



Primary Authority Partnership

Warwickshire County Council Trading Standards

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Propertymark

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Primary Authority Advice Reference WTS/PM/TPO/18

This Primary Authority Advice has been produced by Warwickshire County Council Trading Standards Service, in partnership with The Property Ombudsman and Propertymark, for use by member businesses as an aid to complying with the law. If you follow this advice correctly, your local Trading Standards Service should respect this and not ask you to comply with the law in a different way. If you are contacted by a local authority enforcement body, please inform them that you are a member of the scheme.

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 is being marketed as 'leasehold', 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 full 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 there are doubts or missing information. They may also need to consult official sources, e.g. Land Registry, local authorities etc.

If the agent has carried out all reasonable enquiries 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.

Date Advice is Effective from (issue date): 14 03 2017

Last Review Date: 17 04 2020

Next Review Date: 16 04 2021

Primary Authority: Warwickshire County Council Trading Standards Service

Co-ordinators: The Property Ombudsman and Propertymark

Supporting Regulator: Not applicable

For Publication on the Primary Authority Register: Yes

Geographic Applicability: This advice applies in England.

Scope: This advice is applicable to all member businesses.

How to obtain up to date copies of this advice: Current copies of this advice may be obtained via the member organisations' websites:

www.tpos.co.uk/members/assured-advice/assured-advice-information

and

www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/.