



Get real

Real estate agents operate in a highly competitive and often cut-throat marketplace. Nevertheless, as a prospective home owner, vendor or tenant, you are entitled to get the full picture to make informed decisions when buying, selling or leasing property.

Late last year the ACCC launched a campaign targeting property 'scammers' and has since been inundated with many hundreds of complaints and inquiries about the real estate industry. The ACCC's concerns include:

- » misleading conduct by real estate agents and auctioneers, including dummy bidding and misleading photographic representations
- » real estate investment seminars
- » two-tier marketing
- » advice given by financial consultants, solicitors and valuers
- » unconscionable conduct by financial institutions.

About two-thirds of property related complaints to the ACCC concern the conduct of real estate agents and auctioneers.

Although most consumers concede that a certain amount of leeway in property advertising must be given to allow for the real estate agent's enthusiastic vision, remember this: anyone who relies on what an agent says or does, or relies on advertising—and is misled or deceived—can take legal action under the Trade Practices Act.

Is this the full picture?

An agent advertises a block of land with a photograph that includes a portion of the unfenced neighbouring block. The photograph has also been modified to remove overhead wires and power poles.

This conduct is likely to mislead or deceive any person relying on the photograph to give them an impression of the land on offer.

Remember—it is not necessarily relevant whether the agent actually **intended** to mislead anyone to establish a breach of the Act. What is relevant is the **overall impression** created by the conduct, and its actual or likely effect on the target audience.

Silence can mislead

Linda and David attended an investment seminar and were subsequently flown to a development location to view investment properties. The couple fell in love with one property, particularly the bushland corridor just beyond the back fence. They intended to rent the property until their retirement, then move in and enjoy the lush surrounds. The agent agreed it would be a peaceful place to retire.

The asking price was a bargain as the charts they were shown depicted prices in the area to be around \$30 000 more. The agent said there were two other couples coming that afternoon to view the property. Linda and David snapped it up taking advantage of the low conveyancing fees of the onsite solicitor.

One month later, the bushland behind the property was cleared to make way for a four-lane arterial road. Their dream of a quiet retirement home nestled in the trees was shattered faster than the asphalt was laid.

Misleading or deceptive conduct can include acts of silence or omission. In this case, the information provided by the solicitor should have included the proposed road development. The company hosting the investment seminar may also be liable if they knew of the road development.

An agent should ensure a buyer is aware of all the important matters that should be mentioned, especially when silence would create an incorrect impression in the context of what other representations have been made.

The ACCC in conjunction with the Real Estate Institute of Australia (REIA) has produced an industry guide, *Fair and Square: a guide to the Trade Practices Act for the real estate industry*. The guide is available (\$10) by contacting the ACCC Infocentre on 1300 302 502. More information can also be located on the ACCC website at www.accc.gov.au or the REIA website at www.reia.com.au.