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HEATHER FAULKNER

Don't be scammed!

Get-rich-quick scams aren't as easy to spot as you might think. One API reader shared her story with us because she wanted to warn others.

BY MICHAELA RYAN

Unethical property investment schemes don't come with a warning sign. Property spruikers will always assure you that they're "not like the others". And they might seem like the real deal on the surface.

"Property scams can be incredibly slick and sophisticated, or completely amateurish, but either way, real estate racketeers work on getting their percentage of 'bunnies'," says solicitor and real estate watchdog Tim O'Dwyer.

Don't be fooled by glowing testimonials from satisfied customers. We've just

emerged from a property boom. Prices have gone up nearly everywhere in Australia. So, many people who have invested through property spruikers actually managed to make solid capital gains in the past few years which have, in a way, compensated for the inflated prices they were originally charged.

On the other hand, O'Dwyer points out, "If you paid \$20,000, \$50,000 or even \$100,000 too much for a property in the past, no matter how much its value has gone up, you've still lost what you over-paid."

With the property market set to take a

breather for a while, capital growth has cooled down. So investors who buy through these schemes in the coming years are likely to get burnt.

Property spruikers and many investment groups effectively provide property investment advice. But they don't fall under the same regulations as qualified real estate agents, financial planners or accountants.

Sadly, the Federal and State Governments have spent the past few years arguing over who's responsible for regulating this area, and in the meantime, many unsuspecting investors have been taken for a ride.

CASE STUDY

For Catherine and John (not their real names), it was their due diligence which saved them from being ripped off tens of thousands of dollars.

Catherine came across a website where you could sign up to receive free emails listing "hot" property deals.

Eventually a property came into Catherine's inbox that sounded amazing. It was a block of five flats in a country town for \$490,000.

"There was a lease-back arrangement, where the new owner would lease it back to the vendor for five years," Catherine says.

Under the 'lease back', the vendor

would pay the purchaser \$165 per unit per week. Catherine and John did the sums, and they were impressed by the huge return that was being promised.

The vendor also undertook to recarpet and paint the block before the end of the five years.

Catherine spoke to the organisation behind the website and told them she was interested in the property. They charged her a \$6000 finder's fee, took the property off their website, and put her in touch with the selling agent.

"The selling agent was in Sydney, which struck us as being a little bit strange, since the property was in a regional town.

"The company also had a really strange

named, but the vendor's solicitor was named. However, when Catherine later tried to call this solicitor, she could never reach him.

Strangely, the organisation in Sydney hadn't organised for Catherine and John to have access inside the block of flats. However, as luck would have it, a tenant arrived home while they were inspecting the outside of the property, and he was more than happy to let them look through his unit. He told Catherine and John that he was paying \$115 in rent per week – much less than the \$165 weekly rental specified in the lease-back arrangement.

Catherine and John started to do some homework. They phoned a number of

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name which we'd never heard of."

One important factor saved Catherine and John – they wanted to inspect the property.

"We got tossed around to a few different people within the agency and we told one person that we wanted to go to the town and look at the property and he said, 'Why?' And that caught our attention, that he tried to dissuade us from going to look at the property."

Nevertheless, Catherine and John insisted on seeing the block of flats. They made the trek to the country town and arranged to meet someone outside the property.

"It took us a while to work out his role. We worked out that he was an agent for the company in Sydney, but he was freelance and worked for a number of different agencies. He didn't have a business card and he didn't have the phone numbers of the other guys in Sydney that we were dealing with.

"He didn't have answers to any questions, but interestingly what he did have was a faxed copy of the (lease-back) contract. He was reluctant to have us copy it, but we went and copied the contract."

On the front of the contract there was the vendor's name, and it was actually a family trust. No vendor's agent was

local real estate agents and asked what sort of yields the units in the town were fetching. They found out that the return they had been promised was much higher than anything else on offer in the area.

In their ring-around to local agents, they discovered that, lo and behold, one agent was selling the very same block of flats they had been considering. However, their price tag was \$430,000 – some \$60,000 less than the price on the lease-back contract.

Catherine and John paid this local agent a visit, and they happened to see the rent schedule for the block of flats. The rent was being paid to an individual, not the family trust listed as the vendor on the lease-back contract.

"We were in shock. We couldn't believe it," Catherine says.

They went down to the local council and did a search to find the current owner of the property, and it was not the family trust. It was the individual whose name they'd just seen on the rent schedule.

To alert the true vendor to what was happening, Catherine got in contact with his solicitor. The solicitor remembered that the family trust had put in an offer to purchase the property but the sale had not proceeded.

Catherine also rang the organisation who ran the website that had originally

introduced her to this property. They said that the situation sounded like "two-tier marketing".

Someone from the website later called Catherine back. He had somehow been in touch with the true vendor of the property. (How he found out the vendor's details was a mystery to Catherine). The website representative had discovered that the vendor had an informal agreement with the family trust that they would buy the property for \$430,000 if they found a purchaser to on-sell it to for \$490,000.

"We would have been stuck with a property that we'd paid \$60,000 too much for," says Catherine. "And then I assume we would have been stuck with a fictional rent agreement – when the property was actually renting for \$115 each week rather than the \$165 which the lease back had."

Catherine and John will never know whether the lease-back agreement would have been honoured. It's possible that the people behind the family trust would have taken their \$60,000 and disappeared. On the other hand, using that \$60,000 profit, it would have been affordable for the trust to pay rent at the artificially high rate for quite a few years.

Whether the lease back was honoured or not, if Catherine and John had needed to sell the property, they would have made a big loss.

Remember that \$6000 finder's fee Catherine and John had paid to the website? Well, for some time they received assurances that the money would be refunded, and eventually it was.

Tim O'Dwyer made the following observations after reviewing Catherine and John's case study:

- "A finder's fee can be a rip off in itself when an investment property has been found which ought to have remained lost."
- "It's not illegal for vendors to try to sell a property they don't own, so long as they have some legal entitlement to it (such as the equitable interest you have in a property when you enter a contract of sale which has not yet settled). But it's misrepresentation to hold out ownership when a vendor has no legitimate interest in the property."
- "Lease-back agreements with guaranteed rental returns should always be treated with caution, especially if a '\$2

company' is involved with 'directors of straw'."

- "An investment property with significantly better-than-average rental incomes may be a goldmine that has been 'salted'."
- "Just because a vendor appears to be legally represented, it does not follow that a solicitor is really involved or that this is a lawyer of repute. More solicitors and barristers have gone to jail than bank robbers."

HOW TO AVOID BEING RIPPED OFF

Background search

Before you get involved, put pen to paper

Avoid the temptation to be lazy – if you do your homework it could save you tens of thousands of dollars.

or hand over a single dollar, check the credentials and reputation of the organisation. Do an internet search on the names of the individuals and the organisation, and see what newspapers, online forums and other publications have said about them.

"But be aware that media reports and other comments may be self-serving 'advertorials' generated by the organisation and the individuals," O'Dwyer warns.

Do your own comparisons and research

In Catherine and John's case, they were left to do a lot of the legwork themselves. However, some organisations offer to do everything for you – from locating the property, to organising the valuation, arranging your finance, engaging a solicitor and a rental agent. If this is the case, be very careful.

It's appealing to let someone else do all the hard work, but if you're uninformed about property investment, you take a big risk when you delegate your investment research to someone else who may have a conflict of interest.

Be very careful relying on advice or referrals from people who will make a profit if you proceed with the deal. In general, their primary concern will be ensuring the deal goes ahead, preferably at a price that

will give them the maximum profit. It's up to you to protect your own interests.

Avoid the temptation to be lazy – if you do your homework it could save you tens of thousands of dollars.

You should always:

- Get your own valuation to make sure the property is not overpriced. You can find independent property valuers in the Yellow Pages. Local real estate agents will also be able to provide you with a list of recent sales in the area. And if you do an internet search or look in the real estate section of the local newspaper you'll get a feel for the prices in the current market.
- Ask local property managers/real estate agents for an opinion about the amount

of rent the property is likely to fetch. O'Dwyer suggests you ask for this opinion in writing.

- Speak to property managers, real estate agents and locals to find out how 'tenantable' a property is. If you can't find tenants, your investment will be a lemon. There should be infrastructure (including public transport) close by. It should also be close or accessible to a major employment centre. Make sure it isn't in a dodgy part of town that people steer clear of. And avoid country towns with a small or diminishing population (unless you are experienced and know what you're doing).
- If a loan facility is offered to you, compare it with others on the market. This can be done simply by making a call to a mortgage broker. But make sure it is a mortgage broker you choose.
- Get independent legal advice about any contracts before you sign to make sure you aren't being stooged, or doing anything illegal.
- Inspect the property... never buy a property sight-unseen. When you're there, ask lots of questions if you meet a tenant or neighbour.
- "Remember the old adage that if it sounds too good to be true, it probably is," O'Dwyer says. ●

AUDITIONING A BUYERS AGENT

There are legitimate buyers agents who will personally inspect many properties until they find exactly what their client is after:

Brisbane buyers agent Meighan Hetherington has this advice for investors who are engaging a buyers agent:

1. Ask if they, or their company, also work for sellers. If they also sell properties they may not really be working exclusively for you, and you will probably only be shown their listings.
2. Check their qualifications. In some States, buyers agents must have the same qualifications as real estate agents.
3. Find out exactly what the buyers agent will and won't do as part of their service. Make sure they put it in writing.
4. Agree on the fee and payment terms up front and put it in writing.

Solicitor and real estate watchdog Tim O'Dwyer agrees but adds, "Don't sign anything with any sort of agent, sales person or consultant until you've taken sound, independent legal advice. ■"