



The Buyers Advocate

Connecting People and Property



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Editorial

Hello and welcome to the Peter Rogozik Property Consulting six-monthly newsletter. Despite the tougher market conditions over the previous 12 months we continue to be one of the very few buyer's advocates who exclusively represent buyers. In contrast to most other buyer's advocates we do not offer services to vendors.

Also, we continue to uphold our strict policy of never accepting commissions or kickbacks from third parties, without exception. Our clients can be assured of total independence at all stages of the buying process. These policies make us unique in the real estate industry.

Much has been written about the long standing problem of selling agents underquoting the price of properties that are for sale. I feel I am in an informed position to comment on this issue through regularly attending auctions for over 20 years. In this edition I provide an in-depth analysis of underquoting and solutions on how buyers can combat this strategy regularly used by selling agents.

It was reported recently that the Sheriff's Office sold an inner Melbourne house valued at \$600,000 for \$1000. The house was seized by the sheriff because the owner had failed to pay debts. The intricacies of this transaction were not reported accurately by the media. In this edition I detail what actually occurred and give readers an insight into how Sheriff real estate

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The Truth About Underquoting

The practice of selling agents deliberately and substantially underquoting the likely selling price of an auction property will never be eradicated. This strategy has been implemented for the purpose of attracting buyers to inspect a property and potentially become involved in the bidding process. In essence it is based on deception similar to bait advertising. A buyer is lured in to inspect a property after being advised of a likely selling price that is well below current market value and/or the vendor's reserve price.

Selling agents prefer to have buyers at an auction even if the buyer falsely believes the property is worth substantially less than its actual market value and likely selling price. Greed and fear are common underlying emotions that guide decisions regarding large financial transactions. These two factors are also a major reason why selling agents resort to substantial underquoting.

Greed relates to the possibility of the selling agent not earning a commission. It is impossible to make a sale and earn a commission without buyers at the auction.

The fear factor also comes into effect when the selling agent fails to attract a buyer to the auction. The selling agent then has to explain to the vendor why this occurred given the high expectations at the start of the marketing campaign.

In these situations selling agents are doing their vendor client no favours despite their sales rhetoric on the benefits of such a strategy. Talking down the selling price of a property by a substantial margin will result in buyers being conditioned to believing the property is worth much less than its true market value. Only the very few astute buyers, who have done their homework and have an understanding of market value, will be in a position to purchase the property. Substantial underquoting does not engender competition on the day of the auction.

auctions are conducted.

The state government has made changes to the concessions given to first home buyers. Unfortunately these changes will have a negative impact on employment here in Victoria. In this edition I explain what the changes are and why they will cost jobs at a time when the unemployment rate is on the increase.

Over the last decade there has been an increase in land-use restrictions in Melbourne. Planning authorities have achieved this mainly through applying overlays in certain areas. These overlays have real implications for buyers of residential property. I explain more about this type of restriction and give an explanation of some of the more common overlays buyers will encounter around Melbourne.

Most property owners are unaware of the risks of failing to regularly service gas appliances. There have been many cases of carbon monoxide poisoning because of faulty gas appliances here in Victoria. In this edition I explain in more detail the dangers of this silent killer and how to minimise the risks to property owners and tenants.

As usual in this edition we include our regular article: Market Snapshot. Market Snapshot outlines the recent past performance of the property market. We also present our opinion on future trends in the Melbourne market.

Feel free to contact me 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 I would like to hear from you.

Regards,

Peter

The type of underquoting that should be outlawed is substantial and deliberate underquoting. I don't believe there is anything wrong with quoting a sale property conservatively. Circumstances can change during the marketing campaign that may result in buyers not embracing a property as was expected. For example, market conditions may change due to economic factors. However, I regularly encounter substantial and deliberate underquoting at auctions in Melbourne.

There are two different types of underquoting. The first and most common type of underquoting occurs where the selling agent quotes well below the market value of the property, but the property is announced on the market in a price range considered market value based on recent and comparable sales. As the property is announced on the market at a fair and reasonable price, informed buyers feel they have not been duped. I personally don't have an issue with this type of underquoting.

The second type of underquoting is similar to the first type in that the property is quoted well below its current market value. However, instead of the property announced on the market at its current market value, it is passed in at auction despite substantially surpassing both the advertised price range and its current market value. This type of underquoting causes much anger among buyers.

In this situation buyers feel they have been lured to the auction on false pretences. Many buyers have wasted money on pre-purchase building and pest reports and engaging a lawyer to check the contract and vendor's statement. Buyers have wasted time inspecting the property, not to mention the emotional rollercoaster that most people endure when making what is usually the most expensive purchase of their life.

When the second type of underquoting does occur many selling agents blame the vendor for increasing their reserve price on the day of the auction. Personally I don't accept this excuse as legitimate in the majority of situations. The selling agent coordinates and controls the marketing process. They are supposed professionals who orchestrate the whole marketing campaign. A selling agent should not engage a vendor whose price expectations are unrealistic. Unfortunately, many selling agents do in the hope that the vendor will become realistic during the course of the marketing campaign.

The legislation outlawing underquoting was enacted in 2004. Amazingly there have been only a few prosecutions in Victoria. The statutory authority whose role it is to oversee the real estate industry in Victoria is Consumer Affairs. They have put this problem in the too hard basket and are no longer interested in monitoring the practice of underquoting. The reality is Consumer Affairs Victoria don't have the time, expertise or motivation to effectively monitor underquoting.

Unfortunately consistency has not been a hallmark of the regulator. The few selling agents fined for underquoting can rightly feel they have been made scapegoats given the overall frequency of underquoting.

Trying to outlaw underquoting is akin to flogging a dead horse. As well as having a toothless tiger as the regulator there also exists a loophole in the current legislation that



allows selling agents to avoid playing by the rules.

As the regulations stand at the moment selling agents are prohibited from quoting below the vendor's reserve price and the estimated selling range of the property. The estimated selling range of the property is decided by the selling agent after analysing recent and comparable sales. Both the reserve price and estimated selling range should be inserted on the auction authority, which is signed by both the selling agent and vendor. This regulation was introduced in an attempt to prevent selling agents underquoting.

In reality these requirements are easy for selling agents to avoid. The vendor is not required to disclose a reserve price until the day of the auction so there is no requirement to record a reserve price on the auction authority. In the case of the estimated selling range, selling agents merely insert an estimated selling range that is artificially low, therefore allowing them to quote the property low.

Another method of avoiding prosecution, which has come to the fore over the last 12 months, is the practice of not including written quote prices on marketing brochures. In these situations selling agents only make verbal representations about the likely selling price. When a buyer requests a likely selling price range for a particular property the agent will state there is "buyer interest" around a certain figure. By using the term buyer interest a selling agent avoids making direct representations about the quote range. This buyer interest price range is always more than 20% below the market value and eventual selling price of the property.

The strategy of not stating a quote price on marketing brochures can negatively impact on the marketing campaign for most properties. The majority of property buyers source via the real estate web portals. That pool of buyers who are not highly motivated to purchase a property may not enquire about an estimated selling price if one is not stated on the web portal advertisement. In these circumstances this results in a lost opportunity for the selling agent to engage the prospective buyer.

What does all this smoke and mirrors mean for property buyers? Quite simply there are two solutions to this issue for property buyers. These two solutions are applicable to the first type of underquoting as described above.

Solution one is buyers becoming familiar with property prices to ascertain for themselves the true market value of the property. Buyers need to attend auctions every Saturday for at least three months in their preferred suburbs. They will see first hand what properties are selling for and can recognise for themselves when a property is underquoted.

If solution one sounds like too much hard work, solution two involves engaging the services of either an independent buyer's advocate or a registered valuer. These professionals have access to vital sales data and are able to analyse and interpret the information correctly. A buyer's advocate can also assist with the negotiation process and ensure a property is purchased at the lowest possible price.

Unfortunately if you encounter the second type of underquoting there is nothing you as a buyer can do.

However, most buyers eventually become sellers. If you do become the victim of this type of underquoting, my advice is don't hesitate to inform the selling agent that his services will not be required when the time comes to sell your property.

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Sale by Sheriff

Who would like to purchase a house in inner Melbourne for one thousand dollars? Welcome to the world of sale by the Sheriff. There is an old saying "if something sounds too good to be true then it generally is". This saying certainly applies when it comes to moneymaking schemes.

The Sheriff's Department regularly conducts real estate auctions in Melbourne. These properties have been seized from people who have had court judgements made against them for non-payment of debt. Properties can be sold for as little as one thousand dollars, however, the transaction can become extremely complicated.

This was the case recently in the much publicised sale of a house in the inner Melbourne suburb of Braybrook. It was reported that the Sheriff sold the property for \$1000 but the reporting was incomplete and inaccurate.

In the majority of sheriff auctions the buyer is purchasing only the equity of the owner or owners, i.e. the difference between the market value of the property and the amount of the outstanding mortgage, not the property in its entirety. This was the case with the Braybrook sale.

In this particular situation the buyer purchased equity of approximately \$172,000 for only \$1000. There remained a mortgage on the property of approximately \$457,000. On face value the buyer in this transaction appears to have made a windfall gain. However, there is much more to these types of transactions than meets the eye.

Most properties sold by the sheriff are likely to be encumbered by a mortgage. The buyer then has to approach the mortgagee and come to an arrangement to pay off the existing debt. There could also be caveats on title that the purchaser has to contend with. These caveats could have been lodged by other debtors related to the previous owner, e.g. outstanding council rates.

A sheriff's auction does not operate under the Sale of Land Act 1962. The Sheriff does not provide a vendor's statement under section 32 of the Sale of Land Act. A prospective buyer needs to conduct their own property information searches.

The buyer may also have to remove the original owner from occupying the property. The sheriff does not deliver vacant possession of the property upon a sale. This would most likely entail obtaining a warrant of possession from the Magistrate's Court.

Buying a property from the sheriff is definitely not for the faint hearted. As described above it can be a very complicated transaction. Anyone contemplating purchasing from the Sheriff should seek professional advice.

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Bad Policy Costs Jobs

The recent changes to concessions for first home buyers will cost jobs in Victoria and contribute to an increase in inflation. The state government has ceased the first home buyer's bonus for the purchase of new properties and continued with general stamp duty reductions for all first home buyers.

First home buyers will now receive a 20% stamp duty discount for property purchases up to \$600,000. Further cuts will be made progressively, culminating in a 50% reduction by September 2014. A separate \$7000 grant for first home buyers funded by the federal government continues.

Taking away incentives for first home buyers to purchase new property is an enormous setback for the building industry and the Victorian economy. New housing approvals have been declining over the last 12 months and the unemployment rate has increased from 5% to 5.8% over this same period.

The building industry is a major contributor to providing employment opportunities in Australia. There are hundreds of tradespeople and suppliers engaged in the construction of just one dwelling.

As the rules stand at the moment a first home buyer who purchases a \$600,000 established property is given the same incentives as a first home buyer who buys a new property. The difference is the purchase of a new property will result in substantially greater benefits to the economy than the purchase of an established property.

As I have stated in previous articles, giving all first homebuyers extra handouts is not a long-term solution to the housing affordability problem. A large pool of buyers such as first home buyers with extra financial capacity will only serve to increase the price of housing and therefore fuel inflation.

The affordability problem needs to be tackled by increasing the supply of housing. Increasing the supply of affordable housing in areas that first home buyers prefer to live will provide a long term solution.

This can be achieved by greater low density infill development within ten kilometres of the CBD. Planning permits for these types of developments have been difficult to obtain in the past due to Victoria's cumbersome urban planning system.

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The Silent Killer

Carbon monoxide poisoning from faulty gas appliances has killed nine Victorians in the past decade. The main causes of these deaths have been faulty or badly maintained gas heaters. It has become known as the silent killer, as carbon monoxide gas can't be seen and does not have a smell.

Energy Safe Victoria (ESV) is the independent technical regulator responsible for gas safety in Victoria. ESV recommends that at least every two years all gas appliances should be serviced by a licenced or

registered gas fitter.

According to ESV the following gas appliances may produce carbon monoxide gas: gas heaters, gas water-heaters, stovetops and ovens, gas-powered refrigerators, decorative log fires and barbeques.

More particularly ESV is urging all Victorians with gas heaters built into brick chimneys to get them tested for carbon monoxide spillage. This includes space and room heaters and decorative log fires.

While brick chimneys are designed to safely remove combustion products from the home, they can deteriorate over time. Any holes in the mortar or brickwork could stop the chimney drawing properly. If the fault is bad enough, it may create backpressure that could push toxic carbon monoxide into living areas.

In an effort to create awareness about this issue ESV have initiated a series of media campaigns highlighting the importance of regular gas appliance servicing. Unfortunately the message does not seem to be getting through to property owners. I have spoken to several service contractors who report that, in their estimation, less than 20% of gas appliances in Victoria are serviced regularly.

It is my view that media campaigns alone will not result in any significant increase in gas appliance servicing. Unfortunately many property owners regard regular gas appliance maintenance as an expense that it not a priority. This is especially the case in the current tougher economic climate.

The state government should offer rebates to property owners to assist in reducing the cost burden of regular gas appliance maintenance. This would go a long way to greatly increase the current low levels of gas appliance maintenance.

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Understanding Overlays

State and local governments have introduced a greater number of controls on the use of land over the past five years. Also, more land is now subject to overlays than ever before.

Overlays are a restriction on the use of land in a designated area. In many cases, if a property is affected by an overlay a planning permit is required for the construction of a building and/or other changes to the land.

There are many types of overlays. The following are some of the more common overlays found in the Melbourne metropolitan area.

Heritage Overlay: places of heritage significance can be protected by a Heritage Overlay. Heritage Overlays are contained within local council planning schemes and assist in protecting the heritage of a municipality. These overlays require a planning permit for buildings and works.

Special Building Overlays: this type of overlay identifies areas prone to overland flooding. The purpose of these

overlays is to set appropriate conditions and floor levels to address any flood risk to developments. These overlays require a planning permit for buildings and works.

Environmental Audit Overlay: the Environmental Audit Overlay (EAO) seeks to ensure that potentially contaminated land is suitable for its intended use. These are sites with suspected contamination or adjacent to known contaminated sites.

When a Planning Permit is applied for with the local council, and the site is covered by an EAO, the council will require an auditor to prepare either a Statement or Certificate of Environmental Audit. These audits state suitable uses and any conditions required.

In the sale of residential property overlays are disclosed in the planning certificate, which forms part of the vendor's statement. It is possible for land to be subject to more than one overlay.

Before signing a contract of sale, it is important that buyers understand the implications of purchasing a property that is affected by an overlay.

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Market Snapshot

After a subdued 2011 where auction clearance rates struggled to reach 55%, so far in 2012 the Melbourne market has achieved clearance rates averaging 60%. The Melbourne market is now in a balanced state.

Properties between 2Ks and 10Ks of the Melbourne CBD in quality streetscapes that possess scarce and unique features are attracting multiple bidders. The remainder of the market is floundering. These conditions are characteristic of a balanced market.

The Melbourne property market should continue to improve throughout the remainder of 2012. I'm expecting a balanced market, i.e. auction clearance rates between 60% and 65%, to continue into the foreseeable future.

The major threat to this continued improvement is a sharp rise in unemployment. Much has been said about interest rate movements, however, the employment rate is a far better indicator of buyer confidence and the general health of the property market.

Most homeowners and buyers can reduce their discretionary spending if interest rates are increased. However, the threat of losing your job, whether real or perceived, will put an end to any thoughts of buying a property.

The market as a whole will not rise sharply until at least 2014. However, as always, the quality segment will continue to appreciate despite the performance of other market segments.

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Peter Rogozik Property
Consulting
Licensed Estate Agents
Registered Building
Practitioners

L 27, 525 Collins Street
Rialto South Tower
Melbourne Vic 3000 Australia

PO Box 23406
Docklands, Victoria. 8012
Australia

T + 61 3 9689 9080
F + 61 3 9689 2560
E info@yourbuyersadvocate.com.au
ACN 103 128 678



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Peter Rogozik Property Consulting
PO Box 23406
Docklands, Victoria 8012
AU

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