



The Buyers Advocate

Connecting People and Property



Issue 14 > August 2010

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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 a phenomenal 20 per cent. 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. This substantial increase over the last 10 months finally subsided in May of this year. The price spurt was due to pent up demand as confidence returned to the market as buyers came to the realization that the global financial crisis would not impact the Australian economy to the same degree as overseas countries.

In this edition we explore the recent changes to the rules governing foreign investment in Australia. The government has reintroduced measures it eliminated in 2008. The fact that temporary residents can still purchase established property will have negative repercussions for the Australian economy and more particularly first home buyers trying to enter the market. In this edition I explain why. When buying off the plan it is extremely important the plans and specification documents are comprehensive and detailed. They are by far the most important documents in the transaction. I give an example of how a builder tried to omit the front fence of a dwelling in

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Market Snapshot

Over the last 5 years the Melbourne property market has been more volatile compared to any other time in its history. This has mainly been due to events that have occurred in overseas markets such as the global financial crisis. This type of volatility is more common with share markets than property markets.

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. The surge in prices has continued in the first half of 2010 plateauing in May. Overall there was a phenomenal 20% increase in an 11 month period starting mid 2009.

At this point in time the property cycle has reached its peak and prices will remain stable for the next 12 months. The pent up demand created by the global financial crisis has been satisfied. Also, sellers have felt more comfortable about placing their property on the market. This leveling off in demand combined with greater supply has swung the pendulum back in favor of the buyer.

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Foreign Investment Debacle

The changes to the rules governing foreign investment in residential property announced by the assistant treasurer in April of this year have done nothing to benefit the Australian economy or struggling first home buyers desperate to enter

a off the plan purchase. Luckily the fence was included in the specification, the builder was obligated to include it.

The standard Real Estate Institute of Victoria building clause that selling agents like to include in a contract of sale has proven to be ineffective by a Victorian Supreme Court judgment. In this edition I explain the details of this case and why buyers should never agree to have this clause inserted in a contract. In Victoria we have the farcical situation of a buyer's land tax liability being calculated based not on their own property holding but on the property holding of the vendor. This is a ridiculous situation that needs to be amended sooner rather than later. I provide an article outlining this anomaly. It is always prudent to complete your own due diligence or employ a buyer's advocate before signing a contract of sale for the purchase of real estate. In this edition I give a personal account of how incorrect information is readily communicated to buyers.

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. Over the previous 3 years the Melbourne property market has been more volatile than any other time in its history. 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

the market.

One of the more significant changes is that all temporary residents seeking to purchase existing property in Australia will now be brought within the Foreign Investment Review Board notification, screening and approval process. This was a provision the government lifted in 2008. Temporary residents can still purchase established property for their own use whilst living in Australia however they must compulsorily sell when they depart. On the other hand foreign non-residents can only invest in Australian real estate if that investment adds to the housing stock. Foreign Buyers are prohibited from buying established dwellings.

The major failing of the recent changes is that temporary residents should not be permitted to purchase established property. Temporary residents buying established property will only result in negative outcomes both for local property buyers and the Australian economy. If local property buyers have to compete with temporary residents to purchase established property the result will be an increase in property prices and therefore inflation. This will make it even more difficult for first home buyers to enter the market. Temporary residents buying established property results in zero net increase in new dwellings, it does nothing to alleviate the housing shortage. As with foreign investors, temporary residents should only be permitted to purchase dwellings brand new or off the plan. Buying these types of properties fuels the construction industry which is the cornerstone of our economy. There are hundreds of suppliers and tradesmen that contribute to the construction of just 1 dwelling. The positive flow on effects throughout our economy is phenomenal.

The policy I have outlined above will assist in keeping property prices down therefore making it easier for first home buyers, help stimulate the Australian economy and result in an increase in housing stocks. It is only logical that if you are going to allow property purchases by non-residents it should result in maximum benefits to the local economy and not disadvantage local buyers, unfortunately the way the rules stand at the moment this is not the case.

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Building Clause Beware

The standard Real Estate Institute of Victoria building defects clause that is used by real estate agents has proven to be ineffective by a recent decision of the Victorian Supreme Court. The clause states that a buyer can only avoid a contract of sale if a "major structural defect" is found. I have never agreed with the insertion of this clause and have always advised my clients to insert a clause which includes all defects. There are a number of defects that are non structural that are serious enough to warrant avoiding the contract e.g. rising damp, extensive termite damage. These types of building faults can be very costly to rectify.

In the case mentioned above this particular clause was inserted into a contract for the purchase of a property at the



direction of the selling agent. After a building inspection was completed damp was detected due to faulty plumbing. The buyer requested the contract be rescinded however the vendor did not agree claiming it was not a major structural defect as stated in the clause. The buyer's building report did not state that it was a major structural defect. The matter went to the Victorian Supreme Court. The judge found in favour of the buyer and allowed her to cancel the contract and get her deposit back. The judge said the report did not have to use the specific wording "major structural defect", it was only necessary for it to show there was one. The long term effects of damp entering a building would eventually lead to a major structural defect.

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Specification Specific

When buying off the plan the most important documents in the transaction are the plans and specifications. In this situation the purchaser is essentially buying two elements, the land and the plans/specification document. Unfortunately many buyers are not aware of the importance of getting these documents absolutely right. In the construction of a dwelling there are many components, the cost and quality differential for each building component can be substantial. For example kitchen cabinets can cost as little as \$5000 or in excess of \$50,000 depending on materials used. Even smaller components such as door furniture can have huge price variances based on the level of quality.

It is important that buyers of off the plan property outline all the individual specifications of each inclusion, i.e. size, colour, make and model. If this does not occur there is a risk that the developer/building will include a low quality product or omit something that the buyer expects will be included. We experienced an example of this recently where a builder attempted to omit the front fence of a newly constructed dwelling. These types of omissions are particularly common towards the end of the project as the builder/developer has most probably over spent and is attempting to cut costs so as not to affect his profit. Luckily for our client we insisted on a thorough specification document before signing the contract. We reminded the builder of the serious implications of not following the specification as set out in the contract. The fence was duly constructed as per the specification document. The plans, specifications and engineering drawings should always be attached to the contract with all pages initialled by each party.

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Their Property your Land Tax

Victoria's current land tax regulations for residential property is not a fair system and is in need of change. A buyer is liable to pay land tax on a property purchase based on the land holding of the vendor. We have the farcical situation where the amount of land tax the buyer pays is based not on their own situation

but on another person's property portfolio.

If a property is purchased from a vendor that has a land tax liability then the purchaser is liable to pay the amount of land tax that is attributable to that property based on the vendor's liability. The amount is proportioned at settlement based on a 12 month period as is the case with municipal rates. Clearly the implementation of this tax has not been thought through.

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Wrong, Wrong and Wrong

It's surprising how many times inaccurate information is conveyed to buyers of real estate by selling agents. Without proper independent research this can potentially lead to a bad buying decision. An example of this is a situation I encountered at an open for inspection for the sale of an apartment recently.

I asked the selling agent 3 questions and all the answers given were wrong. I am not suggesting that this particular selling agent was making deliberate misrepresentations. It was probably more a case of not understanding the exact details of the sale.

The first question related to the car parking arrangement. I asked the selling agent if the car space was on title, he stated that it was on title. Having a separate title for the car park is a strict requirement we place on all apartment purchases. After checking the vendor's statement we found that in fact the car space was not on title. There did exist a right by the owner of the apartment to use the car park. This arrangement was incorporated into the rules of the owner's corporation. This type of arrangement is of significantly lesser quality than the situation of possessing a separate title.

The second question was in reference to the internal floor area of the apartment. This information is very important to buyers as financiers place restrictions on borrowing based on minimum floor area requirements. The selling agent stated it was approximately 60 square metres. It was quite obvious that this particular apartment was not 60 square metres, it was approximately 45 square metres.

My third question related to visitor parking. I asked the selling agent if the complex had visitor parking. The following was the reply "no, however the free public parking lot at the end of the street is never full. " In fact I had just attempted to park there and unfortunately it was full.

This 30 second interaction with this selling agent resulted in 3 inaccurate statements. It is important that buyers complete their own independent research before any property purchase is completed.

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