Property Investment Advice
Discussion Paper
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Comments from
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JBA Finance Solutions is a mortgage broker business located in Mooloolaba on the Sunshine Coast, Qld. The business is owned by John Boast who has been a broker since 1997 and has extensive experience in both home and investment loans. JBA Finance Solutions has worked with several real estate agents, marketing agents and developers over the years and is currently a consultant to the Juniper Development Group of Mooloolaba.

RETAIL INVESTORS AND THE PROPERTY MARKET

Q1;
Growth in property investment has in my opinion been driven by people's lack of faith in the share market and superannuation funds. Whilst it is arguable that the turbulence in the share market was caused by unforseen events such as the September 11th attacks in New York, the everyday Australian has been more affected by the failure of companies such as One Tel, HIH and the poor performance of their compulsory super funds. They see their hard earned money disappear whilst fund managers take their fees then blame everything else for the losses. People want to take more control and at least "touch" their investment hence the move to bricks and mortar.

Q2;
Generally people are aware of the risks but again it is the ability to actually have something physical to sell later that gives them comfort. On many occasions I have heard people say that they are happy to be able sell the house later and get their money back rather than have it vanish in super funds or shares.

PROPERTY INVESTMENT ADVICE AND PROMOTION

Q3;
The summary of how property investment advice is fairly accurate. I see the following as the current sources of advice,

1. Real Estate Agents
2. Developers
3. Finance Brokers
4. Accountants
5. Financial Planners
6. Seminar operators

The services are provided in many ways depending mainly on the person and their business. If they are selling the particular product then they will of course focus on that. For example a Real Estate Agent or Developer will sell the house or unit they have and tailor their marketing to it. That is nothing new and does not mean they are devious because that is simply the driving force behind all advertising, to sell their product.

Q4;
The characterisation is again fairly accurate but then seminar operators for shares and other non property investment are just as prevalent. If someone is going to pay to go to one of these things then it is like any education course they do, if you don't finish it or fail then you don't not get your money back. What needs to be controlled is the content.

THE PROBLEMS OF CONCERN

Q5;
As said before, it is the content of the courses these "education" people peddle that needs to be controlled. Many legitimate marketing agencies quantify their claims by facts which can be easily verified by publicly available information. It is the spruikers who do not provide information but focus on the sell and as they say, *"never let a few facts get in the way of a good story."* It is my experience that the bigger the seminar the more dangerous it is. They work on the premise people will believe them if hundreds of others are there and that is where they get their legitimacy. I have seen many people lose after going to any one of a number of seminars (Jack Weaver, Henry Kaye, etc) but I have personally helped others succeed in property investment by pulling apart the marketing story and applying the facts. Orchestrated rip offs such as the Dudley Quinlivan group of companies on the Gold Coast is a clear case where protection is required but again there are many others who do the right things by their clients.
Nothing will protect people from themselves.

Q6;
Your characterisation is true in some cases but again it depends if the promoter is selling, educating or informing the consumer. When there is the one person doing the transaction from start to finish then there is always a conflict and more than likely a chance it is a con. I work with a major developer now and part of the process we put in place was to provide a neutral ground for the client to consider their purchase and seek advice. We pre qualify the client and show them how the purchase would be funded. If they or we are not comfortable with their ability to settle the purchase then it is made clear at the beginning so any contract can be cancelled under the cooling off period.
Deposit Bonds now require a near full loan application prior to any approval. They are no where near as easy to get as they were a few years ago so the current system give the client another opportunity to confirm their ability to afford the purchase by an independent source.
Pressure selling is nothing new but needs to be stamped out. I know of clients who have literally been held in a room and pressured till they signed contracts. These types of things are intolerable and only damage everyone in the industry.

Q7;
Financial Planners are usually against property and favour their own investment strategy which is where they gain their commissions. I know of very few who would give a fair assessment of property investment because unless they charge a fee then they make nothing out of the transaction.
Accountants are also usually so conservative that they fail to recognise the capital gains available in property.
Consumers are confused of who to talk to and my business sees at least two people a week to discuss their desire to invest in property. Many of these remain just that, discussions but at least they can openly talk about it and see just what they can afford. The trouble is that I have the experience but many other brokers, bank loan officers, accountants etc do not. How do you know and how do you licence that?

CURRENT LEGAL FRAMEWORK

Q8;
Trade Practices is very broad but does cover the false & misleading actions that are most prevalent in property investment. The trouble is that it could be years before it reveals itself by which time the selling agent has gone. If you buy “off the plan” in 2004 and the project settled in 2007 then it won’t be till 2008 that any lack of income will show up.
Real Estate Laws do control a fair bit however the actual sales and off the plan contracts are written by the vendors which is where the main problems lie. Many off the plan contracts are written in such a way that buyers settle on unfinished complexes. Just because a building certification certificate is issued does not mean the buyer can move into their property.
The **UCCC** is useless for investment loans and since its inception I don’t think has achieved everything it wanted. As usual it is a “part law” implemented without clear direction and does not cover all lending. Point in case, no two lenders loan contracts are the same yet they come under the same law.
Financial Services Law is the most confusing and frustrating. They try and cover so much to so many different industries that confusion reigns. Take the recent Financial Services Reform Act. Financial products which they cover are defined as credit bearing products such as term deposits and everyday savings accounts. As a broker I can talk about borrowing $1M but I cannot discuss a keycard account to received you pay! I also cannot discuss internet banking which ridiculous as I fail to see how anyone would make or lose money based on how they access their accounts. Investments should have been defined as those with speculative returns such as shares. Term Deposits are fixed interest returns and savings accounts are simply somewhere to park your pay and not your lifelong investment strategy.

OBJECTIVES OF GOVERNMENT

Q9;
The three objectives are the items that need to be addressed as a whole however individually they may need some finetuning,

1. Transparency and consistency – competency is probably the most important point here. That competency can come from experience or qualifications but be aware many “qualified” people make very poor judgements and recommendations. Numbers and figures do not always result in the right decision. Like all investments there is a thing called growth which ultimately makes or breaks the return. I have seen many cases where registered financial planners have recommended against a property purchase only to be proved wrong 2 years later when the value increases 25% plus. What we do is show people the facts and history of the type of property investment taking into account location etc. From this an estimation can be made however we also show them the breakeven or downside of such an investment. Example; if no rent came in how long could you make repayments on the loan? Maybe the answer is a set disclosure statement where expected rental, letting expenses etc can be placed. That way if there is dispute later an arbitrator has a clear starting point.
2. High Standard of advice – this is probably the most important and again if there is a disclosure upfront supported by clear research then the decision made by the buyer will the best they could have done at the time. I can only speak on our process and we qualify the client not only finance but also give them a sounding board to discuss their desires and thereby qualify their decision to buy. I don’t know how to licence that but I know it does not lie in the current financial planning training.
3. Market advisory service – this one I disagree with. You seem to be on the track that unless the buyer gets a better return then the advisor is held responsible. If you take that line then nearly all financial planners and super fund managers will be in court very soon. No advisor can be held responsible for factors outside their control. What an advisor does is assess the information and make recommendations based on known and projected factors in the market. **It is not a guarantee!** The buyer is still the one who makes the decision to invest.

Q10;
No. As stated before there does need to be some responsibility by the vendor if they sell or promote their product as an investment of any description. If someone is selling a complex of say 100 units and in the marketing they promote it as an investment for retirement, wealth, etc then they should be made to give some dollar figure. After all they would have done this research to determine the viability of the project in the first place.

Q11;
Probably not. The current disclosure statements could be expanded to include rental and expenses information and a finance clause should be included in all off the plan contracts. Whilst no lender can give an unconditional approval 2 years from settlement, an assessment of the likelihood of approval can be done. We do that now when getting Deposit Bonds and Bank Guarantees where we have to go through a loan application process as if they were buying the property today. I don’t see the current financial planning licence system helping as few of them even do finance and would comment on returns. A revised licence covering mortgage lending and property investment alone would be better.

Q12;
Regulation of property advice is going to be very difficult for exactly the reasons you have highlighted. There are different laws for different people in different states.
The definition of the purchase should determine what needs to be disclosed, for example, if someone is buying a unit that is for holiday letting then there should be a structured disclosure statement that comes with the contract detailing rental projections, costs etc and the basis of the estimates. If on the other hand someone is buying a house for investment then the real estate agent can simply issue a letter of expected weekly rental which is easily determined by information in their current rent roll.
You cannot regulate a sale process.
A developer or vendor must be allowed to use sales techniques but what should be done is a control on what statements are made and this can be covered by a **Real Estate Investment Disclosure Statement (REIDS)** where basic details are revealed. A licenced financial planner can in no way have complete knowledge of all property investments just as they cannot know everything in the share market. By using the IDS you can encompass ALL people involved regardless of what who they are and what state they are in.
As a finance broker I can see someone who want to buy a property and read the disclosure statement they have been provided. If I agree or disagree with the statements then I can makes comments to the buyer who can investigate it further. If I provide the statement then I can do so and hand it to the buyer. By doing this I would have to have good knowledge of the project etc and be able to provide the supporting evidence.

Q13;
Too many people are involved in the industry to “carve out” anyone. You need to include, Real Estate Agents, Finance Brokers, Solicitors, Accountants, Financial Planners, Developers, Builders Sales Consultants.
I see real estate investment legislation totally separate from the current financial services licence as holding an AFS does not mean you know anything about property. By keeping it separate then you can include all parties at all levels.

Q14;
Over regulation will cause even more confusion and have detrimental effects on the property industry as a whole which in turn could result in job losses.
Self regulation involving such industries as Real Estate Agents, Finance Brokers, and Financial Planners etc could not work. Each group comes from their own background and would not work harmoniously.
Licencing each and every person or organization is the only way to make them responsible. Whilst there are rouge sales persons out there, there are also large corporations that have sophisticated sales programs in place that put huge pressure on the individual salesperson at the end sale.
Just like a car licence, each person or corporation should have responsibility.

Q15;
Regulation needs to control what is said and that will eliminate much of the problems today. It has been previously mentioned Finance Brokers or finance providers should be included however this only applies if they are advising or recommending on the actual

purchase. Structuring the right loan for the client based on their needs is what they are supposed to do. Just because someone has the cheapest or best loan does not determine if that person buys the property. If you take that line the any person who sells you something will need to know exactly what you want it for then make the decision if the product is correct.
Disclosure of information that relates to the decision of buying is what is most important,

Returns
Capital growth potential
Operating or running costs
Relationships in the transaction

With regulation comes liability so there needs to be a clear set of rules of who, what, when and where someone is liable. This is going to be the biggest cost to the consumer as the cost of liability insurance is skyrocketing. If someone is going to seek advice on a real estate investment then there may be the need for a consultation fee to be charged just like if they go to a doctor, solicitor or financial planner today.
If disclosure of income etc were made then what is the liability of the salesperson if for circumstances outside their control (terrorist attacks) the rental unit they recommended does not perform. Was it incorrect information or was it a change in the tourist market? Any recommendation is based on information known today and assumptions based on proven history.

Q16;
Comprehensive conduct, disclosure and licencing regime
This is probably the only way you are going to include all the relevant parties. The scheme would however need to be simple and very clear which is why I keep coming back to disclosing a set number of basic details. This sets a universal playing field for everyone and if required, further investigation can be done by the consumer.

Q17;
Consistency is very important and I recognise the difficulty if the Commonwealth oversees this new scheme. What about adding it to current state Real Estate Agent legislation in the form of a Real Estate Advice Licence. An individual or company would have to apply for this separate additional licence but not have to be a fully licenced real estate agent as they are advising, not selling the property. If they sell then it is in addition to their agent or salesperson licence. This way the states can administer the scheme.

Q18;
Speaking from my position as a Finance Broker and one who deals constantly with developers, I feel many do a good job. It is the high profile cases such as Henry Kaye that creates the perception there are huge problems in the industry. Reading Appendix C, I notice that there are 762 recorded complaints of which 138 relate to Mr Kaye and would also assume many of the ACCC recorded complaints may also relates to him. Also do the ACCC and ASIC recorded complaints include the individual state complaints?

There have been recent cases where unworkable legislation is invoked as a result of consumer groups pushing their own barrow. The comparison rate schedule legislation is a clear case of the NSW Consumer Legal Service producing a flawed report on brokers that resulted in legislation that no one, not even consumers understand.

Any scheme needs to address answers to the common problems and by doing this we will go a long way to eliminate the spruikers etc whilst allowing the law abiding people to get on with their business. After all, how many people have made money out of investment property compared to those who have a loss? Then compare this to the share market over the last 5 years.

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