

BOND YOURSELF to your clients

Mortgage brokers who offer clients hot tips to help them navigate the property purchase maze can, as **Dominic Ogburn** writes, cement potentially life-long referral sources

One way for mortgage brokers to encourage clients into becoming ongoing sources of referrals is to offer them value-added information and services, particularly those that are not generally available. In short, brokers who go out of the way to arm their clients with information to ensure they buy property with their eyes wide open are laying the foundations for solid, ongoing referrals.

Clients remember, and refer their friends and relatives to the brokers who have helped them most, cementing these brokers at the top of the referral tree.

Assume that your new clients are unaware of what's involved in obtaining a new mortgage and then buying property – particularly investment properties. For example, a client may need to complete a loan release authority for their pre-existing loan from their original lender, if they are refinancing to an alternative lender.

Some mortgage professionals now give clients information that details the processes involved in obtaining a mortgage. Clients thus get a clearer picture of what they are likely to face.

Flipside of the boom

In recent years, there has been a boom in construction of the apartments that now make up more than half of all new housing sales in Australia's major cities. Meanwhile, baby boomers have scrambled to invest in property – driven by low interest rates, rising personal wealth and disenchantment with the sharemarket. Banks have lent more money to investors than to home buyers. Property prices have jumped sharply – resulting in an equally sharp reduction in returns. Many industry players see the proportion of apartment sales increasing over time as younger buyers seek low maintenance, well-positioned units as opposed to traditional houses.

However, this boom in apartment construction has also led to, in some cases, a decline in building standards to the point where apartment blocks are more likely to have problems than not. Developers chase the cheapest quotes, while governments have weakened construction laws. Meanwhile, a proliferation of off-the-plan sales means buyers sign contracts before they can see the finished



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product, and there are major gaps in the building codes. Is it any wonder building standards are falling?

The frequency of serious building defects and private certification problems in many new apartment blocks led to a recent NSW parliamentary inquiry and government action to change the law and establish new authorities and procedures to better protect consumers. However many experts (myself included) feel that the problems will persist as long as developers engage and pay for the design consultants, certifiers and builders. This situation may even worsen as the unit market cools and they struggle to save further costs.

Common problems in new developments, even expensive ones, can include poor waterproofing, high noise transmission between units, fire risks, bad bathroom drainage and inadequate air-conditioning. Meanwhile, no state requires home warranty insurance for apartment construction above three-storeys. So, unlike new house construction which carries six-year warranties, there is no safety net if the builder refuses to rectify defects.

Tread carefully

Many off-the-plan and brand new property sale contracts are draconian from a buyer's viewpoint. It is vital that buyers engage a lawyer who specialises in off-the-plan and new sales contracts. They need to undertake a comprehensive building survey report, preferably prior to settlement.

Mortgage professionals should recommend that clients have a specialist off-the-plan lawyer review the contract and advise them on the proprietor's liability for building faults, the 'defects liability period',

Key steps to purchasing a new unit

1. Engage a lawyer who specialises in off-the-plan and new sales contracts to review your contract and specifically advise you on the acceptability of contract conditions relating to defects notification and rectification. Ask for prior client referrals and check them to determine what they thought of the lawyer's skills.
2. Request that the vendor provide all important construction or architectural 'as built' plans of your unit and give this to your building consultant prior to their inspection. Request that the vendor also provide the name and contact details of the Principal Certifying Authority for the project and provide to your consultant.
3. Engage a licensed building consultant with experience in new building final defects survey reports. Check that the consultant carries professional indemnity insurance.
4. Preferably, the final inspection report(s) should be undertaken prior to final settlement. Two copies should be forwarded to your lawyer for review and distribution of one copy to the vendor with a covering letter.
5. If significant building defects or faults are found ask your lawyer to try and negotiate withholding sufficient settlement funds to cover rectification of the works until they have been completed.

Source: Access Property Services



Dominic Ogburn

what constitutes an agreed building fault, how many defect notices are permitted and how long after written notification will the faults be fixed.

Most sale contracts state that the proprietor will fix agreed faults "within a reasonable time" after the expiration of the defects liability period or settlement. But a lot of buyers have been left with unacceptable building faults 18 months after purchase and can end up with a tenant demanding lower rent until the faults are fixed. A good lawyer may be able to negotiate a withholding of funds to cover the cost of repairs until they are done.

Never think that your clients do not need a pre-purchase building inspection of a new apartment or house. Quite the opposite is now the case. Make sure the building consultant they choose has experience in checking new properties.

Check plans

Prior to a building inspection your client should ask the proprietor to provide you with an 'as-built' plan of their unit showing the location of lounge rooms, bathrooms and kitchens

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in adjacent properties relative to their own to assist the building inspector. Proprietors are not compelled to provide these documents, but they should oblige if they believe their property has been well built.

Your client should also ask the proprietor or builder for copies of warranties covering waterproof membranes, termite barrier treatments, air-conditioning systems, windows etc. A good building inspector should report on building faults and then request copies of warranties and certification documents.

These reports are often required to support any home warranty insurance or litigation claim against the proprietor or builder and must be submitted within the defects' liability period, together with any faults that your client may find themselves and a covering

letter to the proprietor (developer) asking for prompt rectification.

A thorough inspection report for an apartment can be more expensive, up to \$1100, than for an existing house, particularly if the apartment is new or bought off-the-plan. The inspector should take photographs and check unit-separating walls and service pipes via access panels in the ceiling for fire safety.

There are numerous examples of apartments where an earlier inspection report has revealed just a few surface defects and where a subsequent inspection uncovers many major faults. Generally items such as minor hairline cracking are not regarded as building faults and will not be repaired.

Stand your ground

Some proprietors will simply stonewall on rectification until the defects liability period has expired and

hand the purchaser and their defects to the builder. Your client's lawyer should put pressure on the proprietor to rectify the faults. But the most effective way is to attempt to withhold monies from the final settlement, which usually requires amending the sales contract prior to signing.

If the proprietor refuses to rectify building defects they should be asked to advise in writing the reasons for not doing so. If your client is purchasing a negatively geared investment property, suggest that they have a depreciation schedule professionally prepared so as to maximise tax deductions. The cost is approx \$400-500 for metropolitan areas.

The consumer advocacy book *Your Home* addresses these and other issues. It provides consumers with the tools to avoid the many pitfalls and maximise the personal and financial benefits of buying real estate. It gives them confidence to make a decision on the biggest investment they may ever make. **MPA**

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