

CONVEYANCING UPDATE

A Division of McKays Solicitors

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Federal court case curtails agent advertising of price in some cases...

It has become quite commonplace both in Mackay and other parts of Australia to advertise the price of properties such as:

- “\$600,000.00+”
- “Offers from \$600,000.00”.

The Federal Court of Australia in a decision in April, 2005 has restricted this type of advertising.

In that particular case the agent placed an advertisement in two newspapers in August stating that \$600,000+ buyers should inspect. The vendor had, prior to this, advised the agent they would not sell for less than \$780,000.

The vendors received an offer for \$750,000.00 in late August which they did not accept, and subsequently advised the agent that they would now accept no less than \$800,000.

In September the agent placed advertisements stating \$650,000+ buyers should inspect. The agent did not expect the house to sell for \$800,000.00 and considered it probably would sell for \$700,000. A neighboring property had recently sold for \$741,000.

The Australian Competition and Consumer Commission (ACCC) commenced an action against the real estate agent for **misleading and deceptive conduct** (section 52 of the *Trade Practices Act*) and **false representations in relation to land** (section 53A of the *Trade Practices Act*).

The court found that the advertisements contained the following implied representations:

- The vendors would sell for approximately \$600,000.

- The vendors were prepared to sell for approximately \$600,000.

- The vendors had instructed agents to sell for \$600,000.

- The agent in fact believed, and held the opinion, that the property would be sold for \$600,000.00 and not substantially more.

- The agent had reasonable grounds for believing and holding the opinion that the property would be sold for \$600,000 and not substantially more

- The market value of the property was not substantially more than \$600,000

Given that the Court believed the advertisement represented the above it had no difficulty in finding that the agent had breached section 52 of the *Trade Practices Act*.

So Are adverts which state “\$600,000.00+” or “Offers from \$600,000.00” illegal?

No, they are not illegal, as such, but agents need to be careful when using this type of advertisement. The advertisement can not be simply a way of attracting attention to the property where the agent has reasonable belief that the property will sell for that price.

Undoubtedly a major factor in the ACCC prosecuting the real estate agent was the big differences in the advertisement and the minimum price that the vendor would like to accept. It is unlikely that the ACCC would prosecute where the difference was less than 5%.

If you need any further help please contact Roland Taylor in our Mackay office on 4963 0800 or rtaylor@swc.net.au

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