



PROPOSED DEFINITION OF PROPERTY INVESTMENT PROMOTER

Proposal

1. That the following measures be considered by the Working Party for the government examination of regulation of property investment advice:
 - a. develop a definition of property investment promoter using the outline shown below;
 - b. licences be required as follows:
 - (1) financial services licence permits the conduct of financial investment advice (presently covered under the FSR Act), property seminars, and financial planning/scheme courses;
 - (2) real estate licence permits the conduct of property seminars which are confined to property and do not include forecasts/predictions, comparison to other asset classes, or legal/financial/tax advice;
 - (3) any seminar or course that involves the sale of property can only be conducted under a real estate licence;
 - (4) registered training organisations are permitted to conduct education courses in investment; and
 - c. the real estate profession (REIA) assist government with an awareness campaign amongst real estate agents as follows:
 - (1) promulgate REIA guidelines on property investment seminars developed in conjunction with ASIC and ACCC (similar to REIA Guidelines for the TPA which were developed in conjunction with the ACCC), and
 - (2) the national training package and CPD for real estate be enhanced to include more cover of the responsibilities of property investment promoters.

Government Objectives

2. The objectives of government in relation to the property investment advice market are to ensure:
 - a. that the market is transparent and operates consistently with community standards and expectations;
 - b. that advisory services to retail investors and prospective investors are of a generally high standard; and
 - c. that retail investor decision-making, and ultimately returns for investors, are generally enhanced by property investment advisory services.

Nature of Property Investment Advice

3. Presently, there would appear to be three broad categories of businesses which are generally agreed in relation to investment advice:

- a. Firstly, real property may be directly purchased through a “High Street” real estate agent. The agent must operate under a real estate licence within stringent State legislation and Commonwealth legislation, eg TPA, Privacy Act, and FSR Act. The FSR Act does not apply to real estate agents in their capacity of selling individual real property. The Act applies to financial products as defined under the Act. The definition of a financial product does not include real property. The FSR does not prohibit the giving of advice regarding investments in real property as part of real estate services. However, if agents compare the potential return on such properties to other financial products like shares or management investments, they may be caught as they may be regarded as providing financial product advice in relation to shares and managed investments.
- b. Secondly, “financial products” may be purchased by a buyer as a result of consultation and include arrangements with a financial services business. A financial services licence under the FSR Act is required by a person who provides financial product advice. A person may also be deemed to be “dealing” or “arranging” in a financial product. The definitions of these activities are clearly detailed in the FSR Act.
- c. Thirdly, businesses may conduct (real) property seminars with the intention of promoting real property for sale, noting that real property is not a financial product. There are two elements within this category, ie those businesses which simply promote specific property for sale and they must operate with a real estate licence to sell property, and those businesses which include “two-tier marketers” with various techniques they use including “get rich quick” techniques, high-energy promotional evenings, free or subsidised inspection flights, and the arrangement of finance etc. The “two-tier marketers” generally do not have either a financial services licence or a real estate licence.

4. The first and second categories above operate appropriately under a licence. In the third category, the operations of the “two-tier marketers” are not clearly specified but they should be caught under legislation. The defining characteristics of the “two-tier marketer” that sets them apart from a legitimate property seminar promoter are the way in which they conduct their business, ie their behaviour, the nature of the “advice” that they give to clients, and sometimes the artificially inflated property price structures that are offered to clients. The nature of their advice usually includes tax planning, risk management, retirement planning, and asset allocation. It may also include the arrangement of finance. Their behaviour is generally characterised by high-pressure promotion and sales techniques which are tantamount to misleading and deceptive conduct and claims which are clearly not achievable or

realistic, ie “if it’s too good to be true, it probably isn’t”. Therefore, a definition of a property seminar promoter is needed.

Proposed Definition Property Seminar Promoter

5. Financial advice is advice about a person’s individual financial circumstances or needs, that recommends strategies and one or more financial products to suit. Financial advice helps individuals to make informed decisions about an individual’s money and develop a strategic approach to managing it. General advice and financial information is not specific to an individual’s financial situation or needs. For example, providing information on property price growth over time is based on historical fact and is therefore informative in nature. It does not constitute financial advice.

6. A property investment promoter should be licensed under the FSR Act if they provide professional business advice on a financial product or real property that is intended, or has the effect of, influencing a person in making a decision to undertake training in schemes to make money from property investment or purchase property as a result of any one or more of the following sort of advice:

- a. making predictions on the future of property,
- b. comparing the likely performance of financial products and property,
- c. helping individuals to set and achieve their long-term financial goals,
- d. individual or general tax planning,
- e. asset allocation,
- f. financial risk management,
- g. retirement planning,
- h. estate or portfolio planning, and
- i. arrange or provide finance.

The behaviour of the property investment promoter is subject to the Trade Practices Act and FSR Act.

7. Similarly, a person or business that sells real property, either as a “High Street” agent or a property investment promoter must operate under a real estate licence. Any entity which carries on the business of selling property on behalf of another entity should be required to hold a real estate licence.

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26 April 2006