

Case Study - False and Misleading Advertising

Relevant Facts

The property for sale comprised a residence on a block of land, which adjoined a council reserve. A driveway on the council reserve lead from the street to the front of the residence, which was orientated sideways on the block, that is the front of the residence faced the adjoining reserve rather than the street. At the end of the driveway was space for two cars to be parked.

The Complainants attended a group inspection at a property and were handed a marketing brochure but not a copy of the property title by the selling property agent on arrival. The brochure displayed four icons which provided a summary of the property's features, including the size of the land and the number of bedrooms, bathrooms and car spaces. The motor vehicle icon had the number '2' next to it, inferring that there were two car spaces. The brochure contained no mention of car spaces in the written description of the property, nor were any car spaces included on the floorplan. There was a disclaimer that the real estate agency business took no responsibility for any inaccuracies and that all interested parties should make their own enquiries to verify the information.

The Complainants made an unconditional cash offer to purchase the property through the Selling Agent, which was accepted. After settlement the Complainants became aware that the two car parking spaces at the front of the Property were on council land and not contained within the property's boundaries.

Ground of Complaint

The ground of complaint was that the listing property agent engaged in false or misleading advertising by promoting the property as having two car parking spaces, when the advertised spaces were not contained within the property's boundaries.

Discussion

The property agent listed the Property and prepared marketing material in the form of printed brochures and an online listing.

Both contained the number '2' next to the motor vehicle icon, which is a normal feature of marketing material, indicating that there were two car parking spaces. The online listing also contained the words, "*Garaging / carparking: Off street*" in the body of the text.

The listing property agent was aware that the car parks were not on the Property title but was responsible for the preparation of marketing material for the sale of property which advertised that the property included two car parking spaces.

Finding by the Board and actions taken

The Board found that to indicate that there were two car spaces alongside the motor vehicle icon in the advertising material is not considered unreasonable. However, the listing property agent should have qualified in both the printed brochure and the online listing that the car spaces were not within the property's boundaries, irrespective of any disclaimer regarding the accuracy of the information provided. Although the Complainants had an obligation to undertake their own due diligence in respect to the purchase of the property, that obligation should not have absolved the listing property agent accurately describing the features and inclusions of the property within the marketing material.

The Board determined that the complaint was substantiated as the property agent did not exercise a standard of competence and diligence that the public is entitled to expect from a reasonably competent property agent. Whilst it was accepted by the Board that there may not have been any intent on the part of the listing property agent to mislead potential purchasers in respect to the parking, it was known that the car parking spaces were not on the property title and therefore the advertising was false or misleading.

The property agent's conduct was characterised as unsatisfactory professional conduct, but of a minor nature and the Board reprimanded the property agent pursuant to section 101(6)(a) of the *Property Agents and Land Transactions Act 2016*.