



Editorial

Hello and welcome to Peter Rogozik Property Consulting six-monthly newsletter. It certainly has been a whirlwind year so far in the world of real estate. The Melbourne property market has gone from strength to strength this year, experiencing significant capital growth especially amongst quality property. Investors from all over Australia have targeted the Melbourne market. Our firm's policy of only purchasing blue chip real estate has resulted in our clients substantially increasing their equity base which gives a great springboard for future investment.

One of our more exciting ventures this year has been our participation in the London Emigration Show. This show which is held annually gives firms the opportunity to display their services to British citizens contemplating making a permanent move to Australia and other parts of the world. Many countries were represented and there was an enormous turnout over the weekend. Australia was much sought after by families as a destination to start a new life. The major reasons most British gave for wanting to make this huge move to Australia was greater economic opportunities for their children, safer living environment and better climate. We spoke to many people and look forward to assisting them with finding new accommodation when they arrive in Australia.

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 we include an article which cites examples of how our property reports have helped our clients avoid making disastrous purchases. What is the difference

In this issue:

- [Market Snapshot](#)
- [Chattel or Fixture?](#)
- [Investment Tip](#)
- [Legal Chat](#)
- [Tenant's Checklist](#)

Market Snapshot

The Melbourne property market has experienced substantial growth this year. This upward movement has been the result of a relatively flat price growth over the previous couple of years. As always quality properties, i.e. properties in exceptional locations with scarce and unique features have benefited the most from this latest upswing.

* 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 is still a lot of steam left in the Melbourne property market. As always the quality of the asset you purchase is more important than when you buy it. Astute selection is everything. 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. The danger we face in the future is that household debt is starting to become excessive. It would only take a few more rises in interest rates or increase in the unemployment rate for many people to face a financial crisis. Purchasing quality assets will insulate against any economic downturn.

*Source; Real Estate Institute of Victoria

TOP

Chattel or Fixture?

The question of whether an item is a chattel or fixture has caused many disputes between vendors and purchasers. This issue arose during post auction negotiations on behalf of one of our clients. The property had passed in and after a protracted negotiation a price had been agreed. We proceeded to sign the contracts when the selling

between a chattel and fixture? We include an article which explains this often disputed issue and give a recent example of a vendor attempting to make an outrageous claim after contracts were signed. The Melbourne rental market is very strong at the moment with the vacancy rate at record low levels. We provide some tips that will assist tenants avoid some of the more common pitfalls.

As usual, in this edition we include our regular articles, Legal Chat by Andrew Padanyi and market snapshot. Andrew explains the importance of registering a caveat on a property immediately after purchasing, unfortunately conveyances rarely perform this task. 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



REIV

agent on behalf of the vendor claimed that the stereo speakers which were fixed to the ceiling should be retained by the vendor. In my view these speakers were clearly a fixture and should remain with the property at settlement, the contract did not mention otherwise. When the vendors made their claim the price had already been agreed so this was a very unfair request. Needless to say their request was denied.

So what is the difference between a chattel and fixture and how does this impact on the sale of a property? There are two issues to examine in determining if a chattel has become a fixture. Firstly, if an item has been attached so that it is hard to remove without causing damage to the land, then the chattel is most likely a fixture. Secondly, what was the intention of the person who fixed the item to the land? If an item has been attached for the purpose of a permanent improvement of the building it is most likely a fixture. In the case of the stereo speakers they were securely fastened to the ceiling therefore removal would have caused damage to the ceiling. Also, being securely fixed to the ceiling indicates they were intended to be a permanent improvement.

It is important to remember that fixtures come with the land automatically, but chattels have to be specified in the contract in order to become the property of the purchaser. If the contract does not mention that the purchaser is buying the chattels, then the vendor can remove the chattels from the property. Typically the contract will state the chattels as "all curtains, drapes, light fittings and fixed floor coverings". Buyers must be aware that sometimes a vendor will instruct the selling agent that their favorite light-fitting or whatever is not to be included in the sale of the property. This must be stated in the contract.

[TOP](#)

Investment Tip

Before purchasing a piece of real estate it is so important to examine all aspects of your purchase namely the real estate, building and legal issues. Our property reports has saved our clients much grief, I would like to take this opportunity to cite some examples.

The first report we complete is our Property Evaluation Report, this report examines real estate issues including the true market value of the property. This report has saved our clients much time and disappointment. Under quoting is a common practice amongst selling agents. Through providing our clients with recent and comparable sales results this report identifies if we are a realistic chance of purchasing the property. For our investor clients we examine capital growth prospects and likely rental return.

The next report we complete is our building and pest report. Over the years this report has identified a number of serious building faults which has allowed our clients to avoid the contract and substantial financial loss. Illegal and faulty plumbing, the absence of a brick party wall, termite infestation are a few serious examples of faults we have detected.

The final report that we undertake is our legal report. Our in house lawyer examines the contract and vendors statement before our clients sign. Again this report has the potential to save our clients much heartache. An example of this was the proposed purchase of a block of land near a river for the purpose of building a new dwelling. The selling agents marketing spiel was laced with phrases such as "build your dream home here". Unfortunately the land was encumbered with an inundation overlay. An inundation overlay restricts what can be built on the land because it may be subject to flooding. Our identification of this overlay saved our client from a potentially disastrous situation.

[TOP](#)

Legal Chat

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

A recent decision of the High Court of Australia is a timely reminder of the need for purchasers of property to protect their interests by lodging a caveat on the title to the property. In general terms, a caveat formally notifies a person's claim or interest in property and prevents registration of a third party's interest without the caveator first being given a reasonable opportunity to take action to protect his or her interest.

In the High Court case, a contract for the sale of land in NSW was entered into in July 2005, but no caveat was lodged. As it turned out, the vendors owed money under a court judgement and the creditors, in order to enforce the judgement debt, lodged a writ of execution against the land with a view to sale by the Sheriff. The purchasers' solicitors did a final search of the title at about 9am on the day of settlement. However, the writ was lodged and recorded at midday. Unaware of the writ, the purchasers proceeded to settlement about 2 hours later that same day. The purchasers' solicitors then tried to register the transfer but were told this was not possible due to prior registration of the writ.

After various decisions and appeals from lower courts, the High Court judges preferred the creditors' interest under the writ of execution and found that, had another purchaser bought the property from the Sheriff, the Sheriff's purchaser would have taken title to the property free of the original purchasers' interest.

The court also found that, if the original purchasers had lodged a caveat against the property straight after the contract was entered into, they would have been protected.

If you are purchasing property the lesson is to protect yourself by lodging a caveat forthwith after entering into the contract and, to be safe, to arrange for final searches on the title as close as possible to the appointed time for 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.

[TOP](#)

Tenant's Checklist

- Don't sign a lease until you've inspected the property.
- Check whether there is gas as well as electricity, heating, smoke detectors (a legal requirement) the size of the hot water system, space for a washing machine, locks on windows and doors, a phone line, enough power points and light fittings.
- Check if the property is close to transport and shops, has adequate fences and gates, is close to noisy clubs, busy roads, railway stations or is under a flight path, and has parking.
- Find out if the landlord has plans to sell the property.
- You'll have to give details about your income, bank account, rental history, employment and one or two references. You don't have to give details about your race, marital status, sexual preference or religious/political beliefs.

- If you pay an application or reservation fee, get a receipt.
- Landlords are not legally allowed to insist on a credit history check.
- Read the lease and remember you can negotiate terms. Check for terms that may not be legal under the Residential Tenancies Act.
- Get a copy of the bond lodgment form and check that the landlord sends the bond to the Residential Tenancies Bond Authority (Vic) or Rental Bond Board (NSW)
- Thoroughly complete the condition report; when you move out you may be liable for any damage not recorded; by law, the property must be “reasonably clean” when you move in.

[TOP](#)

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.



Visit Our Interactive Website at
www.yourbuyersadvocate.com.au

**Peter Rogozik Property
Consulting
Licensed Estate Agents
Registered Building
Practitioners**

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

**PO Box 278 World Trade Centre
Victoria 8005 Australia**

T + 61 3 9689 9080

F + 61 3 9689 2560

E info@yourbuyersadvocate.com.au

ACN 103 128 678

