



# Property Misdescriptions Act 1991

## 1991 CHAPTER 29

### **1 Offence of property misdescription**

- (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.
- (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,
  - (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—
- (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.

## 2 Due diligence defence

- (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 Enforcement**

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

### **4 Bodies corporate and Scottish partnerships**

- (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.
- (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 Prosecution time limit**

- (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—
- (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.

### **6 Financial provision**

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.

### **7 Short title and extent**

- (1) This Act may be cited as the Property Misdescriptions Act 1991.
- (2) This Act extends to Northern Ireland.