



The Agents Handicapping System



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In golf, a person receives a handicap to so that players of different standards can compete on somewhat equal scoring terms. The higher the handicap of a player, the weaker the player is relative to those with lower handicaps. There are those in the golfing community who deliberately play badly at certain stages to increase their handicap so that they have an advantage over their peers. This handicapping system in golf is regulated and the people who oversee it believe in balance. What happens when the system is set up to give people of equal ability a handicap so that they acquire an advantage over all of their competitors?

In Australia, the property investment or project marketing landscape is such a system. Financial planners, accountants, and mortgage brokers have been given an advantage by the lack of action by Fair Trading Departments around the country against their licensed peers.

If you are a real estate agent, you must hold a licence, your corporation must hold a licence, and your employees must hold certificates of registration. You are required to comply with a strict regime relating to appraisals, agency agreements, commission, etc. In Queensland, agents are only permitted to charge 5% for the first \$18,000 and 2.5% thereafter. The agent's ability in Queensland to earn commission is therefore restricted.

We deal with many developers in our legal practice. These developers say they prefer to use financial planners, mortgage brokers and/or accountants as their sales force. They will pay larger commissions to these people because they have a purchaser database. Don't blame the developer as s/he is only acting in their company's best interests. They are merely going to the source that has the best market database. What real estate agents can do about this is something that we can talk about in another newsletter.

These financial planners, mortgage brokers and accountants are not licensed. One mortgage broking group said to the world that

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they don't need to hold a real estate agents licence to sell property off the plan. What a lot of rubbish! Section 3 of the Property Stock & Business Agent's Act 2002 (the Act) includes in its definition of a real estate agent *a person who introduces a 'prospect purchaser' to another agent or a vendor*. Introduction therefore makes them a real estate agent and requires them under Section 8 of the Act to hold a licence.

There is more off-the-plan, investment or project marketing property sold in Australia by these groups than real estate agents. They do not have to complete the required study to hold a licence, they do not have to comply with the regulations and they do not have to apply the same standards as real estate agents. For example, in Queensland financial planners and mortgage brokers are paid approximately \$30,000 per sale. This is well in excess of the commission that is paid to a standard agent.

Real estate agents who are holding licenses are playing off scratch while financial planners, brokers and accountants are given a massive handicap by Fair Trading Departments. It is not that the law does not prevent this activity; it is that Fair Trading Departments are not policing these practices. They will tell you that they haven't received any complaints! Again, this is not true. Henry Kaye and spruikers like him have been the cause of great consternation amongst consumers. If the truth be known, Fair Trading does not understand this marketplace. It changed the NSW law in 2003 to make certain that they were caught, however they do not know how to police it.

Each week the newspaper will show you where this unlicensed trading is occurring. To create a fair and competitive market place, which is Fair Trading's brief, they are now vigilant on chasing down unlicensed motor dealers. The same vigilance needs to be shown in the real estate and property development industry.

Where are your peak bodies! You want to improve the standards of the industry? Just give your stakeholders an even break and place pressure on the regulators to provide an even playing field, not a handicap system for the real estate industry competitors.

**Cheers,  
Bailey Compton  
and The team at ACP/Leverage!**



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