



# What really is 'Material Fact'?

College Chronicle  
Newsletter

June 9, 2023



Australian College  
of Professionals

RTO 91513



# What really is 'Material Fact'?

Material fact is something that has now been long established within the New South Wales property industry and reinforced within the Property and Stock Agents Act 2002 and Property and Stock Agents Regulation 2022.

With the introduction of a set of prescribed disclosures has come many questions and assertions from agents that they no longer have to disclose any item that is not within the prescribed disclosures contained within Clause 60 of the Property and Stock Agents Regulation, which include:

- within the last 5 years the property has been subject to flooding from a natural weather event or bush fire,
- the property is subject to significant health or safety risks,
- the property is listed on the register of residential premises that contain loose-fill asbestos insulation required to be maintained under the Home Building Act 1989,
- within the last 5 years the property was the scene of a crime of murder or manslaughter,
- within the last 2 years the property has been used for the purposes of the manufacture, cultivation or supply of a

prohibited drug or prohibited plant,

- the property is, or is part of, a building that contains external combustible cladding and there is a notice of intention to issue a fire safety order or a building product rectification order regarding the combustible cladding,
- one or more of the following orders, within the meaning of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, is in force in relation to the property:
  - o a building work rectification order,
  - o a prohibition order or
  - o a stop work order.

What is important to understand is that Section 52 of the Property and Stock Agents Act is not limited to ONLY the material facts that have been listed above.

Section 52 of the Act states that an agent must not induce any other person to enter into any contract or arrangement by any statement, representation or promise that is false, misleading or deceptive (whether to the knowledge of the agent or not), or by any failure to disclose a material fact of a kind prescribed by the regulations (whether intended or not) that the agent knows or ought reasonably to know. Examples of the types of things that an agent may disclose include if the agent has knowledge of a new development that may adversely impact the buyer's purchase, a reduction in services available, or if the property is

connected to an embedded network.

This section of the Act makes it clear that there are two parts to the obligation to disclose:

1. to not induce a person to enter into a contract based on misinformation and,
2. to disclose the material facts.

Is not telling someone a fact that they have not asked about the same as not disclosing a material fact or directly lying when asked a question? Under Section 52, it absolutely is all the same, it all amounts to misleading and deceptive conduct and the fines for a breach of section 52 can amount to \$22,000. An interesting alteration to the current First Home Buyers Assistance scheme is around the residence requirement for those who apply for the Transfer duty exemption or concession. Currently, the residence rule is that the eligible purchasers MUST live in the property for at least 6 months in the first 12 months of purchase.

This requirement will now be increased to the purchasers having to reside in the premises for at least 12 months after purchase. This means that those looking to purchase their first home to live in for 6 months and then use it as an investment property will now have to wait for an extra

6 months before they can rent out the premises.

ACOP trainers have a general rule when addressing misleading and deceptive conduct, material facts and the general question from an agent of “Should I disclose.....?” The rule is, if you have to ask “should I disclose?”, then you already know you should be disclosing. Don’t risk your reputation for the sake of non-disclosure.

Rosy Sullivan  
Director | College Principal



ONLY AVAILABLE UNTIL 31 DECEMBER 2023

Australian College of Professionals

## FEE FREE GOVERNMENT FUNDED PROGRAM

This program is for ALL people who meet the eligibility criteria

ACOP OFFERS THIS PROGRAM FOR 4 OF ITS QUALIFICATIONS  
(REAL ESTATE, MORTGAGE BROKING, BUSINESS ADMINISTRATION & LEADERSHIP & MANAGEMENT)

- OVER 15 YEARS OF AGE
- NO LONGER AT SCHOOL
- LIVE OR WORK IN NSW
- AN AUSTRALIAN OR NZ CITIZEN, PERMANENT RESIDENT OR AN HUMANITARIAN VISA HOLDER

**ENROL NOW**

more info  
[WWW.ACOP.EDU.AU](http://WWW.ACOP.EDU.AU)  
RTO 91513

The advertisement features a blue and yellow color scheme. It includes a circular inset image showing three people (two men and one woman) looking at a laptop screen. The text is arranged in a clear, hierarchical manner, with the program name in large, bold letters and the eligibility criteria listed below.

## From the office

It’s been a busy fortnight of training at ACOP with courses running at head office in the Sydney CBD for Mortgage Broking, the entry-level Certificate of Registration real estate and various CPD classes. Our trainers have also been out on the road in Windsor for a Stock & Station licensing program and CPD classes in Castle Hill, Liverpool and Port Macquarie. The travelling for our trainers is back to normal – and they love their getaways and the opportunity to pop in and visit some of our clients whilst they are on the road running training programs.

The Fee Free Government funded program has meant that many existing Assistant Agents are getting on with their real estate licensing program, and there are so many newbies coming through in real estate and mortgage broking and business and management programs. We are definitely seeing so many people super keen to either kickstart or re-start their careers and giving it a boost with some free training subsidised by the government.

There was excitement in the office this week when Dream settled on her first home, with an off-the-plan purchase. She went through the pre-settlement inspection activity in relation to building defects and learnt firsthand so much more about the property process. Congratulations on your big purchase and what a huge step into home ownership. In true ACOP style - I think that deserves a cake for celebration.

**Premium Educators  
Premium Training  
Premium Outcomes**



**Contact us**

1300 88 48 10  
(02) 9264 5505  
enquiries@acop.edu.au

**Visit us**

Level 2, St Andrews House  
464 Kent St, Sydney NSW 2000

**Mail us**

PO Box Q289  
QVB Sydney NSW 1230

**Connect with us**

acop.edu.au



Australian College of Professionals Pty Ltd ABN 32 105 687 910  
Registered Training Organisation Number 91513

Property Training

Finance Training

Strata Management Training

Management Training

Government Funded Training

Compliance Checks

Consumer Education

Value yourself  
Value your future.

**acop.edu.au**