

Hello and welcome to Peter Rogozik Property Consulting six-monthly newsletter. Over the previous six months we have implemented a number of changes that has further improved the quality of our service. I would like to thank all our clients for taking the time to complete our feedback form and providing us with some excellent suggestions to improve our service. We will always constantly strive to develop better ways to deliver our service.

One of our major improvements has been the appointment of a full time Property Researcher. I would like to welcome Christine Tassone to our team. Christine's role will be to search and identify properties that fits the criteria of our clients. Christine has a genuine passion for property and is an accredited agent's representative having completed the relevant real estate course. She has already impressed many clients with her conscientious and enthusiastic approach to customer service. I wish her a long and happy stay with our firm.

Our service offering is unique in that we cover all aspects of a property purchase, are totally independent and will only act for the buyer. Our property reports investigate the building, real estate and legal issues in relation to a property purchase. In this edition I examine the growing trend amongst other buyer's advocates to offer services to vendors. These services have been introduced to increase their revenue base however I believe they are setting themselves up for a conflict of interest.

As usual, in this edition we include our regular articles, Legal Chat by Andrew Padanyi and Market Snap Shot. Unfortunately we include another article exposing more shams rip offs and scams that have recently occurred in the Melbourne property market. Andrew's article examines the often misunderstood differences between a strata and stratum title. Market Snapshot outlines the recent past performance of the property market. We also present our opinion on future trends in the Melbourne market.

Please feel free to contact us if you have any questions in relation to real estate or building matters. Also, if there is a specific topic you would like covered in our next newsletter, we would like to hear from you.

Regards,



Peter

## Market Snapshot

As predicted in our previous issue, the Melbourne property market has experienced moderate growth over the previous quarter. The recent interest rate increases have only slightly dampened the Melbourne market. Quality properties are still attracting multiple bidders and achieving excellent prices. These conditions are symptomatic of normal market conditions. Much of this demand has been driven by owner occupiers however we have noticed more interest from investors over the December quarter.

\* Melbourne's median house price has almost returned to the peak of December 2003, which was \$380,000. This quarter's price data shows that all the fundamentals of the Melbourne property market are on track, the median price is steadily appreciating, stock availability at auctions has increased 11 per cent on 2005 and the clearance rate is up 5 per cent. The September quarterly median house price rose \$5,500 from a revised June quarter median of \$371,500 to \$377,000. The unit and apartment median also rose 1.6 per cent in the quarter and 6.7 per cent from the corresponding quarter in 2005.\*

As for the future we believe there will be moderate growth over the next twelve months. Quality properties will perform well, i.e. properties in exceptional locations with scarce and unique features. At the moment the fundamentals of the economy are sound, employment is strong, interest rates and inflation are relatively low and consumer confidence is high. Taking all these factors into account, an astute purchase will result in double-digit capital growth over the next twelve months.

\*Source: Real Estate Institute of Victoria

## Shams, Rip offs & Scams

### Wake Up to the Games People Can Play

Too often in the real estate industry there are shams, situations and incidents occurring which mean buyers are not getting the best opportunity – not just the best price, but the best opportunity to be a part of the buying process.

These situations include when a selling agent excludes interested buyers from a negotiation, or when a property is sold to a preferred person. These dishonest incidents take place more often than the buying public is aware. On many occasions the selling agent unfortunately chooses these actions not for the vendor or the buyer's gain – but for their own.

Here are just two recent examples of these types of practice that I've recently experienced. Both are unethical and both do the industry – and the buyers and vendors - great harm.

### 1: Left Out of the Negotiations

The first situation involved a well known selling agent in bayside Melbourne and a property in Elwood. My colleague and I inspected the property on behalf of expatriate clients. After we took internal and external photographs of the property, we asked the agent to keep us informed of all offers made in relation to the property - naturally because it could interest our clients.

A few days later we requested the agent email us the contract and vendor's statement. We made another appointment with the agent to undertake our Pre-purchase Building Inspection. After each inspection we reiterated to the agent that we wished to be kept informed of all offers and progress on negotiations regarding the sale of the property.

A day before the scheduled auction I received a phone call from the selling agent enquiring whether we would be attending the auction the next day. I replied that we would. During this short conversation at no stage did the agent advise that the property would be sold prior to the auction or that there were negotiations in progress with another party. Remember that we had already asked the agent to keep us informed of all developments and progress with negotiations and sale of the property.

The agent also knew we had conducted several time consuming inspections and they were aware that we would be attending the auction the next day.

Despite all of this communication, interaction and our specific requests, the agent excluded us from any negotiations. On the day of the auction, we drove to the property and were horrified to see a 'SOLD' sticker on the sales board.

The agent contacted me later that day and did not have any real explanation for this behavior. I asked the agent why they didn't advise me they were negotiating with another party when we spoke the previous day. The agent replied that at that point in time negotiations had not started. They also claimed the vendor was happy with the offer and did not want the agent to ring other interested parties. This is a claim that has been refuted by the vendor.

The selling agent refused to disclose the selling price however I was able to find out that the property sold for \$780,000. My firm had a power of attorney from our clients to negotiate up to \$855,000.

Put simply, I believe this selling agent was negligent in their duty. It is a basic duty of a selling agent to inform all parties that have shown interest in the property or have requested to be kept informed in relation to a property, details on the progress of the sale. And we had certainly indicated our interest. Numerous times. Our interest in the property was clear.

From so many selling agents available, the vendor had entrusted this selling agent to market their

## Shams, Rip offs & Scams continued...

property. In return for this trust, the selling agent has literally ripped their vendor off a potential sum of up to \$75,000. In fact, all parties were deceived; the vendor, my client and my firm.

In my view, the selling agent's actions represent a serious breach of duty involving a substantial amount of money. In most situations this breach of duty can be difficult to prove. However in this situation, I had in my possession a power of attorney outlining exactly the figure I could negotiate to. I believe this represented strong evidence against the selling agent.

I made a complaint to Consumer Affairs Victoria yet despite the evidence of the power of attorney, they were not prepared to take any further action. Consumer Affairs Victoria must act on these types of incidents so that it can be seen to be carrying out the role it was established for. Consumer Affairs Victoria is often described as being a "paper tiger" for its ineffectiveness and failure to act. After liaising with them on the above matter I would add the description of gutless and useless.

### 2: Selling to a Specific Buyer

The second situation involved the attempted purchase of a property by our firm for the purposes of development. Throughout the marketing campaign I had several conversations with the appointed selling agent who was not aware I was a buyer's advocate.

On the day of the auction the selling agents decided not to conduct the auction; the reason for this unusual course of action would become apparent a few days later.

I approached a representative from the selling agents and made a verbal offer of \$340,000. The selling agent informed me the vendor wanted \$380,000 and then tried to convince me that the property was worth nowhere near this figure. On departing I informed the selling agent I was still interested in the property and that I would like to be kept informed of any other offers.

Just a day or two later, I rang the selling agent I had been liaising with. They informed me that an offer of \$380,000 had been received and that the property was about to be sold. I felt that this selling agent wasn't being entirely honest. I spoke with the selling agent's colleague who informed me that the property had in fact been sold on the Saturday. Had I been advised of the offer I would have paid more than the actual selling price.

The entire episode was a charade. Despite my request to be kept informed, the selling agents failed to advise me of the other offer that was made on the day of the auction.

It was clear these selling agents were focused on selling the property to a particular buyer - even if that action resulted in a lower price for their vendor. I was deceptively excluded from the negotiation.

Would you want this agent selling your home using these sorts of deceitful and dishonest behaviours?

Both of these incidents I experienced are unfortunately common occurrences in the Melbourne real estate scene. Vendors are not privy to the interactions and negotiations that take place between potential buyers and the selling agents so unfortunately most of these improper actions remain undetected.

So if any of my clients are selling their home in the bayside or western suburbs of Melbourne, I would be happy to talk with them further about these situations and the selling agents to avoid.

## Is Your Advocate 100% Independent?

As property consultants we have always prided ourselves on being totally independent. We are not aligned to any particular selling agent, property developer or any other group where a conflict of interest could arise. When we search for properties on behalf of our clients the whole marketplace is examined. Our clients can be assured that we will submit properties that best suits their individual needs without fear or favour to anybody. A growing trend amongst buyer's advocates is to advertise their services on the websites of selling agents. In this situation I believe these buyers advocates are setting themselves up for a conflict of interest. Will they favor that particular selling agent when submitting properties to clients? What about a situation where they are negotiating the purchase of a property that is listed with that particular selling agent. Because the selling agent has allowed them to advertise on their web site, are they going to go soft on them with negotiation? I believe there is potential for a conflict of interest.

Also, we only provide services to buyers of property. Unfortunately there is a growing trend amongst other buyer's advocates to offer services to vendors. In my view, as a real estate professional you can only represent a buyer or seller, not both. The buyer's advocates who are offering services to both buyers and sellers are setting themselves up for a conflict of interest. A likely scenario would be a situation where a buyer's advocate advises a seller on the best way to market their property. Subsequent to this a property buyer engages the services of that buyer's advocate to find and negotiate a property on their behalf. It would be a clear conflict of interest if the client's criteria matched a property where the buyers advocate had given marketing advice to the vendor. In this situation the buyers advocate would be acting for both parties, this is clearly unacceptable.

At Peter Rogozik Property consulting we will never offer services to sellers of property nor will we ever advertise with a selling agent or any other party where there could be a conflict of interest. We will never accept commissions, kick backs or any other form of financial reward for recommending one property over another. If you employ our services you can be assured of 100% independence.

## Legal Chat

By Andrew Padanyi B.A., LL.B.

It is easy to confuse stratum title with strata title, but the two are distinct and you should be aware of the implications if the apartment that you are considering buying is stratum title. Stratum title is a form of flat ownership that was available until the Subdivision Act was introduced in 1988. A stratum title is defined by reference to the level of the dwelling in relation to sea level. In contrast, a typical suburban dwelling will be on an allotment whose boundaries are defined by reference to intersecting streets.

In a stratum development, individual owners own their flats as well as being shareholders in a service company. The shares can't be sold separately to the title to which they relate. The service company owns and manages the common property and enters into service agreements with owners. The service agreement sets out the rights and responsibilities of the service company and of each owner. The service company is obliged to maintain common areas and structures including driveways, paths, stairwells, roofs, pipes, drains, boundary walls and fences. Owners are required to pay maintenance fees and use common property in accordance with the agreement. This is similar to the way in which body corporate rules work.

However, a service agreement can be registered on title, the effect of which is to bind successors of the owner. The title can also be subject to a charge, which is intended to secure payment by each owner of maintenance fees to the service company. The major disadvantage in having a service agreement and charge registered is that the title becomes encumbered, and lending institutions don't like encumbrances getting in the way of their first mortgage security. Some lenders won't finance stratum title property at all, others may restrict the loan amount, eg. to a maximum of 80% of the value of the property. If you are considering purchasing stratum title property, as well as doing the normal due diligence it is important to confirm with your lender how much they are prepared to lend so that you are not left short when it comes to settlement.

Note: Readers should not act solely on the basis of the material contained in this article. Peter Rogozik Property Consulting expressly disclaims all liability for any loss or damage arising from the reliance on this document.

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