

# Module 16: Laws and Regulations

- Where to find the laws relating to Estate Agents
- The spirit of the Estate Agents Act 1979
- The need for regulation
- Aggressive tactics and why they are banned

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## Topics covered in this module:

- Where to find the laws relating to Estate Agents
- The spirit of the Estate Agents Act 1979
- The need for regulation
- Aggressive tactics and why they are banned
- Ombudsmen and why they are a good idea

## 16.1 Introduction

**Laws and Regulations – 4m 57s**

### **Laws and regulations are a necessary part of life.**

They ensure that society has guidelines and systems to ensure that people know what the rules are. They also ensure that when things go wrong, there is a clear path that people can follow to get things sorted out.

When it comes to sales and marketing, there is always someone who is willing to stretch the truth a little, or take bargaining tactics too far. It is usually a result of having sales targets to meet and commissions to earn, but too often, people take it too far.

The real estate sector is no stranger to people who try to push the limits. In the 1960s and 1970s, estate agents were saddled with a really bad reputation, which is still around to a certain extent. In an effort to bring the industry into line and lay down parameters for how estate agents handled advertising, negotiations and funds they received as deposits from clients, the Government passed the Estate Agents Act of 1979, which we will also refer to as the Act, from time to time.

This act, together with the Consumer Protection from Unfair Trading Regulations 2008 and subsequent legislation, have given the industry and its clients clear guidelines and remedies.

We will look at some of the rules, but it is advisable to make yourself familiar with all the rules and regulations as soon as you can. Once you've done that, keep going; as your career advances, you will need to be familiar with as much of the law surrounding the business of real estate as possible. If you are not sure about what the regulations mean, don't try to guess and don't make assumptions. Ask a senior estate agent for help and if they are unable to guide you, find a friendly solicitor, conveyancer or surveyor.

Because court action is a very expensive and time consuming way of settling disputes, the government has created redress schemes. These schemes make it possible for members of the public, who feel aggrieved by the actions or poor service of an estate agent, to approach an ombudsman to seek a remedy.

With the legal framework that now exists, the authorities and the real estate industry are far more able to deal with agents who break the law or take advantage of their clients' ignorance of what is involved in buying and selling property.

Estate agents who are found guilty of transgressing the terms and conditions of the Estate Agents Act and subsequent legislation, can be banned from practising as an estate agent in the United Kingdom.

Apart from the legislation controlling the actions of estate agents and property managers, they are also subject to the common Law of Agency. Under this law, an estate agent can be sued for

breaching his or her duty as an agent. These cases often result in heavy financial penalties for agents.

The Government and the Office of Fair Trading have extensive online resources that are freely available. Use these to make yourself completely familiar with the law and what is expected of you as an estate agent, rental agent or property manager.

### **Additional information**

For information about how the law regulates the relationship between the landlord and the tenant, letting agents and property managers can refer to the [Property Guide UK](#).

Similarly, [commercial real estate transactions](#) are governed by a different set of laws (although there could be overlap with residential property laws).

Every real estate agent should be familiar with property sale rules and regulations that govern the UK market. Read more about the current [UK property laws](#) before you start acting for clients

## **16.2 The Estate Agents Act 1979**

**The Estate Agents Act, which came into effect in 1979, governs almost all the things an estate agent does in order to market and sell properties.**

There are some things that the Act does not cover and some provisions that have not been made use of. Sometimes these aspects are covered by other laws and sometimes they are covered by common law.

For the purposes of this course, it will be impossible to cover the entire act, so we will look at the sections that you will come across from the outset. Once you know the basics that will govern how you must conduct yourself as you work as an estate agent, you will be able to find the more intricate rules as and when you need them.

Once again, it is important to note that you should never make assumptions and never take anything for granted. Once you have read about a particular rule or regulation, always find someone you trust to discuss it with.

If you break any of the rules of the Estate Agents Act, there are two levels of action the authorities can take after they have examined the complaint against you. If they find that you have been conducting yourself in a way that is not allowed by the law, they will issue a Warning Order

instructing you to stop.

If you continue, or if your contravention is bad enough, they will take the second avenue open to them and issue a Banning Order against you. This effectively prevents you from practising as an estate agent in the United Kingdom. These orders can be issued against companies and the people who work for them and against individuals.

The first thing to deal with is the part of the act that defines what the work of an estate agent is.

This definition is necessary because people may think that the work they do brings them under the act, and others act as estate agents, but try and insist that they are not estate agents and therefore do not need to comply with the terms of the Act.

## **16.3 When is a person acting as an estate agent for the purposes of the Act?**

**The Act defines an estate agent by looking at the work they do and seeing how closely it relates to the marketing and selling of property.**

This is essential because there are several jobs that are related to the property market that support the functions of an estate agent, but cannot in themselves be regarded as being the work of an estate agent.

Let's take a look at how the Act defines "Estate Agent's work". In this section, the actual wording of the Act is used. This will give you an idea as to how acts are drafted and why it's wise to have the help of an expert when you want to find out anything about the law.

As you read the next section in italics, below, take it slowly.

You will also notice that the Act is divided into sections which are numbered, starting at 1. Each section has sub-sections (1) and (2), etc. and then each sub-section might have its own sub-sections (a), (b) and so on.

To refer to a section of an act, lawyers will quote the section number followed by the sub-sections. They will write it like this: Section 1(2)(e), but they will say: "Section one, subsection two, e".

As you read the section, don't be intimidated, it's basically English in the end!

When lawyers draft legislation, they have to make it as concise as possible. This results in language construction that sometimes seems impossible to understand. Where it becomes confusing, leave out the subordinate clauses and try again.

Okay, let's go:

#### *1 Estate agency work.*

*(1) This Act applies, subject to subsections (2) to (4) below, to things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as "the client") who wishes to dispose of or acquire an interest in land—*

Confused? Let's drop the subordinate clauses:

*(1) This Act applies to things done by any person in the course of a business pursuant to instructions received from another person who wishes to dispose of or acquire an interest in land—*

So basically, the Act applies to the actions of people who run a business, or are employed by a business, who take instructions from clients who wish to buy or sell land. However, watch out for what they say in subsections (2), (3) and (4).

Now have a go at the real thing:

#### *1 Estate agency work.*

*(1) This Act applies, subject to subsections (2) to (4) below, to things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as "the client") who wishes to dispose of or acquire an interest in land—*

*(a) for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and*

*(b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest;*

*and in this Act the expression "estate agency work" refers to things done as mentioned above to which this Act applies.*

*(2) This Act does not apply to things done—*

*(a) in the course of his profession by a practising solicitor or a person employed by him or by an incorporated practice (within the meaning of the Solicitors (Scotland) Act 1980) or a person employed by it; or*

*(b) in the course of credit brokerage, within the meaning of the Consumer Credit Act 1974; or*

*(c) (omitted)*

*(d) in the course of carrying out any survey or valuation pursuant to a contract which is distinct from that under which other things falling within subsection (1) above are done; or*

*(e) in connection with applications and other matters arising under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 or the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997 or the Planning (Northern Ireland) Order 1991.*

*(3) This Act does not apply to things done by any person—*

*(a) pursuant to instructions received by him in the course of his employment in relation to an interest in land if his employer is the person who, on his own behalf, wishes to dispose of or acquire that interest; or*

- (b) in relation to any interest in any property if the property is subject to a mortgage and he is the receiver of the income of it; or*
- (c) in relation to a present, prospective or former employee of his or of any person by whom he also is employed if the things are done by reason of the employment (whether past, present or future).*
- (4) This Act does not apply to the publication of advertisements or the dissemination of information by a person who does no other acts which fall within subsection (1) above.*
- (5) In this section—*
- (a) "practising solicitor" means, except in Scotland, a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974 or Article 4 of the Solicitors (Northern Ireland) Order 1976, and in Scotland includes a firm of practising solicitors;*
- (b) "mortgage" includes a debenture and any other charge on property for securing money or money's worth; and*
- (c) any reference to employment is a reference to employment under a contract of employment.*

Right, enough torture!

What the Act says is that, even if you don't consider yourself to be an estate agent or call yourself an estate agent, if you undertake certain functions in relation to the buying and selling of property, you will be considered to be an estate agent. Because of this, your business transactions and administration must be run accordingly.

The purpose of the Act is to ensure that people acting as estate agents act in the best interests of their clients at all times.

Let's take a plain-language look at what makes someone an estate agent:

If, during the course of your business, or if you are working for a company, you act on behalf of a client in the buying or selling of property of any sort, agricultural, commercial, residential and so on, then you are acting as an estate agent.

The essence of the definition is that you are acting on behalf of a person who gives you instructions to sell a property they own or gives you instructions to seek out a property with certain characteristics that they would like to buy. You introduce potential buyers and sellers or negotiate on their behalf.

You would have noticed that in Section 1(2) (3) and (4) the Act excludes people who are associated with the real estate business, but who are not directly related to the buying and selling of property. They are involved in peripheral functions.

Solicitors and conveyancers are not involved in the marketing and sale of the property, but they are involved in the legal aspects that make the purchase and transfer of the property possible.

Solicitors are involved in drafting the contract that the buyer and seller sign to conclude the sale of the house, so they are crucial to the process, but they have nothing to do with the initial phases of the process.

Although solicitors do not fall under the auspices of the Estate Agents Act, they are controlled by legislation that relates directly to them and bodies like the Solicitors Regulation Authority.

Banks, building societies and the people working for them, as well as others involved in the business of granting credit to people applying for mortgage loans, are also excluded from being defined as estate agents.

People who work closely with the buyers and sellers of property are surveyors, property inspectors and valuers. They too are not included in the definition.

The above exclusions from the estate agent definition are logical as the people involved clearly have nothing to do with the actual sale or the negotiations leading up to it.

Less obvious is the exclusion of people mentioned in section 1(3) who are involved in the purchase or sale of their own land or the land of their employers. This states that if a person wishes to sell or buy land and he instructs an employee of his to effect the transaction for him then that does not make that employee an estate agent.

This is because the buying and selling of property is not the usual business that the boss or the employee are involved in.

Section 1(4) clears people who deal with advertising and the publication of material about the sale of property.

It excludes from the definition people working for an estate agent company who deal with placing information and pictures on their website and in local newspapers and so on. They are involved purely with the spreading of the information about the property, they are not involved in any negotiations or other contact with the sellers or buyers.

## 16.4 Duty to Your Client

**As an estate agent, you are often working with people who are making decisions that will affect them for many years to come and who are making the single biggest purchase of their lives.**

If they make a wrong decision, they will probably never fully recover from it financially.

For your clients, being involved in the negotiations and transactions of buying or selling a property can seem like a protracted and bewildering exercise. They will rely on you for guidance and will trust your recommendations.

For these reasons, it is vital that estate agents are honest and above board in all their dealings with their clients and the buyers of their clients' property.

## 16.5 Descriptions of Properties

**In 1991, the Property Misdescriptions Act made it illegal to incorrectly describe various aspects and characteristics of properties being marketed.**

This act was replaced by the Consumer Protection from Unfair Trading Regulations 2008 which was passed to implement the European Union Unfair Commercial Practices Act.

The regulations protect consumers from a range of activities that are considered to be unfair pressure or that are false and would induce the consumer to act under a mistaken impression that he or she was buying something that either does not exist or is not what it is claimed to be.

**Estate Agents are bound by the regulations to ensure that the following is done:**

- Disclose all information that they know about, or should know about, that relates to the property being marketed.
- This information must be set out clearly, intelligibly and in good time for any interested parties to consider and act upon the information. What this means is that the information must not be ambiguous, it must use generally accepted terms for the property it is describing and it must all be presented as soon as the estate agent is aware of it. You must not hold certain information back and only reveal it at the last minute. For instance, you cannot ambush your client as they are about to sign an offer or a contract. If you have information that you are pretty sure would have put them off making an offer in the first place, you have to reveal it.
- You have to make sure that all information you put out about the properties you are marketing is accurate and not misleading. This applies to what you say about the properties in conversations, the photographs you take and publish online and in pamphlets and everything you write about the properties in brochures, ads, emails and the like.
- Once you have assessed a property and are ready to write up the sales particulars and descriptions and lists of fixtures and fittings, you are bound to check your descriptions with the seller to ensure that they are accurate. You will be liable if the sales particulars include anything that should not be there and if they exclude anything that should have been included. You will also be held liable if you include anything that you have reason to believe is incorrect. If you doubt any detail, check with the seller. If you think they are mistaken or being less than honest with you, check it out through a third party.
- Last but not least, all advertisements that you put out must be in accordance with the British Codes of Advertising and Sales Promotion and Direct Marketing. This means that they must be legal, decent, honest and truthful. In other words, be very careful of that old sales cliché: "Sell the sizzle, not the steak". A little sizzle is fine; too much will get you into the frying pan along with the steak!



Essentially the law requires the utmost honesty and integrity from estate agents. If a little thought is given to the matter, it is only short-sighted individuals who would flout these laws. In the medium to long term, dishonest actions and half-truths will catch up with them. Reputation has a way of preceding a person. Sooner or later, bad and dishonest business practices will catch up with the perpetrator in the way of an official complaint and dwindling client numbers.

## 16.6 Conflict of Interest

**In any business, where an agent is representing another person, they will not be able to do their job properly if they have a personal interest in the subject of the business transaction. In other words, if you have shares in a plot of land or a block of flats, for example, you will be personally involved in any negotiations that are conducted in the sale of that asset.**

You will not be seen as having an unbiased opinion in any dealings that take place.

The law states that estate agents must reveal any personal interest that they, or any connected person, have in any property that is being traded. This interest has to be declared in writing before any negotiations start.

If the connection exists at the time the property is brought to the agent for sale, the interest must be declared immediately. If the agent only becomes aware of the interest after negotiations begin, then the interest must be declared as soon as the agent becomes aware of it.

**An example where an agent would not know of a connected person having an interest in a property until after negotiations have begun would be the following:**

- An agent is approached to market a property for a person he or she has no connection with. After going through the listing and valuation process the agent places advertisements for the property in all the usual places.
- There are several responses to the marketing drive and one of the people turns out to be the agent's brother-in-law.
- The agent immediately informs their client, the seller of the property, in writing, that a person with whom he or she has a personal connection is interested in the property.
- Whether or not the brother-in-law ever makes an offer on the property or goes ahead and buys

it is irrelevant. As soon as there is interest from a person with a connection, other than a purely business connection, it must be revealed before any further negotiations can take place.

The definition of a "connected person" is extremely broad. It includes friends, business associates, employees, employers and family members.

The purpose of declaring an interest in a property that an agent is marketing or has been approached to market is to reveal any conflict of interest that may occur.

**An example of a conflict of interest would be something like this. If our agent does not declare that their brother-in-law is interested in the property the following could unfold:**

- The brother-in-law puts in a bid that is, predictably, less than what the seller is asking.
- After considering that offer and two other offers that are slightly more, the seller goes with the brother-in-law's offer.
- Information from the estate agent was that the brother-in-law's offer was the best as the other two people were not as financially sound. Accepting either of their offers might pose problems when it came to obtaining mortgages.
- After the sale has been concluded, the seller finds out about the agent's connection to the buyer of their property from a mutual acquaintance.
- They immediately assume that there was a conflict of interests and the agent will not have a leg to stand on.

The declaration of a connected person also applies to the situation where an agent is contracted to find a property for an acquaintance. They must declare their connection to the seller of the property right at the outset of negotiations.

Once a personal interest has been declared in a property, an agent may not request or receive a deposit for the sale of the property.

**FACT**

6,815 separate issues were raised by consumers to the Property Ombudsman

*Source: thechatshop.com 2015*

## 16.7 Negotiating Techniques

**Chapter 8 of the Consumer Protection from Unfair Trading Regulations 2008 deals with the regulation of aggressive commercial practices.**

These practices are set out to be

"... practices that, in the context of the particular circumstances, intimidate or exploit consumers, restricting their ability to make free or informed choices. In order for an aggressive practice to be unfair it must cause or be likely to cause the average consumer to take a different decision to one he might have taken."

As an estate agent, you are dealing with people who are not necessarily familiar or at ease with the process of buying and selling property. It is very easy to take advantage of people who are looking to you, as the expert, for guidance.

**You must always bear in mind section 8.2 of the Regulations, which states: "The CPRs prohibit commercial practices which: by harassment, coercion (including physical force) or undue influence:**

- significantly impair, or are likely to significantly impair, the average consumer's freedom of choice or conduct concerning the product, and
- the average consumer takes, or is likely to take, a different decision as a result."

Harassment and coercion are not specifically defined in the Regulations. This gives court officials and ombudsmen who administer the law the scope to consider any type of behaviour that a consumer might have considered threatening or coercive. In other words, it does not limit the courts to a narrow definition and it likewise does not give dubious operators the scope to avoid the law by having clear examples of what is acceptable and what is not.

"Undue influence" is defined in regulation 7(3)(b) of the Consumer Protection Regulations as: "exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision."

This would cover behaviour that could be considered as bullying. For instance, where an agent constantly calls a person and asks them if they have made a decision, or pretends to be impatient and about to lose their temper or, more obliquely, brings a seller an offer with a really tight deadline.

Any behaviour on the part of the agent that the client could point to and say that he or she was unduly influenced to make a decision, could fall into this category.

The CPR also defines the factors that indicate aggressive practice and states that it is not necessary for all three factors (harassment, coercion and undue influence) to be present for a mode of behaviour to be deemed aggressive.

An example of aggressive practice on the part of an estate agent could be where the agent arrives at a seller's home late at night with an offer. They then imply by their behaviour that they are not going to leave until the seller signs the offer.

Clearly, this sort of behaviour would intimidate some people and annoy others. The courts or ombudsmen will most probably take the subjective view and agree with the complainant. In short, it is never worth your while to put undue pressure on a client. If you find this course of action tempting, take a look at your skills and techniques. Somewhere you are falling short and taking the lazy way out. Fix them before you find yourself in front of an official.

**Take a Quick Recap Test**

[viralQuiz id=214]

## **16.8 The Watchdogs of the Real Estate Industry**

**In many cases, the Government will assign the power to administer**

**certain law, rules and regulations to an autonomous body like a local authority.**

In the case of the Estate Agents Act and supporting regulations such as the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008, the National Trading Standards Estate Agency Team of Powys County Council is the officially appointed enforcement authority for the United Kingdom.

NTSEAT, as the team is known, was appointed by the Government to ensure that the relevant acts and regulations were properly administered and that all complaints and grievances against estate agents were dealt with in an effective way.

The team has the power to investigate alleged claims of malpractice by estate agents. After they have considered all the facts and their relevance to the Act and the Regulations, they will either dismiss the complaint as being unfounded or they will issue a "Notice of Proposal".

This notice will be an advisory to the estate agent concerned that the team is considering making a Prohibition Order against them that will prevent them from practising as an estate agent in the United Kingdom.

The agent concerned then has at least 21 days to defend themselves and explain why the order should not be brought into effect.

Prohibition Orders can ban a person or an entire company and its staff members from practising any form of estate agency, or from particular areas of estate agency work.

**A Prohibition Order will be brought into effect against a person if the team finds that any of the following offences or types of offences have been committed:**

- A warning order has been ignored
- An offence involving violence, fraud or other dishonesty has been committed
- An act of racial or sexual discrimination has been committed during a person's work as an estate agent
- Certain specified offences have been committed
- Certain offences under the Act have been committed
- Certain provisions of the Act have been breached
- Or a person has engaged in a practice declared undesirable under the Act.

It is not necessary for a Warning Order to be issued before a Prohibition Order can be issued.

Whether or not a Warning Order is issued will depend on the nature and severity of the offence that has allegedly been committed and what, if any, prejudice has been suffered by the complainant in the matter.

If an agent fails to comply with a Prohibition Order, he or she will have committed a crime and could face criminal proceedings and subsequent fines.

## **Redress Schemes**

All estate agents who do business in the residential property section in the United Kingdom are legally obliged to belong to one of three redress schemes.

The Government instituted the redress schemes so that people with complaints against estate agents would have a convenient alternative to the courts.

**The schemes are known as:**

- The Property Ombudsman
- Ombudsman Services: Property
- Property Redress Scheme

Ombudsman schemes are designed to be independent and to provide full and final settlement in disputes between aggrieved members of the public and estate agents.

In resolving disputes, compensatory awards can be made for actual, quantifiable loss as well as for distress, aggravation and inconvenience caused to clients by an estate agent.

The ombudsmen have no regulatory powers in relation to estate agents. They have no powers to impose fines on agents or dictate how agents run their businesses.

When members of the public have a dispute with an estate agent, they will be able to locate the estate agent on one of the ombudsman's sites so that they can lodge a complaint with the correct authority.

Ombudsmen also cover disputes between members of the public and Chartered Surveyors, surveyors, residential managers, letting agents and valuers.

## **Summary**

It is unfortunate that the business of real estate marketing acquired a reputation for what one politician called "sharp practices". Because of this, the way estate agents conduct their business and deal with their clients is regulated by a comprehensive network of legislation and common law.

Between the Estate Agents Act and the common Law of Agency and the Ombudsman system, there isn't any situation that cannot be solved. The flip side of this is that there really isn't anywhere for an agent who engages in dubious practices to hide.

The temptation to use bullying tactics to speed up the decision making process that clients go through is tempting to some people. Although it may be a frustrating wait for someone to decide, if you abide by the law and exercise patience, it will reward you in the immediate term as well as the long term.

People are very sensitive to the way they are treated. If you deal with someone in an okay way, they won't sing your praises; after all, you are just doing your job. However, if you extend yourself, they will be impressed. Sooner than you realise, your reputation as a helpful and concerned person will spread.

Being devious and dishonest may get you one or two quick results. The backlash will be that you will not get referrals from clients, your progress will be slow and sooner or later a disgruntled client will have you before an ombudsman or worse. In the end, you will be banned from working as an estate agent in the United Kingdom.

So, be professional, be patient, and meaningful progress will follow.

[Tweet "I just completed Module 16 of the Estate Agency Diploma Course"]

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