

# **Property Misdescriptions Act 1991**

Aberdeenshire Council  
Trading Standards



## **The Legislation**

The Property Misdescriptions Act 1991 creates an offence for any house builder, property developer or estate agent (including any solicitor providing any estate agency services) to make a false or misleading statement about a specified matter.

Specified matters are defined in the Property Misdescriptions (Specified Matters) Order 1992, which covers a wide variety of descriptions such as location, address, environment, room sizes, fitness for purpose, fixtures & fittings, history and price etc.

## **The Basic Principals**

The Act does not alter any contractual position between parties but is intended to protect buyers from false or misleading statements and to ensure businesses compete fairly with each other.

There is no obligation to describe any item listed as a specified matter but any such description must not be false or misleading. A description can, however, be made in any manner such as in writing, pictorially and verbally.

Nobody actually needs to buy a property for an offence to have been committed. As soon as a false or misleading statement is given a breach of the act may have occurred.

The Act does not require the business to know the statement is false for an offence to have been committed and is therefore of “strict liability”. To ensure fairness though the Act contains a “due diligence” defence. This means if a court considers all reasonable steps and all due diligence has been taken to avoid the commission of the offence then a business will not be found guilty.

## **Due Diligence**

Reasonable Steps – likely to involve setting up a documented system of control relevant to the size, structure and practices of the individual business.

Due Diligence – ensuring the proper operation of that system.

A documented due diligence system can ultimately be shown to the court or officers investigating an alleged offence but is likely to fail if there is a reasonable step which could have been taken and was not.

As a general guide towards establishing a due diligence system the following should be considered as good practice.

- a) ensure staff have the necessary training, experience and authority to conduct the relevant task – particularly in relation to drawing up schedules.
- b) request vendors to check the accuracy of the schedule before a property is marketed and countersign to this effect. It should, however, be noted that under the Act vendors cannot commit any offence.
- c) be aware of any aspect of a property that should put you on your guard such as extensions or loft conversions etc
- d) ensure someone proof reads every schedule
- e) ensure a senior person regularly checks a proportion of the schedule produced
- f) produce a check list as an aide memoire when obtaining property details
- g) when customers make enquires keep a record in the property file so there is no confusion at a later date over what information was provided.
- h) Check everything that it is reasonable to check and take copies of e.g. receipts/guarantees for work carried out
- i) ensure equipment used, such as tape measures, are accurate.
- j) if a property has been marketed by you for some time periodically re-check the details to ensure nothing has changed.

### **Descriptions**

No descriptions have been banned by the Act but phrases such as “immaculate condition” or “ideal location” have wide implications and are subjective and may, therefore, be best avoided.

The following is provided as guidance –

Location – statements such as “close” to amenities etc may be misinterpreted however stating actual distances (by road) is less likely to mislead.

Environment – ensure the overall effect of a description is not misleading – “peaceful rural location” may need further clarification if noisy tractors pass by in the early morning. However, if no reference is made to the environment there is no obligation to disclose a proposed road being built nearby provided that failure to do so would not make other descriptions misleading.

Photographs - A photograph can mislead and so should not be enhanced or changed. Photographs should be taken from natural angles and positions so as to be genuinely representative. If a block of apartments is shown, the actual property for sale can be highlighted in the photograph and if a garage which is not for sale appears in the photograph a statement under the photograph should make that clear.

Measurements - These should be as accurate as possible and stated with a reasonable margin of error in the schedule. Every measure used should be accurate and calibrated. Care should be taken when describing irregular shaped rooms and diagrams can be included to provide clarification. Descriptions such as “L shaped room,” “into bay windows” and “to back of fitted wardrobe” may also be useful and necessary to ensure measurements do not mislead.

### **Disclaimers**

General disclaimers telling buyers not to rely on details have no effect under the Act and will not prevent offences being committed. Disclaimers may, however, be useful if for example household appliances are included in the sale but you have not verified they are in working order. They should be as bold, precise and compelling as any information to which they relate.

### **Further Advice**

Every trading standards service operates to the “Home Authority Principle” which provides for advice to be given by the local authority trading standards service in the area where your head office is located. If your head office is within Aberdeenshire, or you have specific local issues, you can contact Aberdeenshire Consumer Protection who can offer further free and impartial advice.

You may also wish to view the Act and the Order and these can be obtained from Her Majesty’s Stationery Office or at [www.hmsso.gov.uk](http://www.hmsso.gov.uk).