

Property Misdemeanors

Guidance Notes for Traders

FURTHER ADVICE IS AVAILABLE FROM:

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About Trading Standards

Our aim is to protect consumers and businesses from unfair trading. As an estate agent or property developer, the Property Misdescriptions Act demands that you do not falsely describe property. Businesses who do this not only mislead, but might also gain business at the expense of those who tell the truth. We realise that you may have incurred some extra costs with the introduction of the Act as a result of extra checking procedures and documentation. It is worth remembering, however, that the cost of non-compliance could be substantial. The maximum fine on summary conviction is £5,000 per offence and on conviction on indictment an unlimited fine. One set of property particulars alone might contain several offences. So as well as compliance being in the interests of consumer protection and fair trading, it is also makes good economic sense! As well as carrying out spot-checks, we will also be dealing with complaints. You should be ready to co-operate with our officers and show them any documentation they need to see. All officers carry credentials which they will gladly show.

'Home Authority' Principle

With each trading standards department dealing with descriptions seen within its own area, it is important that there is uniformity. If you have any specific questions on interpretation of the Act, and your business has a Head Office outside our area, you are encouraged to ask your Head Office to seek the advice of their local trading standards department in the first instance.

- When you get queries about a property, get the person who prepared the details to answer the questions and make a record of what is said on file. You won't be held responsible for what vendors tell purchasers in your absence unless you knew what they were going to say, but remember that purchasers might forget who told them what.
- Check everything you can. Ask to see receipts and guarantees for work carried out. Check council tax bands. Ask for evidence of sales and turnover if you want to describe the success of a business property.
- Set up a system to ensure that your staff are adequately trained and that their work is regularly checked. You should consider random double-checking of property details against the property itself during this auditing process. Any deficiencies can then be dealt with by issuing corrected particulars and retraining where necessary.

General Descriptions

Terms such as 'immaculate condition' or 'recently decorated' are not banned by the Act, but these terms will be taken to refer to the entire property. If there are any particularly attractive features, your client will obviously expect you to use them as selling points but they should not be emphasised to the exclusion of bad features if the overall result is a misleading description.

The Act does not require you to disclose defects such as a leaky roof even if you have seen a survey, but your description as a whole must not give the impression that the property does not have that defect.

Location

Don't stretch the Trossachs or the Cairngorms too far! Use the correct postal address. If a house is in one council geographically, but its postal address is in a neighbouring council, you should include both with equal prominence.

Comments concerning the proximity of properties to local services should be used with care. Terms such as 'close' or 'easy access' are best avoided, as are estimates of journey times. A statement of the actual distance is more accurate, eg 4 miles to the A96.

Environment

If a house has open fields on three sides and an abattoir or night club on the fourth, the safest option is not to refer to the outlook. If you said that it was surrounded by views across open fields, you would mislead unless you made equal reference to the view on the fourth side. If you use a photograph of the back or the side of a property on its own, you should make that fact clear.

Photographs

A photograph can be misleading. Do not doctor photos or use extreme lenses. If you take a photo of the view from a bedroom window, but cannot include the rubbish dump, don't say 'panoramic views' or 'unspoilt countryside'.

Measurements

You should try to make measurements as accurately as you can. We suggest an error margin for rooms in domestic properties of eight centimetres either way is reasonable. Sonic measures are not specifically banned, but, as with any measuring instruments, they should be calibrated every twelve months and used with great care. Our advice is that physical measures are better.

Be careful with gardens, where large length or area measurements can be involved.

Pricing and 'New Instructions'

You may advertise a property as a 'new instruction' to your agency for only a short period (we would suggest a month) after you have been asked to become the vendors' agent. This applies even if the property has been advertised previously with another agency.

Newly built and newly converted properties are covered by the Consumer Protection Act 1987. Such a property should only be described as 'reduced' if it has been on sale at the higher price for twenty eight consecutive days in the last six months and you state what that higher price was.

You should be able to provide adequate evidence to show that you have tried to obtain information on the length of any lease (in Scotland this means a 'long lease') or freehold of the property. Alternatively, say that this aspect has not been checked.

Re-checking

If you have a property which has been under your instructions for a long period of time, it is advisable to check to see if the details are still correct. If a new road is planned which wasn't before, or if the local train operator withdraws a train service you had referred to, then you should modify your details and advertisements.

Disclaimers

General disclaimers in small print telling buyers not to rely on details won't be effective in preventing offences. However, there are some cases where a specific qualifying description may be acceptable. For example, if the vendor claims without documentary evidence that the property was treated for dry rot, you may only mention this if you say as part of that description that you have not seen any documents to verify this. A similar qualification might be applied to the working order of household appliances or central heating or claims about the history of a property. The crucial fact in assessing whether a qualified description is valid is the ease with which you could have reasonably checked it.

You should obtain a copy of the Property Misdescriptions Act itself and the Specified Matters Order if you want to get the full benefit from this sheet. The legislation is available from HMSO bookshops.

Basic Principles

The Act, which controls property developers as well as estate agents, creates criminal offences but does not alter the contractual position between vendor, buyer and agent.

You will not have to refer to any item in the specified matters list, but if you do, your descriptions must be truthful. Things you say about the property will be covered as well as the printed word, photos, plans etc.

The Act will not stop you acting in vendors' interests by presenting property in the best light provided what you say does not mislead.

Things you can do

- Get vendors to sign to say that particulars are correct before you market a property. Give them a chance to amend anything that is wrong. This won't protect you if you print a misdescription you could have reasonably checked out for yourself, but it will minimise the risk.
- Think about all the descriptive phrases you use and ask yourself what they will mean to an average purchaser.
- Make it somebody's task to proof-read particulars and sign to say they have done so.

Finally...

As well as the Property Misdescriptions Act, Trading Standards enforces a range of consumer and trading legislation which might affect you. Examples include the Estate Agents Act and the Consumer Credit Act. Advice or literature to assist you in complying. is available from Trading Standards.



These notes have been prepared by Aberdeenshire Council Environmental Health & Consumer Protection. They are provided for the guidance of traders and are not intended to be a definitive statement of the law. Only the courts can give an authoritative interpretation of legislation.