

Information for people who are working as an estate agent - what you must do to meet your legal obligations

Supplementary guidance – defining common listing terms used to describe the status of a property during the sale process

Introduction

The National Trading Standards Estate Agency Team, hosted by Powys County Council, is the UK's lead enforcement authority for the Estate Agents Act 1979 ('the Act'). One of the team's responsibilities is to provide information and advice regarding estate agency work in the UK.

There are currently many terms used to describe the status of a property during the sales process – 'new on the market', 'new instruction', 'under offer', 'sale agreed', 'sold subject to contract', 'sold' etc. These terms are widely used in advertisements, sale boards and portal listings, but there is some confusion within the industry and with the public about the use of these terms and what they mean, which can lead to frustration and delay in the home buying and selling process. Where there are delays in updating a property's status or use of incorrect descriptions this can lead to an agent being in breach of industry codes and/or their legal obligations. This guidance is not intended to require agents or portals to use the terms listed, but to provide a definition of these terms when they are used.

It is a legal requirement that the status of a property is accurately described and updated in a timely manner, as this is material information for prospective purchasers. It is the responsibility of the estate agent to ensure that this information is clear, unambiguous and up to date while any advertising is still live. The use of any of these terms is voluntary but agents must still ensure that material information about the status of the property is clearly communicated to potential buyers.

Definition of terms

'New on the market' – a property which has not been marketed in (at least) the last six months; the description should only be used for a short period of time. This term should not be used if the property has been previously offered for sale by another agent and remained unsold in the last six months. 'Refreshing' a listing to make a property appear new on the market is misleading, especially where there has been no significant marketing break.

‘New instruction’ – a property which an agent has recently been instructed to sell (and which may have been offered for sale by another agent without being sold); the description should again only be used for a short period of time.

‘New listing’ (on a property portal) - a property which has recently been listed on that portal; commonly used in conjunction with ‘New on the market’ or ‘New instruction’ - the description should only be used for a short period of time.

‘Recently added / Just added’ (on a property portal) – a property which has recently been listed on that portal; commonly used in conjunction with ‘New on the market’ or ‘New instruction’- the description should again only be used for a short period of time.

‘New and Exclusive’ – either a new instruction or new on the market which is exclusive to that agent or portal (depending on the context). The description ‘new’ should only be used for a short period of time, although the term ‘exclusive’ can be used for as long as it is applicable.

[NOTE: ‘short period of time’ referred to above - any guidance on the length of time for which the above descriptions is used can only be very general. Material considerations such as the advertising medium, the buoyancy (or otherwise) of the market and the method of sale and perhaps even the nature of the ‘average consumer’ at whom the marketing in question is targeted will vary greatly and only the courts will be able to decide based on all the individual circumstances. Use of the above terms for a period not exceeding one calendar month is unlikely, in the general course of events, to be considered misleading]

‘Reduced’ – a property which has been recently reduced in price. Any reduction should be a genuine reduction against the previous price, in accordance with the Chartered Trading Standards Institute’s ‘Guidance for Traders on Pricing Practices’¹.

‘Under offer’ – used when an offer has been received which is under consideration by the vendor, but the property is normally still on the market (i.e. further offers may be made dependent upon the vendor’s written instructions) – the description should only be used until the offer is accepted or declined, as the case may be.

‘Sale agreed’ – used when an offer has been accepted by the seller, but (for example) contracts may not have been prepared or the buyer may not be in a final position to proceed. The property may or may not still be on the market, i.e. further offers may be made dependent upon the seller’s written instructions. The seller’s decision on future marketing is material information in this context and should be clearly stated on property listings to avoid any confusion amongst potential buyers. This description may be used until the property is sold or the sale falls through, as the case may be.

‘Sold subject to contract’ – relates to a property on which an offer has been accepted by the seller and the sales process is complete, subject to contracts being exchanged. The seller should be asked to confirm whether or not the property should continue to be marketed for sale, and this decision should be clearly stated on property listings, as above. This description may be used until the property is sold or the sale falls through, as the case may be.

¹ www.businesscompanion.info/sites/default/files/Guidance-for-Traders-on-Pricing-Practices-Apr-2018.pdf

‘Sold subject to conclusion of missives’ (in Scotland) – an offer has been accepted but the sale has not been concluded - the property should no longer be marketed for sale. In rare cases the sale may still fall through, hence the use of this description.

‘Sold’ – contracts have been exchanged and the sale is completed – the property must no longer be marketed for sale. ‘Sold’ property listings should be removed in line with portal requirements and/or relevant codes of practice (e.g. RICS UK Residential Real Estate Agency 6th edition, the Property Ombudsman code of practice for residential sales, etc.)

Offers from prospective purchasers

Any offer received on a property at any stage in the sales process must be communicated to the vendor in writing without delay. The only exception to this is where a vendor instructs the agent in writing that offers of a certain type do not need to be passed on or where agents are under a statutory duty to delay passing on such offers (e.g. where a suspicious activity report is being made). Agents must therefore establish at every significant stage of the sales process whether or not a vendor wishes to continue receiving offers. Without written instructions to the contrary, the agent is obliged by law to continue passing on offers until contracts have been exchanged or missives concluded. Where instructions have been received that no further offers are to be accepted, this is material information and should be declared in the property listing and any other advertisements.

Further guidance

Additional guidance is available at www.powys.gov.uk/estateagency, or from your professional association. You should also follow the requirements of any industry code(s) which you are obliged to follow by virtue of your membership or registration.

Important – please note

Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information. We accept no legal liability for the information provided. Only the courts can interpret statutory legislation with any authority. This advice is not intended to be a definitive guide to, nor substitute for, the relevant law - independent legal advice should be sought where appropriate. We aim to keep any advice or guidance timely and accurate - if any inaccuracies or omissions are brought to our attention we will try to deal with these as quickly as possible. You can contact the NTS Estate Agency Team at estate.agency@powys.gov.uk