

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Home Information Packs

Section 150: Acting as estate agent

311. A person acting as an estate agent for a seller of residential property can be a "responsible person" for the purposes of the duties imposed by this Part of the Act. This section identifies when and in what circumstances a person is to be regarded as acting as an estate agent for the seller. A person acts as an estate agent under the Act if his or her business is in England and Wales, and he acts under "marketing instructions" from the seller.
312. "Marketing instructions," mean instructions to introduce a potential buyer to the seller, or to sell the property by auction or tender. This is similar to the definition of estate agency work used in section 1 of the Estate Agents Act 1979. Marketing instructions would not include advertising-only instructions, so printing firms, web sites and newspapers that carry a "for sale" list or advertisements would not be acting as an estate agent simply by doing so. "Marketing instructions" imply that the person being instructed exercised some independent judgement about how a property is marketed. There are also likely to be contractual arrangements under which the estate agent earns a fee for introducing a potential buyer to the seller. It is not relevant for these purposes whether or not the person describes himself as an estate agent, so another professional such as a solicitor would be covered if he undertook these activities.
313. In order for the duties in this Part of the Act to apply, the estate agent's business must be carried out from a place in England and Wales. It does not matter if that place is not used exclusively or mainly for business purposes, such as a residential property. Nor does it matter that only part of the estate agent's business is not located in England and Wales. However, if a residential property in England and Wales is marketed only by an agent from another country who does not have a business in England and Wales, that agent will not be regarded as the responsible person. Instead, the seller would be considered to be the responsible person for the purposes of this Part, regardless of his place of residence.