

PROPERTY ADVISORS

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Guidance Papers

Objectives

The principal objective of a Guidance Paper (GP) and Resource Pack (if applicable) is to clarify professional and industry processes, best practices, and procedures and to discuss their use and implementation.

A GP is designed to be of assistance to Members and those who use Members' services. They serve as a guide and measure of acceptable professional practice and conduct of a Member.

The intention of a GP is to:

- a) provide information on the characteristics of different types of assets that are relevant to the advice.
- b) provide information on appropriate practices and their application.
- c) provide information that assists Members in exercising the judgements they are required to make in specific situations'; and
- d) convey elements of what is considered "competent professional practice" for Australian Property Institute (API) Members and "best practice" for Property Institute of New Zealand (PINZ) Members.

A GP is not intended to provide comprehensive training, instruction or prescriptive practices and procedures, or direct that a process, professional approach, or method should or should not be used in any specific instruction or situation.

Member Obligations

The Member is responsible for choosing the most appropriate approach in a matter based upon the task and instruction. It is a matter for each Member to decide the appropriate practice in any situation, and if they are unclear, seek professional advice from others, or contact the Institute(s). Members have the responsibility of deciding when it is appropriate to depart from the guidance and practices contained in a GP.

The Institute(s) do not warrant that anything contained in this, or any GP is the definitive or final statement on any issue. Members must perform their own work pursuant to their own professional expertise and experience and if required, seek additional advice which might include legal advice.

Court of Tribunal Reliance

A court or tribunal may consider the contents of any relevant GP or other document relating to a recommended professional practice published by Institute(s) in deciding whether the member acted to a standard required by law.

Currency of Publication

Case law and relevant legislation may change over time and whilst the Institutes(s) consider this GP current at the time of publication, Members and those who use Members' services should have regard to legislative changes and new rulings and if necessary, seek further advice prior to having regard to this GP.

Departure or Non-Compliance

Where a Member considers that a circumstance exists that warrants the departure from or non-compliance with any of this GP, the Member's report (or other advice) must include a statement that outlines:

- a) the reasons for the departure or non-compliance with this GP; and
- b) any impact the Members departure or non-compliance may have on the content of the report.

Members are advised to seek legal and/or other advice before departing from practice recommended in a GP.

Enquiries

If any Member considers any information or advice in this GP to not be accurate or up to date, or wish to raise any issue for consideration arising from the contents of this GP, please refer this to

API contact: standards@api.org.au

PINZ contact: standards@property.org.nz

1.0 Introduction

1.1 Scope of this Guidance Paper

This Guidance Paper (GP) is to provide guidance on what constitutes “Property Advice”, and review the role and methodology used by Property Advisors and the regulatory framework in which property advice can be provided by Members.

This Guidance Paper applies to Members involved in the provision of property advice.

It should be used in conjunction with other GPs and/or practice standards which are either overarching or directly applicable to the issues involved.

1.2 Certifications

The API does not have any specific Certification for a Property Advisor, but there are various Certifications which may, depending upon the role of a Property Advisor, be relevant as follows:

- a) Certified Property Practitioner (CPP)
- b) Certified Development Practitioner (CDP)
- c) Certified Practising Valuer (CPV)
- d) Certified Commercial Property Manager (CCPM)

PINZ has registration as a Property Advisor through the member registration process.

2.0 Definitions

The following defined words and terms have relevance to leasing incentives and appear in this GP. Other words and terms that are also defined in the IVS Glossary and / or the joint API / PCA / REIA 2007 Glossary of Property Terms may be used but are not listed below in the interests of brevity.

Property Advice	Property Advice is the provision of specialist research, market knowledge and strategic advice to clients to solve their problems and maximise their opportunities. Property Advice is typically provided to corporations, government, or individuals for a variety of purposes. For example, it may include strategic property reviews, market research, advice on the purchase, sale or leasing of property, due diligence, new development or upgrading property, adding value by development approvals, feasibility studies, assessing portfolio mix, syndicate management, etc. The nature of the property advice and the title used to describe it depends very much upon the scope and individual circumstances of each brief.
Property Advisor	The term “Property Advisor” is used in a generic sense to cover a variety of property roles including Property Economist or Consultant; Asset Manager; Syndicate Manager; Development Manager; Tenant Representative; etc.
Institute	All references to “Institute” means API/PINZ.

3.0 Advisory Practices

3.1 Scope of Client's Brief

It is fundamental to develop from the outset a clear understanding of the client's specific needs and objectives. The initial consultation will involve listening to what the client has to say and asking appropriate questions. This will be particularly necessary where the client is a new client or may be unsure as to what property services or solutions can be provided. In some cases, a client will initially request a valuation, when their objective for the advice may be for other purposes which are better addressed in a different type of "property advisory" report. It is useful to extend beyond the actual issue to establish the context in which the consultancy is to be carried out. This may involve developing some understanding of the client's objectives, but no attempt should be made to provide any advice that the member is not qualified to provide.

The Property Advisor should challenge client's current thinking and offer alternative solutions and ideas. Often a sound understanding of where they have come from, the issues they currently face, and their long-term goals and aspirations provide a good platform on which to develop up the best solution.

At the initial consultation, as much information as possible should be taken down at the time in note form. When it appears that the subject has been well covered, summarise the position with the client to ensure you clearly understand the client's needs and objectives. It would be beneficial to confirm this in writing for the client as well as indicating what plan of action you propose, what type of report you consider appropriate and the basis of your fee. Provide an extra copy of this letter for the client to sign and return as acknowledgment.

3.2 The Importance of Communication

Any consultancy will usually require frequent communication with the client especially if the task is complex, has several stages, involves other experts or is a development project. The task may take months or years to complete, and it is important to keep the client informed of progress, even if no problems are being encountered, or no additional information is needed from the client. An agreed and adopted regular reporting process to keep the client informed how the consultancy is progressing, including any good or bad news, will be important for client satisfaction with the property advice. Further meetings are often useful, especially where alternatives need to be considered before progressing to the next stage of the consultancy brief.

In line with 3.1 above it may also be appropriate in some circumstances to put together a "project plan" at the commencement of the role so the client understands the resources required, estimated cost/budget, programme/timeframes, process being followed, agreed outcomes being sought and risks. Project Control Group (PCG) meetings and reports indicating progress against milestones, work completed during the period and an update of risks is a good way of keeping the client informed in a more formal way.

3.3 Other Experts Reports

Where it is considered that other expert's reports are necessary, it needs to be explained to the client the reasons for this requirement in arriving at any assessments or recommendations in the property advice. In these circumstances the client's written approval would normally be obtained beforehand and an undertaking on payment of the fee or a direct payment by the client to the other consultant is considered.

3.4 Report Content

The property advisory report will typically be detailed. In some circumstances where, for example, the client may know the property well it may not be necessary to provide a full description of the property. But it is good practice to give at least a summary of all the main aspects of the site and improvements. This is a discipline which can sometimes identify an important issue e.g. an easement which may otherwise be missed by assuming the client is already aware of its existence. The report would be more detailed in relation to the specific issues important to the client's needs and objectives. Such things as development alternatives, timing, feasibility studies and sensitivity analyses need to be clearly set out including all assumptions. With detailed reports, it is usually beneficial to provide an Executive Summary which provides the client with a good overview of the main aspects of the report and recommendations.

Other matters to consider in reports include 1) style and presentation to suit the purpose of conveying the key messages (may involve diagrams, flow charts, photos, bullet pointing rather than full text, attached reports), 2) assumptions, 3) limiting conditions (of the writer) and 4) referencing.

Property advice reporting should generally include:

- a) The instructions, scope, and limitations of the advice
- b) All assumptions made in preparing the advice.
- c) Factual statements about past performance and research.
- d) Reasonable grounds for statements about future forecasts.
- e) Honest and Reliable statements of opinion.
- f) Balance in the overall impression of the report.
- g) No ambiguous statements.
- h) Source and currency of the information provided.
- i) Logical information and prominence of pieces of information.
- j) Reasonable disclaimers.
- k) References to other reports or articles.

4.0 Regulatory Requirements

There are differences in the way in which Australian and New Zealand licensed financial advisors define key concepts such as a “financial product”. The following requirements are specific to Australia. See Annexure B for information on the provision of financial advice in the New Zealand context.

4.1 Limitations to Providing Property Advice

Property advice can only be given on “Direct Property” (unless the advisor is a separate financial services licence holder).

Property advisors cannot provide any statement, opinion or report that is intended to influence a person or persons to make a decision in relation to a financial product. The term 'financial product' is generally defined as a facility through which a person makes a financial investment, manages financial risk or makes noncash payments. It includes managed investment schemes, time share schemes, property investment schemes, and a range of other investment facilities.

(including shares, options, derivatives etc.) (Note there are differences in definition in the Corporations Act and the Australian Securities and Investment Commissions (ASIC)

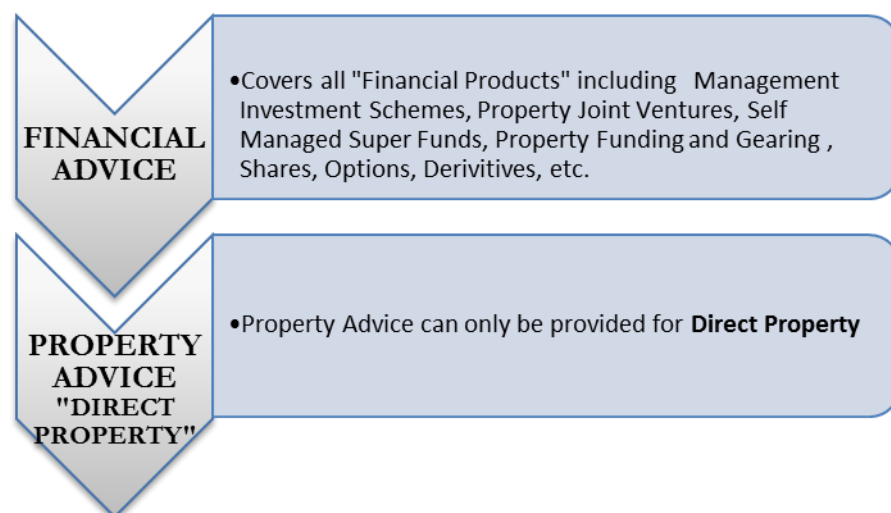
Act). Importantly, it is not possible to avoid providing financial product advice merely by making a statement that the person does not make any recommendation or provide any opinion about the product.

When any advice constitutes “**Financial Advice**” it is mandatory for the advisor to be a financial services license holder, or an authorised representative of such a body.

Direct Property is not currently defined as a “Financial Product” – so any person can give “Property Advice”. However, such advice is still regulated under competition and consumer legislation, which essentially dictates that any advice cannot be deceptive or misleading. The main regulators in relation to property in Australia are:

- Australian Competition and Consumer Commission (ACCC) www.accc.gov.au
- Australian Securities and Investment Commission (ASIC) www.asic.gov.au
- Various State agencies responsible for Consumer Affairs
- Financial Markets Authority (New Zealand) www.fma.govt.nz

Legislation is increasingly being introduced and updated to provide better protection for the consumer from unscrupulous people taking advantage of the general public as property becomes a more popularised form of investment.



5.0 Role & Limitations of the Property Advisor

5.1 Scope of Advice

The Property Advisor needs to be clear on the scope of advice being given and ensure they do not need other appropriate licenses as follows.

Valuer - In some circumstances, where the advice constitutes an opinion on “value”, then the Property Advisor may need to be a licensed/registered or qualified Valuer in Australian states, territories, and New Zealand.

Real Estate Agent- In an Australian context, where property advice continues into a negotiation stage, with the advisor acting on behalf of a client in negotiations for a transaction involving a sale, lease, or property management, then the property advisor is likely to be acting in the capacity of an “agent” and needs a real estate license in all jurisdictions.

In a New Zealand context, any work done, or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction comes within the definition of a real estate agent. Any person carrying out such work needs to be licenced under the Real Estate Agents Act 2008.

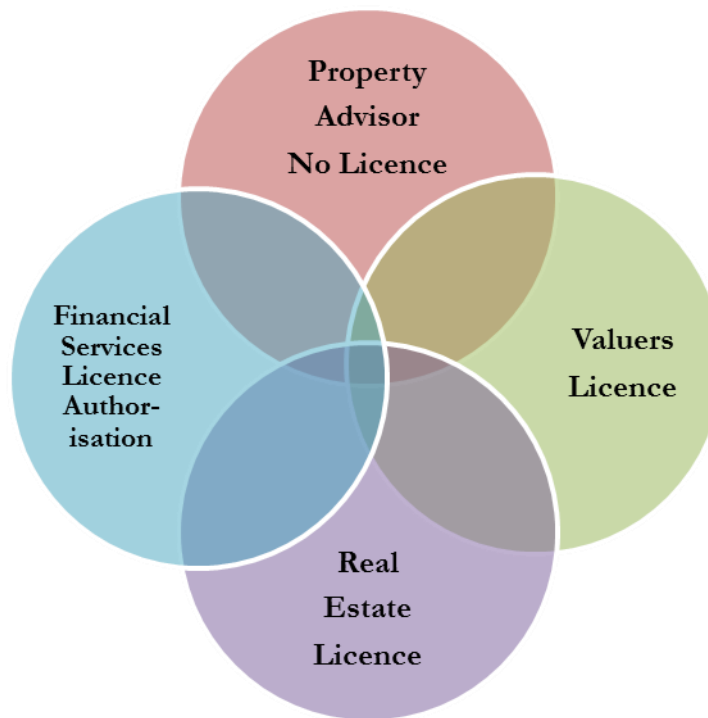
Development Manager- A Property Advisor may be working for a client in the role of a Development Manager and should carefully check their local jurisdiction to ensure they are operating within all statutory requirements. If the development management role includes direct responsibility or supervision of residential construction, then a builder’s licence is usually required in all Australian states and territories. A builder’s licence is not necessary in some jurisdictions for commercial construction.

Property Advice “boundaries”- The Property Advisor needs to be very careful they do not overstep the boundary into financial advice. Examples of where this can occur include:

- a) Providing opinions on financing or gearing a property.
- b) Discussing property ownership structures with clients.
- c) Comparing the performance of property with other financial products. (e.g. Shares or Super)
- d) Advice which involves a Self-Managed Superannuation Fund (SMSF).

If so, all individuals who provide incidental personal or general financial product advice to retail customers must meet the minimum training standards for the holder of a Financial Services Licence (Australia), or an Authorised Financial Adviser, representative of a Qualifying Financial Entity or Registered Financial Advisor (New Zealand).

Therefore, members need to be very clear on what type of property advice is being given and the relevant licence or authorisation (if any) required in their jurisdiction.



6.0 Professional Standards for Property Advisors

Members who wish to act as Property Advisors are required to follow the Institute's Professional Rules of Conduct including the following: 6.1 Professional Property Training. (Australia)

Members have the general requisite educational training in property to provide expert property advice. Where appropriate, Members should seek to undertake specialist courses in specific areas of property advice or provide advice under supervision of an experienced Practitioner where required.

6.1 Practical Experience & Knowledge

Members should have the practical experience in the type of property advice they are providing. Members should not accept appointments or act outside their level of expertise and knowledge.

6.2 Code of Professional Conduct

Members are required to act independently and where appropriate, impartially as detailed below. They cannot act where there is a conflict of interest, nor accept third party fees, and must maintain confidentiality. In some circumstances it may be appropriate to act in an advocacy role to best represent their client, but not in any circumstances where they are bound to act impartially.

6.3 Disciplinary Process

Members can be subject to the disciplinary code if a complaint is made that they acted inappropriately or outside the Code of Professional Conduct.

6.4 Professional Indemnity Insurance

It is not currently a compulsory requirement for Property Advisors to have PI Insurance, but it is encouraged where members provide this service. In New Zealand registered Property Advisors must have or be covered by employer's professional indemnity insurance.

7.0 Additional Resources

A separate resource pack, ANZPGP 202.1 has been prepared to support this GP. The resource pack is intended to be a support document that may assist you apply the GP in practice. The GP and the resource pack should be read in conjunction with each other. The resource pack may be updated as things change such as case law and legislation, so please ensure that you view the latest version of the resource pack.

8.0 Effective Date

This Guidance Paper is effective from 1 July 2021. Earlier adoption is permitted.

This Guidance Paper *ANZPGP202* replaces *ANZRPTIP2* effective 1 January 2016 - which is withdrawn from 30 June 2021.