



# Estate Agents Act 1979

## 1979 CHAPTER 38

### *Regulation of other aspects of estate agency work*

#### **18 Information to clients of prospective liabilities**

- (1) Subject to subsection (2) below, before any person (in this section referred to as " the client") enters into a contract with another (in this section referred to as " the agent") under which the agent will engage in estate agency work on behalf of the client, the agent shall give the client—
  - (a) the information specified in subsection (2) below; and
  - (b) any additional information which may be prescribed under subsection (4) below.
- (2) The following is the information to be given under subsection (1)(a) above—
  - (a) particulars of the circumstances in which the client will become liable to pay remuneration to the agent for carrying out estate agency work ;
  - (b) particulars of the amount of the agent's remuneration for carrying out estate agency work or, if that amount is not ascertainable at the time the information is given, particulars of the, manner in which the remuneration will be calculated;
  - (c) particulars of any payments which do not form part of the agent's remuneration for carrying out estate agency work or a contract or pre-contract deposit but which, under the contract referred to in subsection (1) above, will or may in certain circumstances be payable by the client to the agent or any other person and particulars of the circumstances in which any such payments will become payable; and
  - (d) particulars of the amount of any payment falling within paragraph (c) above or, if that amount is not ascertainable at the time the information is given, an estimate of that amount together with particulars of the manner in which it will be calculated.
- (3) If, at any time after the client and the agent have entered into such a contract as is referred to in subsection (1) above, the parties are agreed that the terms of the contract should be varied so far as they relate to the carrying out of estate agency work or

any payment falling within subsection (2)(c) above, the agent shall give the client details of any changes which, at the time the statement is given, fall to be made in the information which was given to the client under subsection (1) above before the contract was entered into.

- (4) The Secretary of State may by regulations—
- (a) prescribe for the purposes of subsection (1)(b) above additional information relating to any estate agency work to be performed under the contract; and
  - (b) make provision with respect to the time and the manner in which the obligation of the agent under subsection (1) or subsection (3) above is to be performed;
- and the power to make regulations under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) If any person—
- (a) fails to comply with the obligation under subsection (1) above with respect to a contract or with any provision of regulations under subsection (4) above relating to that obligation, or
  - (b) fails to comply with the obligation under subsection (3) above with respect to any variation of a contract or with any provision of regulations under subsection (4) above relating to that obligation,
- the contract or, as the case may be, the variation of it shall not be enforceable by him except pursuant to an order of the court under subsection (6) below.
- (6) If, in a case where subsection (5) above applies in relation to a contract or a variation of a contract, the agent concerned makes an application to the court for the enforcement of the contract or, as the case may be, of a contract as varied by the variation,—
- (a) the court shall dismiss the application if, but only if, it considers it just to do so having regard to prejudice caused to the client by the agent's failure to comply with his obligation and the degree of culpability for the failure; and
  - (b) where the court does not dismiss the application, it may nevertheless order that any sum payable by the client under the contract or, as the case may be, under the contract as varied shall be reduced or discharged so as to compensate the client for prejudice suffered as a result of the agent's failure to comply with his obligation.
- (7) In this section—
- (a) references to the enforcement of a contract or variation include the withholding of money in pursuance of a lien for money alleged to be due under the contract or as a result of the variation; and
  - (b) "the court" means any court having jurisdiction to hear and determine matters arising out of the contract.

## **19 Regulation of pre-contract deposits outside Scotland**

- (1) No person may, in the course of estate agency work in England, Wales or Northern Ireland, seek from any other person (in this section referred to as a "prospective purchaser") who wishes to acquire an interest in land in the United Kingdom, a payment which, if made, would constitute a pre-contract deposit in excess of the prescribed limit.

- (2) If, in the course of estate agency work, any person receives from a prospective purchaser a pre-contract deposit which exceeds the prescribed limit, so much of that deposit as exceeds the prescribed limit shall forthwith be either repaid to the prospective purchaser or paid to such other person as the prospective purchaser may direct.
- (3) In relation to a prospective purchaser, references in subsections (1) and (2) above to a pre-contract deposit shall be treated as references to the aggregate of all the payments which constitute pre-contract deposits in relation to his proposed acquisition of a particular interest in land in the United Kingdom.
- (4) In this section " the prescribed limit" means such limit as the Secretary of State may by regulations prescribe ; and such a limit may be so prescribed either as a specific amount or as a percentage or fraction of a price or other amount determined in any particular case in accordance with the regulations.
- (5) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Failure by any person to comply with subsection (1) or subsection (2) above may be taken into account by the Director in accordance with section 3(1)(c) above but shall not render that person liable to any criminal penalty nor constitute a ground for any civil claim, other than a claim for the recovery of such an excess as is referred to in subsection (2) above.
- (7) This section does not form part of the law of Scotland.

## **20 Prohibition of pre-contract deposits in Scotland**

- (1) No person may, in the course of estate agency work in Scotland, seek or accept from any person (in this section referred to as a " prospective purchaser ") who wishes to acquire an interest in land in the United Kingdom a payment which, if made, would constitute a pre-contract deposit or, as the case may be, which constitutes such a deposit.
- (2) If, in the course of estate agency work in Scotland, any person receives from a prospective purchaser a payment which constitutes a pre-contract deposit, it shall forthwith be either repaid to the prospective purchaser or paid to such person as the prospective purchaser shall direct.
- (3) Failure by any person to comply with subsection (1) or subsection (2) above may be taken into account by the Director in accordance with section 3(1)(c) above but shall not render that person liable to any criminal penalty nor constitute a ground for any civil claim, other than a claim under subsection (2) above for the recovery of the pre-contract deposit.
- (4) This section forms part of the law of Scotland only.

## **21 Transactions in which an estate agent has a personal interest**

- (1) A person who is engaged in estate agency work (in this section referred to as an " estate agent") and has a personal interest in any land shall not enter into negotiations with any person with respect to the acquisition or disposal by that person of any interest

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*Status: This is the original version (as it was originally enacted).*

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in that land until the estate agent has disclosed to that person the nature and extent of his personal interest in it.

- (2) In any case where the result of a proposed disposal of an interest in land or of such a proposed disposal and other transactions would be that an estate agent would have a personal interest in that land, the estate agent shall not enter into negotiations with any person with respect to the proposed disposal until he has disclosed to that person the nature and extent of that personal interest.
- (3) Subsections (1) and (2) above apply where an estate agent is negotiating on his own behalf as well as where he is negotiating in the course of estate agency work.
- (4) An estate agent may not seek or receive a contract or precontract deposit in respect of the acquisition or proposed acquisition of—
  - (a) a personal interest of his in land in the United Kingdom; or
  - (b) any other interest in any such land in which he has a personal interest.
- (5) For the purposes of this section, an estate agent has a personal interest in land if—
  - (a) he has a beneficial interest in the land or in the proceeds of sale of any interest in it; or
  - (b) he knows or might reasonably be expected to know that any of the following persons has such a beneficial interest, namely,—
    - (i) his employer or principal, or
    - (ii) any employee or agent of his, or
    - (iii) any associate of his or of any person mentioned in sub-paragraphs (i) and (ii) above.
- (6) Failure by an estate agent to comply with any of the preceding provisions of this section may be taken into account by the Director in accordance with section 3(1)(c) above but shall not render the estate agent liable to any criminal penalty nor constitute a ground for any civil claim.

## **22 Standards of competence**

- (1) The Secretary of State may by regulations made by statutory instrument make provision for ensuring that persons engaged in estate agency work satisfy minimum standards of competence.
- (2) If the Secretary of State exercises his power to make regulations under subsection (1) above, he shall in the regulations prescribe a degree of practical experience which is to be taken as evidence of competence and, without prejudice to the generality of subsection (1) above, the regulations may, in addition.—
  - (a) prescribe professional or academic qualifications which shall also be taken to be evidence of competence;
  - (b) designate any body of persons as a body which may itself specify professional qualifications the holding of which is to be taken as evidence of competence ;
  - (c) make provision for and in connection with the establishment of a body having power to examine and inquire into the competence of persons engaged or professing to engage in estate agency work ; and
  - (d) delegate to a body established as mentioned in paragraph (c) above powers of the Secretary of State with respect to the matters referred to in paragraph (a) above;

and any reference in the following provisions of this section to a person who has attained the required standard of competence is a reference to a person who has that degree of practical experience which, in accordance with the regulations, is to be taken as evidence of competence or, where the regulations so provide, holds such qualifications or otherwise fulfils such conditions as, in accordance with the regulations, are to be taken to be evidence of competence.

- (3) After the day appointed for the coming into force of this subsection,—
- (a) no individual may engage in estate agency work on his own account unless he has attained the required standard of competence;
  - (b) no member of a partnership may engage in estate agency work on the partnership's behalf unless such number of the partners as may be prescribed have attained the required standard of competence; and
  - (c) no body corporate or unincorporated association may engage in estate agency work unless such numbers and descriptions of the officers, members or employees as may be prescribed have attained the required standard of competence;

and any person who contravenes this subsection shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

- (4) In subsection (3) above "prescribed" means prescribed by the Secretary of State by order made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) No regulations shall be made under this section unless a draft of them has been laid before Parliament and approved by a resolution of each House.

## **23 Bankrupts not to engage in estate agency work**

- (1) An individual who is adjudged bankrupt after the day appointed for the coming into force of this section or, in Scotland, whose estate is sequestrated after that day shall not engage in estate agency work of any description except as an employee of another person.
- (2) The prohibition imposed on an individual by subsection (1) above shall cease to have effect if and when—
- (a) the adjudication of bankruptcy against him is annulled, or, in Scotland, the sequestration of his estate is recalled; or
  - (b) he obtains his discharge.
- (3) The reference in subsection (1) above to employment of an individual by another person does not include employment of him by a body corporate of which he is a director or controller.
- (4) If a person engages in estate agency work in contravention of subsection (1) above he shall be liable on conviction on indictment or on summary conviction to a fine which on summary conviction shall not exceed the statutory maximum.