



Property Misdescriptions Act 1991

CHAPTER 29

ARRANGEMENT OF SECTIONS

Section

1. Offence of property misdescription.
2. Due diligence defence.
3. Enforcement.
4. Bodies corporate and Scottish partnerships.
5. Prosecution time limit.
6. Financial provision.
7. Short title and extent.

SCHEDULE:

Enforcement.



Property Misdescriptions Act 1991

1991 CHAPTER 29

An Act to prohibit the making of false or misleading statements about property matters in the course of estate agency business and property development business. [27th June 1991]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Where a false or misleading statement about a prescribed matter is made in the course of an estate agency business or a property development business, otherwise than in providing conveyancing services, the person by whom the business is carried on shall be guilty of an offence under this section.

Offence of
property
misdescription.

(2) Where the making of the statement is due to the act or default of an employee the employee shall be guilty of an offence under this section; and the employee may be proceeded against and punished whether or not proceedings are also taken against his employer.

(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine.

(4) No contract shall be void or unenforceable, and no right of action in civil proceedings in respect of any loss shall arise, by reason only of the commission of an offence under this section.

(5) For the purposes of this section—

- (a) “false” means false to a material degree,
- (b) a statement is misleading if (though not false) what a reasonable person may be expected to infer from it, or from any omission from it, is false,

1979 c. 38.

- (c) a statement may be made by pictures or any other method of signifying meaning as well as by words and, if made by words, may be made orally or in writing,
- (d) a prescribed matter is any matter relating to land which is specified in an order made by the Secretary of State,
- (e) a statement is made in the course of an estate agency business if (but only if) the making of the statement is a thing done as mentioned in subsection (1) of section 1 of the Estate Agents Act 1979 and that Act either applies to it or would apply to it but for subsection (2)(a) of that section (exception for things done in course of profession by practising solicitor or employee),
- (f) a statement is made in the course of a property development business if (but only if) it is made—
 - (i) in the course of a business (including a business in which the person making the statement is employed) concerned wholly or substantially with the development of land, and
 - (ii) for the purpose of, or with a view to, disposing of an interest in land consisting of or including a building, or a part of a building, constructed or renovated in the course of the business, and
- (g) “conveyancing services” means the preparation of any transfer, conveyance, writ, contract or other document in connection with the disposal or acquisition of an interest in land, and services ancillary to that, but does not include anything done as mentioned in section 1(1)(a) of the Estate Agents Act 1979.

(6) For the purposes of this section any reference in this section or section 1 of the Estate Agents Act 1979 to disposing of or acquiring an interest in land—

1979 c. 33.

- (a) in England and Wales and Northern Ireland shall be construed in accordance with section 2 of that Act, and
- (b) in Scotland is a reference to the transfer or creation of an “interest in land” as defined in section 28(1) of the Land Registration (Scotland) Act 1979.

(7) An order under this section may—

- (a) make different provision for different cases, and
- (b) include such supplemental, consequential and transitional provisions as the Secretary of State considers appropriate;

and the power to make such an order shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Due diligence
defence.

2.—(1) In proceedings against a person for an offence under section 1 above it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) A person shall not be entitled to rely on the defence provided by subsection (1) above by reason of his reliance on information given by another unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information, and
- (b) to whether he had any reason to disbelieve the information.

(3) Where in any proceedings against a person for an offence under section 1 above the defence provided by subsection (1) above involves an allegation that the commission of the offence was due—

- (a) to the act or default of another, or
- (b) to reliance on information given by another,

the person shall not, without the leave of the court, be entitled to rely on the defence unless he has served a notice under subsection (4) below on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings or, in Scotland, the diet of trial.

(4) A notice under this subsection shall give such information identifying or assisting in the identification of the person who committed the act or default, or gave the information, as is in the possession of the person serving the notice at the time he serves it.

3. The Schedule to this Act (which makes provision about the enforcement of this Act) shall have effect. Enforcement.

4.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly. Bodies corporate and Scottish partnerships.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed in Scotland by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

5.—(1) No proceedings for an offence under section 1 above or paragraph 5(3), 6 or 7 of the Schedule to this Act shall be commenced after— Prosecution time limit.

- (a) the end of the period of three years beginning with the date of the commission of the offence, or
- (b) the end of the period of one year beginning with the date of the discovery of the offence by the prosecutor,

whichever is the earlier.

(2) For the purposes of this section a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by him shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.

Financial
provision.

6. There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of such money under any other Act.

Short title and
extent.

7.—(1) This Act may be cited as the Property Misdescriptions Act 1991.

(2) This Act extends to Northern Ireland.

SCHEDULE

Section 3.

ENFORCEMENT

Enforcement authority

1.—(1) Every local weights and measures authority in Great Britain shall be an enforcement authority for the purposes of this Act, and it shall be the duty of each such authority to enforce the provisions of this Act within their area.

(2) The Department of Economic Development in Northern Ireland shall be an enforcement authority for the purposes of this Act, and it shall be the duty of the Department to enforce the provisions of this Act within Northern Ireland.

Prosecutions

2.—(1) In section 130(1) of the Fair Trading Act 1973 (notice to Director General of Fair Trading of intended prosecution by local weights and measures authority in England and Wales), after the words “the Consumer Protection Act 1987,” there shall be inserted the words “or for an offence under section 1 of, or paragraph 6 of the Schedule to, the Property Misdescriptions Act 1991,”. 1973 c. 41. 1987 c. 43.

(2) Nothing in paragraph 1 above shall authorise a local weights and measures authority to bring proceedings in Scotland for an offence.

Powers of officers of enforcement authority

3.—(1) If a duly authorised officer of an enforcement authority has reasonable grounds for suspecting that an offence under section 1 of this Act has been committed, he may—

- (a) require a person carrying on or employed in a business to produce any book or document relating to the business, and take copies of it or any entry in it, or
- (b) require such a person to produce in a visible and legible documentary form any information so relating which is contained in a computer, and take copies of it,

for the purpose of ascertaining whether such an offence has been committed.

(2) Such an officer may inspect any goods for the purpose of ascertaining whether such an offence has been committed.

(3) If such an officer has reasonable grounds for believing that any documents or goods may be required as evidence in proceedings for such an offence, he may seize and detain them.

(4) An officer seizing any documents or goods in the exercise of his power under sub-paragraph (3) above shall inform the person from whom they are seized.

(5) The powers of an officer under this paragraph may be exercised by him only at a reasonable hour and on production (if required) of his credentials.

(6) Nothing in this paragraph—

- (a) requires a person to produce a document if he would be entitled to refuse to produce it in proceedings in a court on the ground that it is the subject of legal professional privilege or, in Scotland, that it contains a confidential communication made by or to an advocate or a solicitor in that capacity, or
- (b) authorises the taking possession of a document which is in the possession of a person who would be so entitled.

SCH. 4.—(1) A duly authorised officer of an enforcement authority may, at a reasonable hour and on production (if required) of his credentials, enter any premises for the purpose of ascertaining whether an offence under section 1 of this Act has been committed.

(2) If a justice of the peace, or in Scotland a justice of the peace or a sheriff, is satisfied—

- (a) that any relevant books, documents or goods are on, or that any relevant information contained in a computer is available from, any premises, and that production or inspection is likely to disclose the commission of an offence under section 1 of this Act, or
- (b) that such an offence has been, is being or is about to be committed on any premises,

and that any of the conditions specified in sub-paragraph (3) below is met, he may by warrant under his hand authorise an officer of an enforcement authority to enter the premises, if need be by force.

(3) The conditions referred to in sub-paragraph (2) above are—

- (a) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under that sub-paragraph has been given to the occupier,
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry,
- (c) that the premises are unoccupied, and
- (d) that the occupier is temporarily absent and it might defeat the object of the entry to await his return.

(4) In sub-paragraph (2) above “relevant”, in relation to books, documents, goods or information, means books, documents, goods or information which, under paragraph 3 above, a duly authorised officer may require to be produced or may inspect.

(5) A warrant under sub-paragraph (2) above may be issued only if—

- (a) in England and Wales, the justice of the peace is satisfied as required by that sub-paragraph by written information on oath,
- (b) in Scotland, the justice of the peace or sheriff is so satisfied by evidence on oath, or
- (c) in Northern Ireland, the justice of the peace is so satisfied by complaint on oath.

(6) A warrant under sub-paragraph (2) above shall continue in force for a period of one month.

(7) An officer entering any premises by virtue of this paragraph may take with him such other persons as may appear to him necessary.

(8) On leaving premises which he has entered by virtue of a warrant under sub-paragraph (2) above, an officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(9) In this paragraph “premises” includes any place (including any vehicle, ship or aircraft) except premises used only as a dwelling.

Obstruction of officers

5.—(1) A person who—

- (a) intentionally obstructs an officer of an enforcement authority acting in pursuance of this Schedule,

- (b) without reasonable excuse fails to comply with a requirement made of him by such an officer under paragraph 3(1) above, or
- (c) without reasonable excuse fails to give an officer of an enforcement authority acting in pursuance of this Schedule any other assistance or information which the officer may reasonably require of him for the purpose of the performance of the officer's functions under this Schedule,

SCH.

shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) If a person, in giving any such information as is mentioned in sub-paragraph (1)(c) above,—

- (a) makes a statement which he knows is false in a material particular, or
(b) recklessly makes a statement which is false in a material particular,

he shall be guilty of an offence.

(4) A person guilty of an offence under sub-paragraph (3) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
(b) on conviction on indictment, to a fine.

Impersonation of officers

6.—(1) If a person who is not a duly authorised officer of an enforcement authority purports to act as such under this Schedule he shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
(b) on conviction on indictment, to a fine.

Disclosure of information

7.—(1) If a person discloses to another any information obtained by him by virtue of this Schedule he shall be guilty of an offence unless the disclosure was made—

- (a) in or for the purpose of the performance by him or any other person of any function under this Act, or
(b) for a purpose specified in section 38(2)(a), (b) or (c) of the Consumer Protection Act 1987.

(2) A person guilty of an offence under sub-paragraph (1) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
(b) on conviction on indictment, to a fine.

SCH.

Privilege against self-incrimination

8. Nothing in this Schedule requires a person to answer any question or give any information if to do so might incriminate him.

© Crown copyright 1991

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

Dd 7/2002 566001 19585

1st Impression July 1991
3rd Impression July 2002

Published by The Stationery Office Limited and available from:

The Stationery Office

(Mail, telephone and fax orders only)

PO Box 29, Norwich NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Order through the Parliamentary Hotline *Lo-Call* 0845 7 023474

Fax orders 0870 600 5533

You can now order books online at www.tso.co.uk

The Stationery Office Bookshops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

The Stationery Office Oriel Bookshop

18-19 High Street, Cardiff CF1 2BZ

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 55 66 Fax 0870 606 55 88

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders 020 7219 3890

General enquiries 020 7219 3890

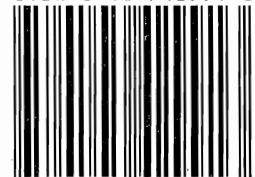
Fax orders 020 7219 3866

The Stationery Office's Accredited Agents

(see Yellow Pages)

and through good booksellers

ISBN 0-10-542991-0



9 780105 429913