



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

Photographing & filming tenants'
possessions for advertising purposes
Victorian Law Reform Commission Consultation

August 2014

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ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are Members of the REIV. These Members are located in city, rural and regional areas.

The businesses employ more than 10,000 people in Victoria in a market which handles over \$70 billion of transactions totalling 22 per cent of GSP.

Members specialise in all facets of real estate, including: residential sales, commercial and industrial sales, auctions, business broking, buyers agency, property management, owners' corporations management and valuations.

Introduction

On 30 Jan 2014 the Victorian Law Reform Commission (VLRC) announced the terms of reference for a review into 'photographing and filming tenants' possessions for advertising purposes'.

The paper, published on 27 June 2014, asked questions designed to assist the VLRC to determine whether changes are needed to improve the operation of this area of law.

To help answer these questions the REIV has engaged in a process of industry consultation comprising:

- Consideration and review by Member elected committees including the:
 - Property Management Chapter Committee
 - Sales Chapter Committee
 - Estate Agency Committee
- A survey of REIV members in relation to issues raised in the Consultation Paper
- Informal member consultations by our board, executive and membership team.

This paper presents a discussion of the answers received and a series of recommendations to the VLRC.

The recommendations aim to strike a balance between the issues outlined by the VLRC and the practical needs of tenants, landlords and agents.

The Scope

Issue hard to identify

Nearly 470,000 of Victoria's 1.95 million households privately rent the premises in which they live¹ and data cited by the Tenants Union of Victoria states the median average length of a tenancy is only 18 months.²

It follows that in any given year almost 300,000 residential tenancies must be advertised for sale or lease and, in many cases, these properties are tenanted during this process.

Data suggests that, for every 13,000 tenanted properties advertised there is just one query (relating to photographing or filming possessions) to Consumer Affairs Victoria.³

Furthermore, the Victorian Civil & Administrative Tribunal (VCAT) does not have any record of an application for an order restraining a landlord or agent from using advertising photographs that contain tenants' possessions.⁴

Feedback from the industry, included in this submission, supports the basis that, in the rare occurrence that a tenant is concerned about this area of activity, the concern is allayed through discussion and mutual recognition of a need to meet the tenants' (and landlords') best interests.

Key Outcomes

The following outcomes were gained from the Member consultation process.

Sensitivity to tenants' needs

Of all agents surveyed none were aware of an instance where there had been a failure to adequately notify a tenant that advertising photographs or videos containing their possessions would be taken inside their home.

A small number of agents were aware of instances in which a tenant was concerned that their possessions might be seen in advertising photographs.

No agents reported that tenants had expressed any additional concerns other than those already under consideration by the VLRC.

Mutual support, common solutions

Where a tenant concern was identified, agents reported they were able to negotiate a compromise solution between the tenant and the landlord. Examples of these negotiated outcomes include:

- Using older photos of the property
- Waiting until the property was vacated before taking new photographs
- Allowing the tenant to review and approve photographs before they were used in advertising

Workable practices

Agents made a variety of suggestions for a workable standard practice for taking photographs and video for advertising purposes. These are in line with current practices, and focus on:

- Agents should be required to inform tenants prior to an inspection that photographs or videos for advertising purposes may be taken and allow tenants to raise concerns at that time.
- "Right of entry notification" be provided that makes it clear that photographs/video may be taken. The notification needs to provide contact details for the agent, so that tenants can raise any concerns.

Some agents made a further suggestion that tenants' consent to the taking of photos and video for advertising purposes only be gained where their possessions are shown.

¹ Tenants Union of Victoria, Key Housing and Tenancy Statistics (February 2014); VLRC Preliminary consultation with the Tenants Union of Victoria (30 August 2013)

² VLRC Consultation Paper, Introduction (p. 4)

³ The Consultation Paper notes that in over three years to June 2013 Consumer Affairs Victoria (CAV) received 68 enquiries about advertising photographs containing tenants'

possessions. Over the same period, about 900,000 properties were rented in this state.

⁴ Information provided to the Victorian Law Reform Commission by the Victorian Civil and Administrative Tribunal (4 March 2014)

Industry View

Throughout the consultation process it was clear that estate agents possess a clear understanding of a tenant's need for privacy.

The concerns raised by the VLRC Consultation Paper were acknowledged by agents who emphasised in return that respectful and effective practices were already in place throughout industry.

Agents were universally concerned about the potential impact of additional regulation which could seriously disadvantage landlords' legitimate interests.

Concerns

The majority of agents surveyed expressed concern about additional regulations being imposed and noted that broader education of tenants and landlords in this area would be useful.

The overwhelming majority of agents surveyed support the right of agents, and to lesser extent landlords, to enter a property to take photographs or videos for advertising purposes.

100% of members surveyed supported the right of landlords and agents to take photographs and videos containing tenants' possessions where tenants were informed in writing and given the opportunity to remove their possessions from view.

Summary

Agents report that the “issue” is, at best, extremely hard to identify.

This is supported by VCAT, which has no record of an application for an order restraining a landlord or agent from using advertising photographs that contain tenants’ possessions.

It should be noted that the consultation is being undertaken only in response to “discussions between the Victorian Law Reform Commission and the Tenants Union of Victoria”.⁵

Recommendations

In developing the following recommendation the REIV has taken into consideration the information presented in the VLRC discussion paper, the feedback of members and the practical and financial impacts that additional regulation may have on tenants, landlords and agents.

The key recommendations, as outlined earlier, are for a formalisation of current practices. These include:

- Agents should be required to inform tenants prior to an inspection that photographs or videos for advertising purposes may be taken and allow tenants to raise concerns at that time.
- “Right of entry notification” be provided that makes it clear that photographs/video may be taken. The notification needs to provide contact details for the agent, so that tenants can raise any concerns.

⁵ VLRC Consultation Paper, Preface (p. IV)

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