

CONVEYANCING UPDATE

A Division of McKays Solicitors

For a smooth, hassle free conveyancing solution...

**If you make representations you can't back up by facts...
You may well have to back them up with your own money...**

Saying the wrong thing may not only lose you the sale, it may also make you personally liable for tens of thousands of dollars...

In a recent case the seller was the owner of a parcel of land and block of 6 units. The agent, Mr Torpy, prepared a coloured brochure which contained a representation that each flat was accurate. approximately 63 square metres. The brochure also contained a small print disclaimer which read in part, "The information contained herein has been supplied to us and we have no reason to doubt its accuracy, however we cannot guarantee it."

In fact the representation was incorrect and had been obtained by the agent pacing out part of one of the units in the block, and calculating from that estimate. Only one of the units was this size with the others being considerably smaller. The buyer relied on the representation as to size as the basis for calculation of a potential redevelopment.

The court held that the representation constituted misleading and deceptive conduct under the Fair Trading Act.

Under the Act the buyer was entitled to claim damages which included:

1. Legal fees including trust company set up, Conveyancing fees, legal advice regarding town planning, surveyor ...over \$50,000
2. Financing fees...nearly \$42,000
3. Reasonable compensation to the director of the buyer.

4. Loss of the chance of profit of between \$1,330,600 and \$1,556,900 on resale of the refurbished units.

The vendor had inherited the units and had no personal knowledge of the area of the flats and had reasonable grounds to rely, as she did, upon the experience of her agent Mr Torpy in believing his approximation was accurate.

While Mr Torpy, the real estate agent, was not a party to this action, it was made quite clear by the judges that he was the person responsible for the misrepresentation and as such the vendor will be entitled to recover its damages from him.

In summary:

1. Be careful about making representations based on your own knowledge and try to only make representations provided to you by the owner if possible.
2. Document all information given to you by the owner by way of diary notes or signed annexures to listing agreements.
3. Have the owner sign off on all advertising material including brochures and advertisements if possible.

For further information please contact our Statewide team: Roland Taylor in our Mackay office on 4963 0800 and Kellie Woodward in our Brisbane office on 3223 5928.

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