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## Editorial

Hello and welcome to Peter Rogozik Property Consulting six monthly newsletter. The Melbourne property market again gathered momentum mid 2009 which resulted in average price growth of around 15 percent. This increase precedes the peak of the market which occurred in November 2007 followed by a reduction in prices due to the effects of the global financial crisis.

We would like to welcome Karin Butterfield to our team. Karin has a wealth of experience in real estate having established her own executive relocation business. She has been involved in the real estate industry for the past 15 years. Karin has already successfully located several properties for our clients and is proving to be a great addition to our team.

The capital growth performance of the investment properties we have selected for our clients have performed remarkably well. During the last six months there have been 3 resales of these properties. I outline the amazing profit margins that our investor clients have enjoyed. Unfortunately I came across an incident of dummy bidding at an auction in Yarraville. This type of behavior is rare since legislation was enacted outlawing it back in 2004. In this edition I explain exactly what happened. I have never agreed with the policies of financial institutions in relation to minimum floor areas of 1 bedroom apartments. These nonsensical policies make it more difficult for first time home buyers and investors to enter the market in a quality way. In this edition I explain in detail why

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## Market Snapshot

The second half of 2009 saw the Melbourne property market surge forward on average by 10%. Consumer sentiment changed dramatically as people realized that the global financial crisis wasn't going to impact Australia as it had other large western economies. Confidence was restored with the resulting effect on property prices.

Early indications for 2010 are that the strong demand will continue for inner city quality property. The auctions I have attended so far have been hotly contested also, open for inspections are attracting many prospective buyers. 2010 is shaping up as a year that we will again see healthy price growth.

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## Amazing Results

Our firm has always prided itself on being extremely discerning when selecting an investment property for our clients. The property has to meet strict criteria before we would recommend a purchase. The difference in capital growth between a good choice and the optimum choice can be hundreds of thousands of dollars in the medium to long term. Recently there have been 3 resales of properties I selected on behalf of investor clients. The capital growth was substantial in a relatively short period of time. These results were even more amazing given the fact that during this period our economy supposedly experienced the worst recession since the great depression. The following are the results:

Date of Purchase	Buying Price	Date Sold	Selling Price	Time Held	Gross Profit
<b>Property 1</b>					
26-4-2008	\$452,000	14-11-2009	\$535,000	1 year 7 months	\$83,000

this policy needs to be changed.

A little known fact is that at least 15 Australian children have died in incidents related to curtain and blind cords since the early 1990's. Children, particularly infants can die from strangulation after becoming entangled in loose curtain and blind cords. Consumer Affairs Victoria is currently running an awareness campaign about this issue. In this edition we include an article outlining these tragic accidents.

As usual, in this edition we include our regular articles, Legal Chat by Andrew Padanyi and Market Snapshot. Andrew explains how a vendor can unwittingly create a terms contract with the resulting negative consequences. 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*



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Property 2					
9-3-2007	\$435,000	14-11-2009	\$593,000	2 years 8 months	\$158,000

  

Property 3					
10-7-2007	\$320,000	15-1-2010	\$410,000	2 years 6 months	\$90,000

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## Dummy Bidding Alive and Well

A real estate agent situated in Melbourne's inner west has resorted to using a dummy bidder on properties that are unlikely to attract multiple bidders. On the 23rd of May of last year I attended an auction in Yarraville with a young couple hoping to purchase their first home. The dummy bidder placed several bids before the property was passed in. I was immediately suspicious as I was aware that this person was an associate of the selling agent in that he provided maintenance services to their property management division. After the property was passed in he strategically stood in front of the property giving the false impression that he was an interested buyer. The selling agent was conversing with him in a further attempt to put pressure on my clients. This is a tactic that some unscrupulous selling agents use when a property is passed in and there is only one genuine buyer interested in the property. Inexperienced buyers become fearful that another party will purchase the property and are therefore duped into paying a much higher price for the property.

With the permission of my clients I walked over to this person and reminded him of the serious consequences in relation to dummy bidding. My strategy worked as he scampered off down the street with a very fearful look on his face. When I challenged the selling agent about their dummy bidder, they didn't deny my accusation.

I then proceeded to negotiate a very favorable price for my clients. I believe the tactic used by the selling agent is a low act because the selling agent is attempting to unfairly gain an advantage against what are often inexperienced first home buyers. This particular selling agent didn't have the necessary negotiating skills so he resorted to what is essentially cheating in an attempt to gain an advantage. You might be thinking this is exactly the selling agent I need to sell my house. This particular selling agent has a history of also acting unethically towards their own vendor client given the opportunity.

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## Legal Chat

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

Despite recent changes to the Sale of Land Act in Victoria (the Act), it's still possible to unwittingly create a terms contract (as distinct from the usual cash contract) where the vendor gives possession of the property before settlement. This occurs where the contract provides that the purchaser is entitled to possession before final payment.

In a recent court case, the vendor intended to sell vacant land but the purchaser wanted an extended settlement and the right to access the property before settlement to obtain building and

planning permits and to start building. A special condition was written into the contract granting the purchaser "immediate possession". Subsequently, the purchaser sought to avoid the contract on the basis that the contract was in fact a terms contract and that the vendor had failed to comply with the Act.

The vendor argued that the special condition was only intended to give the purchaser access to the land for specific purposes pending settlement, not to have possession of it. However, the court decided the condition meant what it said and the purchaser was entitled to avoid.

The breach relied on by the purchaser in this case was the failure of the vendor to transfer the property to the purchaser when requested to do so and to take a mortgage back. All terms contracts have this right. Failure by a terms vendor to comply with the purchaser's request entitles the purchaser to avoid the contract.

There are also additional disclosure requirements that apply to terms contracts. Breach of those requirements may also entitle the purchaser to avoid.

The vendor might be saved avoidance if the vendor has acted honestly and reasonably and the purchaser is in no worse a position. The case illustrates how easily an ordinary cash contract can be "accidentally" converted into a terms contract, and the consequences. For the purchaser, non-compliance by the vendor with what turns out to be a terms contract can be an unexpected method of avoiding the contract if the purchaser's circumstances change during the contract period. However, the vendor can still resist avoidance by showing that he/she has acted honestly and reasonably and that the purchaser has not suffered disadvantage as a result of the vendor's non-compliance.

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## **Must be 50 Square Meters?**

Most financial institutions place restrictions on lending in relation to genuine 1 bedroom apartments based on internal floor area. This policy is ridiculous and archaic. The fact that these financial institutions place such a high emphasis on floor area only demonstrates that they do not understand the fundamentals of real estate, an amazing reality given their resources.

Floor area is a lower order factor when assessing the capital growth potential of a 1 bedroom apartment. In this article I am strictly referring to a genuine 1 bedroom apartment and not a bed sit or studio apartment. The major drivers of capital growth in relation to a 1 bedroom apartment is distance to amenities, quality of streetscape, low density block, car parking on title, type of title etc. Assessing a 1 bedroom apartment according to the above criteria is a more accurate way of ascertaining the quality of the lender's security.

First homebuyers are most affected by this policy. The 1 bedroom apartment market provides first homebuyers the

opportunity to enter the market in an affordable way. Also, provided the correct selection is made they will benefit from exceptional capital growth which will assist them greatly when they decide to upgrade in the future. Because of spiraling prices, first home buyers are already facing an uphill battle attempting to enter the market. Unfortunately this restriction on lending based on floor area is making it much more difficult for first home buyers to enter the market.

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## Beware of Blind Cords

Tragically at least 15 Australian children have died in incidents related to curtain and blind cords since the early 1990s. Most recently, two Victorian infants died after being strangled by cords in August and September 2009.

The cases described below occurred in Australia before 2009.

### Case 1

While a mother was hanging out washing, her three year old daughter climbed on to a bed and played with incorrectly secured looped cords. The child managed to place the cord around her head and slipped from the bed. The mother found her daughter just a few minutes later, but she could not be revived.

### Case 2

A 15-month-old child was placed in a cot for a sleep. The child woke up and started playing with looped cords alongside the cot. The cords became entangled around the young child's neck. The child eventually became tired and sat down in the cot. The cords strangled the child who was unable to be revived when found.

For more information on the risks and safety tips, please view the [Consumer Affairs website](#) or contact Consumer Affairs Victoria on 1300 55 81 81

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