

OFT GUIDANCE

ON THE REQUIREMENTS OF CONSUMER LAW

DEFINITION OF ESTATE AGENCY WORK

October 2013

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1 INTRODUCTION

This guidance is intended to help you understand whether the requirements of the Estate Agents Act 1979 (the Act) apply to you. It is not, however, a substitute for the law and if you are in any doubt you should consult a professional adviser.

This guidance reflects the amendments to the definition of estate agency work made by the Enterprise and Regulatory Reform Act 2013, and introduced on 1 October 2013.

The guidance does not cover the detailed requirements of the Act. There are also other important laws and regulations that may apply to you, even if you are not subject to the requirements of the Act.

For further advice on the Act or other consumer protection legislation you should contact your local authority Trading Standards Service (or, in Northern Ireland, the Department of Enterprise, Trade and Investment), contact your professional body or trade association, and/or seek independent legal advice.

2 ESTATE AGENCY WORK

The Act applies if you are doing estate agency work, and even if you don't call yourself an estate agent you may be seen to be one in law when you do certain things. The Act applies in the same way whether you work for yourself or for someone else.

Section 1 of the Act contains the legal definition of estate agency work. The legal definition is very wide and, subject to certain limited exceptions, you will be engaging in estate agency work if, in the course of business and acting on instructions from a third party (your client) who wishes to either buy or sell property (an interest in land), you do either (or both) of the following:

- things for the purpose of, or with a view to, effecting the introduction to your client, of someone who either wishes to buy or sell property
- or things after such an introduction has been made by you to secure the sale or purchase of the property.

The law only requires you to do things for the purpose of, or with a view to introducing your client to a buyer or seller in order for you to be acting as an estate agent. It is not necessary for you to actually introduce your client to a buyer or seller in order to fall within the legal definition of estate agency work.

If you do any of the following things, you will be, or are likely to be, engaging in estate agency work:

- sending out property particulars and arranging viewings
- dealing with queries from potential sellers or buyers on behalf of your clients.

3 EXEMPTIONS

There are some important exceptions to the definition of estate agency work. These include:

- work done by solicitors or their employees as part of their work as solicitors
- surveys or valuations carried out independently of any other estate agency work
- work connected with planning applications and matters covered by the Town and Country planning legislation
- arranging rentals or property management
- overseas property transactions, and
- work done in the course of arranging mortgages.

In addition there is an exemption for merely 'publishing advertisements or disseminating information', for example businesses such as newspapers, providing advertising space for property with no other estate agency function.

The scope of the exemption has been extended from 1 October 2013 to include intermediaries, such as internet portals for private sales, which merely enable private sellers to advertise their properties and provide a means for sellers and buyers to contact and communicate with one another. The exemption will apply provided that a business does nothing else covered by the general definition.

The exemption for intermediary businesses is therefore likely to apply if:

- you only provide a means for the seller and prospective buyer to contact one another directly, for example online
- you provide a branded 'For Sale' board to the seller to assist in this process (although if the board contains your contact details and you deal with potential buyers on behalf of the seller the exemption is unlikely to apply), and
- you only pass on to a prospective buyer, by whatever channel of communication, the information provided by the seller in their advertisement.

If, however, you offer any personal advice to a seller or a buyer, or other ancillary services, such as preparing property particulars or photographs or an energy performance certificate, you will be outside the scope of the exemption and bound by the obligations in the Act.

If the exemption applies, then you will not be obliged to comply with requirements that are relevant to full service estate agency businesses, such as the disclosure of any self-interest in a property transaction and membership of a redress scheme for residential estate agents.

The Act will continue to apply to businesses that are involved in or have scope to influence property transactions.

4 FURTHER INFORMATION

Further information about the requirements of the Act can be found at www.offt.gov.uk/business-advice/estate-agents.

There are also other important laws and regulations that may apply to you, even if you are not subject to the requirements of the Act. The OFT has produced guidance on the Consumer Protection from Unfair Trading Regulations 2008 www.offt.gov.uk/business-advice/estate-agents and the Unfair Terms in Consumer Contracts Regulations 1999 www.offt.gov.uk/business-advice/unfairterms.