

NewsFlash



December 2009

as legal advisers to

Real Estate Early Warning Signs

TressCox Lawyers on behalf of Realcover bring you this NewsFlash to assist your risk management preparations.

The suing silly season has arrived.

The depressed economy is likely to fuel litigation against real estate agents.

Actions commenced, relying upon the Trade Practices Act, which protects consumers from false, misleading and deceptive conduct, is on the increase.

Real estate agents are more likely to be sued in the period ahead as opposed to the last six years.

Agents can protect themselves from actions by adopting transparent business practices, noting adequate disclosure and disclaimers, as well as reviewing their professional indemnity insurance.

In brief, a claimant sets out to prove in litigation that alleges misleading and deceptive conduct, that the defendant engaged in a business practices:

- i. upon which a consumer relied to their detriment;
- ii. that the business practice was causative of economic loss;
- iii. that the real estate agent represented property as having qualities or attributes that it did not have;
- iv. the real estate agent represented the condition of the property was other than as advertised;

v. the real estate agent failed to disclose information about a property or a transaction in order to induce a purchaser into that transaction which the consumer would not otherwise have entered if the correct information had been disclosed;

vi. a real estate agent claims a property benefits from rights which it does not have;

vii. a real estate agent advertises that a property benefits from services or work to be performed which it does not.

To be successful these agents action must be causative of injury or loss to a consumer.

In the current economic environment, there are many unhappy people who are only now seeking to take out their frustrations on a real estate agent in a court room.

The best form of protection a real estate agent has often then adopting 'best practice' standards including:

- keep file notes of conversations
- do not overstate the potential of a property
- Encourage prospects to make their own investigations
- Use adequate disclaimers on marketing material
- Obtain the factual material about a property from an owner, in writing
- Carry out periodic inspections and keep records of findings.

and, is to ensure that he or she has adequate professional indemnity insurance to protect, not only a business reputation, but also, personal assets.

Realcover

Your industry. Your insurer.

and its agents



endorsed by



TressCox Contacts



Torq Murray
Partner
Phone 61 2 9228 9253
Torquil_Murray@tresscox.com.au



Jason Newman
Partner
Phone 61 3 9602 9701
Jason_Newman@tresscox.com.au

Melbourne
Level 9 469 La Trobe Street
Melbourne VIC 3000
Phone 61 3 9602 9444
Fax 61 3 9642 0382

Sydney
Level 20 135 King Street
Sydney NSW 2000
Phone 61 2 9228 9200
Fax 61 2 9228 9299

Brisbane
Level 40 Central Plaza 1
345 Queen Street
Brisbane QLD 4000
Phone 61 7 3004 3500
Fax 61 7 3004 3599

www.tresscox.com.au

Realcover National Claims Helpline
1800 559 450