



29 July 2007

SOMETIMES EMPATHY CAN COST BIG DOLLARS (2)

G'day there,

"I don't need to phone my Solicitor. I am a Solicitor. If the contract between the agent and vendor is like most standard fee-for-service agreements, then the agent will be an unsecured creditor of the vendor, and the commission like any other ordinary debt.

Where:

(1) the proceeds of sale exceed the amount owing to the bank; or

(2) there is a shortfall, but the vendor has sufficient cash on hand to pay the agent, this does not present any problems.

However, if there is a shortfall and the bank enforces its security, the laws of insolvency mean that the bank (a secured creditor) has priority over all the unsecured creditors. The bank can therefore keep all the proceeds of sale.

The agent's recourse is against the vendor, and if the vendor has other creditors, the situation may be akin to seagulls fighting over a chip."

My email of late last week telling how some agents had "done money" in a big way through selling property for the vendor just ahead of a Banks foreclosure and then, in the period between contract exchange and settlement, the Bank having taken over and discovered there were insufficient funds to cover the debt, the agent was not paid created a lot of interest and comment.

One of these, from a Solicitor, I have headed this email with and which puts the situation very succinctly, especially as I received the email after just having dined on fish and chips at a water side eatery!

I found an article by George Megaloginis in Friday's edition of The Australian most interesting on the subject of default sales and this is what he had to say , amongst other things, on the subject:

"In Victoria, the State with the nations highest ownership rate , court ordered possessions have more than trebled over the past five years, from 892 in 2001 to 2765 last year. It seems a dramatic increase, yet last years tally accounted for just 0.4% of the 632,000 home borrowers across Victoria.

The repossession rate tumbles to less than 0.2% when matched against the State's total of 1.78 million households.

In Sydney, where house prices have been falling in the battler western suburbs since 2004, the repossession rates remain on par with those in the more stable

Melbourne market.

The raw NSW-wide numbers show 5368 repossessions last year, a doubling of the 2189 recorded in 2002. But the respective repossession rates were 0.7% of the 740,000 NSW mortgage belt and 0.2% of the 2.3 million NSW households.

The Reserve Bank estimates that less than 1% of all home borrower households are more than 90 days behind on their repayments while more than 50% are ahead of schedule”

With electioneering already under way for the federal election sometime later this year, it will be most interesting to see how the protagonists adapt those figures to suit their spin on the situation.

Meanwhile, we as agents will still be left to deal with the percentage of repossessions, whatever they may be, that do occur and I thus return to my original point- treat the vendors (if they have not already been marched on) with compassion and service BUT be aware of the ramifications that come with the listing.

Whilst many, indeed most, mortgagees do prefer to sell by auction for various reasons, what we have found from those who have attended one of our *From Signup to Sale* courses is that the degree of thoroughness we give the subject of “vendor service” has stood them in very good stead with mortgagees and in gaining realistic reserves.

If you would like more details on the course dates and locations, either visit our website or email us at info@fountainandco.com.

Carpe diem

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