

CASE STUDY

Disclosure & Misleading Advertising



Overview	Misleading Advertising
Issue:	Conduct of a Property Agent
Finding:	The property agent's conduct falls short of the standard of competence and diligence that a reasonable member of the public is entitled to expect from a reasonably competent Property Agent.
Consequences:	The Agent was formally reprimanded.
Origin:	Complaint to the Property Agents Board
Relevant Legislation:	<i>Code of Conduct</i> Clause 9 <i>Property Agents and Land Transactions Act 2016</i> Section 56 Section 101(6)(a)

Background

In mid-2024, a purchaser (the complainant) entered into a contract to buy a residential property from a private vendor. The property was listed through a licensed real estate agency under a sole agency agreement. The property agent, an employee of the agency, was the listing agent.

The property was advertised as having seven bedrooms, two bathrooms, multiple living areas, and additional undeveloped space. The upstairs area featured two loft-style bedrooms, a powder room, and a large lounge.

After signing the contract and paying a deposit, the complainant sought clarification about council regarding approvals for the upstairs rooms. The Property Agent advised her to speak with her conveyancer. A valuation later revealed that the upper-level rooms were not council-approved for habitation. Despite this, the sale proceeded to settlement in December 2024.

Nature of the Complaint

In March 2025, the purchaser lodged a complaint with the Property Agents Board alleging that:

- The property agent and agency failed to disclose that the upstairs loft bedrooms were not council-approved.
- The agent ignored pre-settlement enquiries regarding the unapproved works.
- The agency failed to adequately supervise the property agent.

- There were undisclosed safety and compliance issues, including unsafe electrical work, a defective pump that caused minor fire damage, and a high-voltage powerline easement.
- The agency ignored her written complaint.

The complainant sought findings of professional misconduct, disciplinary action, and compensation exceeding \$100,000 for rectification and associated costs.

Property Agent's Response

The property agent denied wrongdoing and stated that:

- The vendor represented the house as having seven bedrooms, and the agent believed this to be accurate.
- The advertising copy was approved by the vendor.
- He was unaware of any unapproved or illegal building work.
- The purchaser inspected the property multiple times (six visits) and was permitted to review the council records.
- The vendor had no reason to suspect the loft rooms were not approved, as they appeared complete and functional.
- He did not possess expertise in building compliance and relied in good faith on the vendor's representations.
- The property's easements were clearly shown on the title, and the pump and wiring issues arose after settlement.

The Property Agent maintained that they acted honestly and reasonably and requested dismissal of the complaint.

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Investigation

The Board requested further information and found that:

- The property agent did not obtain a Property Information Report from the State's property database prior to marketing.
- The agent did not secure a Vendor Disclosure Statement as considered best practice.
- The Property Agent did not obtain signed documentation from the vendor detailing the property description as 'true and correct' but rather relied on an email exchange where the vendor provided instructions on how the property was to be described which the Property Agent undertook to follow.
- The Property Information Report showed the property as a four-bedroom home, not seven, with a floor area significantly smaller than the one advertised.
- Significant discrepancies between the floor plan included in the original advertising for the property, the Property Information Report and the advertised floor area which if obtained would have reasonably prompted the Property Agent to confirm the validity of the improvements.
- The Property Agent failed to respond appropriately to the purchaser's enquiry as to whether the two upstairs bedrooms had proper council approval.

The Board concluded that if the agent had reviewed the Property Information Report, the discrepancies would have been evident and warranted further enquiries.

Findings

The Board determined that:

1. The property agent failed to ascertain all pertinent facts before marketing the property, contrary to Clause 9 of the Property Agents Code of Conduct.
2. The property agent engaged in false or misleading advertising by describing the property as having seven bedrooms and other features that lacked council approval.

The Board rejected the Property Agent's claim that reliance on the vendor's word was reasonable, given the obvious inconsistency between the advertised features and the property's actual approval status.

Other allegations—such as those regarding the powerline easement, the water pump, and agency supervision—were found to be unsubstantiated or outside the Board's jurisdiction.

Decision

The Property Agents Board determined that the conduct amounted to minor misconduct.

The Property Agent was reprimanded under Section 101(6)(a) of the Property Agents and Land Transactions Act 2016 for:

- Failing to ascertain all relevant facts prior to listing the property.
 - Engaging in false or misleading advertising.
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Relevant Legislation Explained

Code of Conduct 2022

9. Professionalism in the property agents industry

(1) A property agent -

...

(f) must ascertain all pertinent facts in relation to a transaction undertaken for a client so as to avoid error, exaggeration or misrepresentation and, if any information about any matter in relation to the transaction, whether or not it is a fact, and whether or not it is unknown to the client, is ascertained, must disclose that information to the client as soon as practicable;

While there are no legislative requirements that specifically obligate a Property Agent to obtain a Vendor Disclosure Statement or a Property Information Report prior to listing a property for sale, doing so would represent sound business practice and demonstrate a high standard of diligence and competence.

Property Agents and Land Transactions Act 2016

Section 56 of the Act states:

(1) A property agent must not represent in any way to someone else anything that is false or misleading in relation to the letting or sale of property.

(2) It is a defence for a person charged with an offence against subsection (1) for the person to prove that, at the time when the representation was made, he or she believed, on reasonable grounds –

(a) in the case of an offence of false representation, that the representation was true;

or

(b) in the case of an offence of misleading representation, that the representation was not misleading.

The Board was satisfied that the Property Agent's failure to ascertain all pertinent facts in relation to the transaction contributed to the property being advertised in a manner that could be considered false or misleading.

The Board considered that the defences available under Section 56(2) are not applicable to the Property Agent in this instance.

This is because the Board considered that the Property Agent had not demonstrated sufficient reasonable grounds to believe that the representations he made regarding rooms in the loft at the Property were true and not misleading.

The decision of the Board was made pursuant to section 101(6)(a) of the Property Agents and Land Transactions Act 2016 -

101. Procedure for minor misconduct

(6) However, if the Board is satisfied that the evidence substantiates the complaint, it may do either or both of the following:

(a) caution or reprimand the property agent;

What Could the Property Agent Have Done in This Example?

1. Verified Key Property Details

Before listing, including approved room numbers and floor area, by obtaining a Property Information Report or similar documentation.

2. Sought Clarification from Relevant Parties

From the vendor and, if necessary, the local council regarding the status of the loft rooms.

3. Used a Vendor Disclosure Statement

To confirm that all building works were council-approved. These are not mandatory in Tasmania however the Board considers that their use should be encouraged by Property Agents whenever possible.

4. Advertised the Property Accurately

Avoiding descriptions that could mislead potential buyers.

5. Maintained Comprehensive Records

Of all due diligence steps taken prior to marketing.

6. Provided Transparent Communication

To prospective purchasers regarding any uncertainty about building approvals or compliance.