

Primary Authority Partnerships

Warwickshire County Council Trading Standards & National Federation of Property Professionals & The Property Ombudsman

Primary Authority Advice

Advice requested:

When an agent is marketing a leasehold property, what material information should be disclosed to consumers?

Legislation considered:

Consumer Protection from Unfair Trading Regulations 2008 (as amended) (“CPRs”)

Other Material considered:

National Trading Standards Estate Agency Team Guidance on Property Sales, September 2015 (“NTS Guidance”)

Residential Leases: Fees on Transfer of title, Change of Occupancy and other events, Consultation Paper 226, October 2015, Law Commission

Residential Leases: Fees on Transfer of Title, Change of Occupancy and Other Events, Summary of responses to Consultation Paper, May 2016, Law Commission

Assured Advice Issued:

The simple rule for agents is that they pass on all the material information that a potential purchaser or tenant needs to make their transactional decision, as failure to do this could be classed as a misleading omission.

An individual purchasing a property will need to know the tenure of the property. Where the property being marketed as ‘leasehold’, then the agent would be expected to provide material information to the consumer so they can make an informed transactional decision.

Material information in respect of the lease would include, but is not limited to, the following:

- Number of years remaining on the lease;
- Amount of Annual Ground Rent and when payable, together with details of how this will increase over time, if applicable;
- Amount of Annual Service Charge, and when payable;

- Amount of any Event Fees, and when payable;
- Amount of Annual 'Sinking Fund Reserve' and when payable (if not already included in other charges);
- Details of any event-related fees & charges payable under the lease that are triggered by certain circumstances or events;
- Rent payable in the case of a shared ownership arrangement;
- Details of any other fees / charges contained in the lease
- Details of any unusual restrictions or covenants affecting the use and enjoyment of the property

The agent would be expected to take all reasonable precautions and exercise all due diligence to avoid committing an offence under the regulations. In practice, we would expect the agent to have asked the vendor to declare such information in writing, for example via the completion of a property information questionnaire signed by the vendor.

The agent is not a solicitor, so we would not expect them to perform conveyancing duties before marketing the property. However to satisfy their duty to take all reasonable precautions, they should ask further relevant questions of the vendor, where doubts or missing information exists following receipt of the questionnaire.

If the agent has carried out all reasonable enquiries with the vendor and certain information is still unavailable, the fact that the information is unknown should be clearly disclosed to potential purchasers, to enable them to make an informed transactional decision.

Agents should follow the requirements in any relevant code of practice that they are obliged to follow as part of their membership of a consumer redress scheme.

This advice only applies to England, Wales & Scotland.

Date Advice is Effective from:

14 03 2017

Reference and renewal:

The reference for this advice is: WTS/NFOPP/TPOS/18

This advice will be reviewed annually; however it will remain valid until it is marked 'obsolete' on the Primary Authority Database. If any part of this document requires amendment following a review, a completely new version will be added to the database and the previous version shall be marked 'obsolete'.