

Director's guidelines for determining properties that are comparable to a residential property that is to be sold

Estate Agents Act 1980 (Vic), subsection 47AD(1)

These Guidelines must be taken into account when determining comparable properties

1. Under subsection 47AD(1) of the *Estate Agents Act 1980* (Vic) (the Act), the Director of Consumer Affairs Victoria (the Director) may issue guidelines relating to matters that estate agents and agents' representatives must have regard to in determining which residential properties are most comparable to a residential property that is to be sold.
2. An estate agent or their representative must ensure that an estimated selling price of a property contained in an engagement or appointment to sell is reasonable and determined in accordance with the requirements at section 47C of the Act, explained in this Guideline.
3. Failure to meet these requirements may result in penalties up to 200 penalty units
4. Under subsection 47AD(3) of the Act, the Director must ensure that these Guidelines are published on the Consumer Affairs Victoria website.

Estate agents must provide an estimated selling price to a seller (section 47A)

5. An estate agent or an agent's representative must provide an estimated selling price to a seller before the seller signs an engagement or appointment to sell a property (the sale property).
6. The estimated selling price must be expressed as a single amount or a range where the upper limit does not exceed 10 per cent of the lower limit.
7. The engagement or appointment to sell must be set out in the form approved by the Director.

The estimated selling price must be reasonable (sections 47AB and 47AC)

8. The estimated selling price must be reasonable and determined in accordance with the following requirements.

9. The estate agent or agent's representative employed by the agent must take into account the sale prices of three comparable properties that the agent or their representative reasonably considers to be the most comparable.
10. A residential property is a comparable property if it is of a similar standard or condition to the sale property, and is:
 - a. if the sale property is located within the Melbourne Metropolitan area – within a two-kilometre radius of the sale property.
 - b. if the sale property is located outside the Melbourne metropolitan area – within a five-kilometre radius of the sale property.
11. The Melbourne metropolitan area for these purposes is determined by the Director. The current Determination is published on the Consumer Affairs Victoria website.
12. If the sale property is located in the Melbourne metropolitan area, the comparable properties must have been sold within the preceding six months of the date that the seller signs an engagement or appointment to sell the property.
13. If the sale property is located outside the Melbourne metropolitan area, the comparable properties must have been sold within the preceding 18 months of the date that the seller signs an engagement or appointment to sell the property.
14. The estate agent or their representative is not required to take into account the sale price of three comparable properties if they reasonably believe that fewer than three comparable properties were sold in:
 - a. if the sale property is located within the Melbourne Metropolitan area – the preceding six months.
 - b. if the sale property is located outside the Melbourne metropolitan area – the preceding 18 months.
15. If an estate agent or their representative is not required to take into account the sale price of three comparable properties for the reason stated above, the estimated selling price must nevertheless be reasonable.

Most comparable properties

16. Where there are *more than three* comparable properties that could be taken into account, the agent or their representative must take into account the three that they consider to be the *most comparable*.
17. When determining which properties are the three most comparable properties, the estate agent or their representative must have regard to:
 - a. the standard and condition of the properties;
 - b. the location of the properties;
 - c. the dates on which the properties were sold; and
 - d. the Director's Guidelines (these Guidelines).

Matters agents or their representatives must have regard to in determining which residential properties are most comparable

18. **The standard and condition of the properties (section 47AC(2)(a))** – the following matters must be taken into account when considering the standard and condition of the comparable properties compared to the sale property:
 - a. the external construction (e.g. the building materials used);
 - b. the age of the property;
 - c. the architectural style and layout;
 - d. whether the property is renovated or unrenovated;
 - e. the floor size of the dwelling and the land size of the property (as applicable);
 - f. the number of bedrooms, bathrooms, and carpark spaces;
 - g. any special features, such as a swimming pool or tennis court.
19. **The location of the properties (s 47AC(2)(b))** – the following matters must be taken into account when considering the location of the comparable properties compared to the sale property:
 - a. the distance from the sale property;
 - b. zoning and street frontage;
 - c. neighbourhood features, such as proximity to shops, transport, schools, parks, business and industry.
 - d. whether the properties are in the same or different school zones.
20. **The dates on which the properties were sold (s 47AC(2)(c))** – the date on which the comparable property was sold must be taken into account, particularly whether it is closer to the date that the estimated selling price is determined than another comparable property that was sold at an earlier date.
21. **Build status** – the build status of the comparable properties compared to the sale property must be taken into account, for example whether the properties are already built, under construction, sold off-plan or vacant land. Comparable properties should be of the same build status as the property for sale where available. For example, a newly built or renovated property may not be comparable to an older or unrenovated property.
22. **Substantially similar properties** – if a comparable property that was sold within the relevant timeframe and distance from the sale property is substantially similar to the sale property (e.g. duplexes, villa units, apartments in the same complex, houses built on the same street or in the same estate by the same builder), the agent or representative must take that property into account when determining an estimated selling price.

Other relevant requirements

23. **Publication in the Statement of Information (s 47AF(2)(e))** – The details of the three most comparable properties must be included in the Statement of Information that you must provide to a prospective buyer within two business days of a request, display at any open for inspection and include with any internet advertising for the property being offered for sale.
24. If comparable property sales were not taken into account when setting the estimated selling price, a statement outlining that you reasonably believe there are fewer than three comparable sales available must be included in the Statement of Information.
25. **Substantiation (s 47D(1)(a)(iv))** – The Director may give an estate agent who is engaged or appointed to sell any residential property a written notice requiring the agent to give information or produce documents to substantiate the reasonableness of any determination of the 3 most comparable properties. Penalties apply for failing to comply with such a notice without reasonable excuse.

Director, Consumer Affairs Victoria

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