



ASSURANCE
Fair Trading Act 1987
Section 79

Assurance to the Commissioner for Consumer Affairs given for the purposes of s79 of the *Fair Trading Act 1987* by:

Bateman Realty Pty Ltd (ACN 121 289 272) t/a All Adelaide Real Estate City Edge and Paul Bateman

PERSONS GIVING THIS ASSURANCE

1. This Assurance is given to the Commissioner for Consumer Affairs ("the Commissioner") by Bateman Realty Pty Ltd trading as All Adelaide Real Estate City Edge in the State of South Australia and Paul Bateman for the purposes of section 79 of the *Fair Trading Act 1987* (SA).

BACKGROUND

2. Bateman Realty Pty Ltd (ACN 121 289 272) ("Bateman Realty") is a proprietary company limited by shares.
3. Bateman Realty is a licensed Real Estate Agent that sells residential properties in South Australia.
4. Mr Paul Bateman ("Mr Bateman") is a director of Bateman Realty.
5. Section 24A of the *Land and Business (Sale and Conveyancing) Act 1994* requires the advertised price of residential land to be not less than the prescribed minimum advertising price. The prescribed minimum advertising price is whichever is the greater of the vendor's acceptable selling price and the agent's estimate of the selling price, as expressed in the Sales Agency Agreement.
6. Section 20 of the *Land and Business (Sale and Conveyancing) Act 1994* requires a Sales Agency Agreement (entered into with a vendor before an agent can lawfully act on behalf of the vendor) to meet all requirements prescribed under section 20 of the *Land and Business (Sale and Conveyancing) Act 1994*.
7. Sections 10 and 11A of the *Land Agents Act 1994* requires that a registered agent that is a body corporate must ensure that its place of business is being properly managed and supervised as required by regulation 10 of the *Land Agents Regulations 2010*.

CONDUCT OF CONCERN

8. Between November 2017 and January 2018, Bateman Realty advertised the sale of a property at 8 Torrens View Court, Highbury, South Australia for between \$660,000 and \$680,000 in circumstances where both the vendor's acceptable selling price and the agent's estimated selling price was \$680,000. The prescribed minimum advertising price was therefore \$680,000.

9. Between March 2017 and May 2017, Bateman Realty advertised the sale of a property at 12 Neville Street, Northfield, South Australia for between \$350,000 and \$370,000 in circumstances where the vendor's acceptable selling price was \$355,000, and the agent's estimated selling price was \$350,000. The prescribed minimum advertising price was therefore \$355,000.
10. Between February 2017 and May 2017, Bateman Realty advertised the sale of a property at 2A Down Drive, Valley View, South Australia for between \$499,000 and \$539,000 in circumstances where the vendor's acceptable selling price was \$520,000 and the agent's estimated selling price was not completed. The prescribed minimum advertising price was therefore \$520,000.
11. Between December 2016 and June 2017, Bateman Realty advertised the sale of a property at 26A Leron Avenue Enfield, South Australia for between \$499,000 and \$549,000 in circumstances where the vendor's acceptable selling price was \$550,000 and the agent's estimated selling price was not completed. The prescribed minimum advertising price was therefore \$550,000.
12. Between December 2016 and August 2018 Bateman Realty acted as a land agent for a vendor in circumstances where the Sales Agency Agreement did not record the agent's estimated selling price as a single figure, nor the vendor's acceptable selling price and/or the manner of sale in relation to the sale of residential land at:
 - 26 Meadowbank Terrace, Northgate, South Australia
 - 16 Kanangra Road, Dernacourt, South Australia
 - 16 River Walk, Walkley Heights, South Australia
 - 1 Stonehaven Lane, Northgate, South Australia
 - 7 Piccadilly Way, Lightsview, South Australia
 - 1 Twin Street, Northfield, South Australia
 - 5 Brian Grove, Paradise, South Australia
 - 2A Down Drive, Valley View, South Australia
 - 1 Penang Lane Lightsview, South Australia
 - 26A Leron Avenue, Enfield, South Australia
13. Between December 2016 and January 2018 Bateman Realty failed to ensure that the nominated manager and its employees were all instructed as to their obligations of the *Land and Business (Sale and Conveyancing) Act 1994*, the *Land Agents Act 1994* and the *Land Agents Regulations 2010* and failed to ensure that the nominated manager acted with due care and diligence by reviewing the employees Sales Agency Agreements.

CONTRAVENTIONS

14. The Commissioner considers and Bateman Realty and Mr Bateman acknowledge, that it is likely that Bateman Realty has:
 - 14.1. Made representations (through advertising) as to the likely selling price of residential land which were less than the prescribed minimum advertising price in contravention of section 24A of the *Land and Business (Sale and Conveyancing Act) 1994*;

- 14.2. Acted on behalf of vendors in respect of the sale of residential land in circumstances where the Sales Agency Agreement did not comply with all the requirements under section 20(1) of the *Land and Business (Sale and Conveyancing Act) 1994* in contravention of section 20 of the *Land and Business (Sale and Conveyancing Act) 1994*; and
 - 14.3. Failed to properly manage and supervise its place of business as required by sections 10 and 11A of the *Land and Business (Sale and Conveyancing Act) 1994* by ensuring that its nominated manager followed the practices specified in regulation 10 of the *Land Agents Regulations 2010*.
15. The Commissioner considers and Mr Bateman acknowledge, that it is likely that Mr Bateman has:
- 15.1. Aided, abetted, counselled or procured Bateman Realty to make a representation (through advertising) as to the likely selling price of residential land which was less than the prescribed minimum advertising price in contravention of section 24A of the *Land and Business (Sale and Conveyancing Act) 1994* and section 267 of the *Criminal Law Consolidation Act 1935*; and
 - 15.2. Aided, abetted, counselled or procured Bateman Realty to act on behalf of a vendor in respect of the sale of residential land in circumstances where the Sales Agency Agreement did not comply with all the requirements under section 20(1) of the *Land and Business (Sale and Conveyancing Act) 1994* in contravention of section 20 of the *Land and Business (Sale and Conveyancing Act) 1994* and section 267 of the *Criminal Law Consolidation Act 1935*.

COMMENCEMENT OF ASSURANCE

16. This Assurance comes into effect when:
- 16.1. The Assurance is executed Bateman Realty;
 - 16.2. The Assurance is executed by Mr Bateman; and
 - 16.3. The Commissioner for Consumer Affairs accepts the Assurance so executed.

ASSURANCE BY BATEMAN REALTY AND MR BATEMAN FOR THE PURPOSES OF SECTION 79 OF THE FAIR TRADING ACT 1987

17. In response to the concerns raised by CBS on behalf of the Commissioner for Consumer Affairs, Bateman Realty and Mr Bateman hereby provide an Assurance to the Commissioner that:
- 17.1. Bateman Realty will not make a representation as to the likely selling price of land which is less than the prescribed minimum advertising price in compliance with section 24A of the *Land and Business (Sales and Conveyancing) Act 1994*;
 - 17.2. Bateman Realty will not act for a vendor unless and until it has entered into a Sales Agency Agreement with the vendor that fulfils all the requirements for Sales Agency Agreements in compliance with section 20 of the *Land and Business (Sales and Conveyancing) Act 1994*;
 - 17.3. Bateman Realty will ensure that its business is properly managed and supervised in compliance with sections 10 and 11A of the *Land Agents Act 1994* and regulation 10 of the *Land Agents Regulations 2010*;

- 17.4. Mr Bateman will not aid, abet, counsel or procure a land agent to make a representation as to the likely selling price of land which is less than the prescribed minimum advertising price in compliance with section 24A of the *Land and Business (Sales and Conveyancing) Act 1994*;
- 17.5. Mr Bateman will not aid, abet, counsel or procure a land agent to act for a vendor in circumstances where the land agent has not entered into a Sales Agency Agreement that fulfils all the requirements for Sales Agent Agreements in compliance with section 20 of the Act;
- 17.6. Bateman Realty undertakes that existing and new staff are to be inducted and trained to identify legal and ethical requirements of Sales Agency Agreements and adhere to all legislative obligations;
- 17.7. Bateman Realty will ensure that its Sales Agency Agreement compliance process is maintained by a senior member of staff on an ongoing basis'
- 17.8. Mr Bateman will enrol in, and complete to a satisfactory standard within 12 months, three units which form part of the Diploma of Property Services (Agency Management):
- **CPPDSM4008A** Identify legal and ethical requirements of property sales to complete agency work
 - **CPPDSM4009A** Interpret legislation to complete agency work
 - **BSBMGT502A/ BSBMGT502B** Manage people performance

ACKNOWLEDGMENTS

18. Bateman Realty and Mr Bateman acknowledge that:

- 18.1. It is an offence to breach an Assurance, as set out in section 81 of the *Fair Trading Act 1987*.
- 18.2. CBS will make this Assurance publicly available including by publishing it on CBS' public register of undertakings on its website;
- 18.3. CBS may, from time to time, make public reference to the Assurance including in news media statements and in CBS publications; and
- 18.4. This Assurance in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 18.5. This Assurance may be produced to any Court in respect of any proceedings alleging any future contraventions of the *Fair Trading Act 1987* or a related Act.

EXECUTED BY Bateman Realty pursuant to section 127(1) of the *Corporations Act 2001 (Cth)* and Paul Bateman in his personal capacity for the purposes of this Assurance


.....
Mr Paul Bateman

Director of Bateman Realty Pty Ltd

Date: 29/5/19

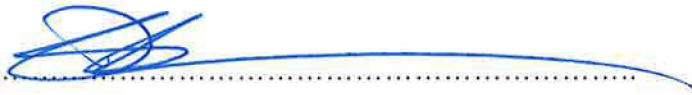


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Ms Denise Bateman

Director of Bateman Realty Pty Ltd

Date: 29/5/19

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to s79 of the *Fair Trading Act 1987*



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Commissioner for Consumer Affairs (SA)

Date: 12/6/19

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