

Chapter 3

Promotion of land banking schemes

3.1 All land banking schemes investigated by the committee were promoted and sold through investment seminars or wealth creation programs. Investors attended the seminars in person or were part of a wealth creation program and received 'study' materials straight to their home. Beyond the complicated nature of the options agreement and the land banking schemes themselves, significant risks are associated with investment seminars and wealth creation programs. In this chapter, the committee examines the marketing of land banking schemes.

Property spruikers

3.2 While the nature of the property investment schemes being promoted has changed over time, the behaviour of property spruikers is largely consistent across time. The significant problems associated with the provision of property investment advice were considered in two inquiries in the 2000s: the Parliamentary Joint Committee on Corporations and Financial Services report, *Property Investment Advice—Safe as Houses?*, released in June 2005 (PJC report) and the Victorian Parliament Law Reform Committee's report, *Inquiry into Property Investment Advisers and Marketeers*, released in April 2008 (Victorian Parliament report).

3.3 The PJC report and the Victorian Parliament report were both triggered by significant problems with the provision of property investment advice and 'wealth creation' services, such as investment seminars which arose during the property boom of the early- to mid-2000s. The recent property boom in Australia seems to have provided similar conditions for property spruikers seeking to exploit interest in the benefits of property investments, however tenuous that link may be in the case of land banking schemes. As Mr Cohen, Director of Consumer Affairs Victoria, told the committee:

Property spruikers have been of interest to national, state and territory agencies for a number of years. In our experience they generally emerge where rising prices create the opportunity for profit from property investment and where homeownership is less affordable—for example, property prices were rising in the early 2000s when Henry Kaye began offering get-rich-quick investment advice.¹

3.4 The use of the term 'property spruikers' has a particular connotation. The committee adopts the term used by the Australian Consumer Law National Project which defines property spruikers as:

1 Mr Simon Cohen, Director, Consumer Affairs Victoria, *Committee Hansard*, 30 September 2015, p. 1.

...property investment promoters—usually not licensed as real estate agents or financial service providers—who run wealth creation seminars, and offer property investment.²

Investment seminars and retail clients

3.5 Investment seminars are often characterised as 'educational services' that provide advice on strategy. Few seminars appear to disclose at the outset that the focus will be on selling particular investments. Importantly, despite the seminars being about investment activities, they are not represented as providing 'financial advice'. Mr McIntyre, for example, was adamant that he was an educator and did not give financial advice:

I am an educator. There is a distinct difference. I am probably the biggest critic of the financial-planning industry in the country.³

3.6 According to Mr McIntyre, he educated people on a range of strategies and that it was not financial advice because, 'if you want financial advice, you go and see a financial planner'. He accepted that he received a commission on the options he sold and this was disclosed, stating that if 'we are selling a product, we disclose our interest'. He reiterated:

We do not give advice. We offer them [potential investors] an opportunity to go and do their due diligence. It is up to them to do that.⁴

3.7 Mr McIntyre agreed with the description that he was selling an opportunity.⁵

3.8 As a result of publicising these events as educational, the seminars attracted a wide range of attendees. Some people who attended were interested in learning more about potential investment strategies, whereas others were attracted by the offer of a free form of financial information.⁶

3.9 As mentioned earlier, the committee received a DVD copy of a recording of an investment seminar presented by 21st Century Property Direct in late 2010 or early 2011 promoting the Moira Park Green City development in Shepparton, Victoria.⁷ The Moira Park Green City development appears to be the first time the practice of

2 Australian consumer law, ACL National Projects, Property Spruikers/Rent to Buy schemes, <http://consumerlaw.gov.au/acl-national-projects/> (accessed 6 January 2016).

3 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 28.

4 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 28.

5 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 28.

6 Parliamentary Joint Committee on Corporations and Financial Services, *Property Investment Advice – Safe as Houses?*, June 2005, p. 10.

7 Ms Grazyna Monka, *Submission 148* (21st Century Property Direct, 1 Day Wholesale Land Release DVD: Homestudy).

selling options to purchase land was used.⁸ Mr Steven Molnar, who is reportedly a former business associate of Mr Kaye, presented the seminar.⁹ Asked at the start of the seminar as to why they were attending the session, audience members stated reasons including to:

- achieve a positive cash flow;
- provide for an early retirement;
- find a good investment with little money down;
- obtain information;
- learn some skills;
- have a better lifestyle; and
- take advantage of a special opportunity.¹⁰

3.10 In relation to how attendees became aware of the investment seminar, Mr Guy reported receiving an email about the seminar after somehow ending up on a marketing list for Global1 Training Pty Ltd, an event management company. Ms Baxter recounted seeing online advertisements promoting the seminar while she was researching property on a real estate website.¹¹

3.11 Investment seminars often targeted people keen to secure their future through acquiring a tangible asset such as property. Building retirement savings is one of the main reasons people invest in property. Market First's schemes, for example, were marketed as an opportunity 'to give you [the investor] the chance to invest in Australia's future blue chip suburbs, *today*'.¹² In particular, investment seminars were often aimed at people looking to build wealth but lacking investment experience. Previous property investment schemes promoted through investment seminars have often focused on 'get-rich-quick' schemes such as rent-to-buy and vendor terms.¹³ Dr Elizabeth Lanyon from Consumer Affairs Victoria described the types of people who have been singled out as potential investors in these schemes:

In the past, these schemes have been mainly rent-to-buy and vendor terms. Those legal forms are not in themselves problematic. However, consumers who are being targeted are those who have limited access to mainstream

8 Royce Millar, Simon Johanson and Ben Schneiders, 'Investors' dreams turn to dust', *Sunday Age*, 8 March 2015, p. 28.

9 Adele Ferguson and Simon Johanson, 'Delving into the dark side of shadow brokers', *Sydney Morning Herald*, 13 August 2011, p. 11.

10 Ms Grazyna Monka, *Submission 148*, around 5 minutes into DVD no. 1.

11 Mr Jim Guy, *Committee Hansard*, 30 September 2015, p. 35; Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 40.

12 Market First, *Unique Benefits*, <http://www.marketfirstgroup.com.au/about> (accessed 18 September 2015).

13 See footnote 2 in chapter 2 for a description of rent-to-buy schemes.

finance, are often underemployed or commonly underemployed, have low financial literacy and are generally in need of easy or quick financial gains. Our national work is identifying the unique consumer risks that arise with these schemes.¹⁴

3.12 Those promoting land banking schemes have an arsenal of persuasive arguments designed to entice potential investors. These are explored below.

Privileged access

3.13 An important sales technique was to make the investor feel special by convincing them that they were being presented with a unique deal—an opportunity too good to be missed. The court presiding over the Midlands case cited the following examples of the marketing and promotional material used by Property Direct on behalf of Midland:

- (a) "a 'never seen before' property investment opportunity that enables you to secure prime land for a measly, tiny fraction of what others could ever negotiate";
- (b) "a fool-proof plan to grab seven properties over twelve years worth potentially millions of dollars—without relying on the banks or unmanageable payments";
- (c) "potential to make \$1.25m in return in 10 years time with the buy and hold strategy, or 125% return in two years if you want to sell out and cash it out early. Feel at ease, safe and secure with our no-risk exit strategy".¹⁵

3.14 When considered in isolation, the benefits and ease of investing in land banking schemes would appear to be 'too good to be true' to most people. In fact, spruikers often acknowledged that this strategy seemed unrealistic, but only because, they argued, 'mum and dad' investors do not usually have access to these opportunities.

3.15 Potential investors were encouraged to feel as though they had been given privileged access to special deals and opportunities not available to others due to the hard work of the schemes' promoters and developers. For example, one slide at the 21st Century Property Direct seminar was titled 'We are pleased to offer you an exclusive investment opportunity within one of Australia's fastest growing areas'.¹⁶ Mr McIntyre made the same point to the committee:

14 Dr Elizabeth Lanyon, Director, Regulation and Policy Division, Consumer Affairs Victoria, *Committee Hansard*, 30 September 2015, p. 2.

15 Australian Securities and Investments Commission v Midland Hwy Pty Ltd (administrators appointed); in the matter of Midland Hwy Pty Ltd (administrators appointed) [2015] FCA 1360, paragraph 15, <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2015/2015fca1360> (accessed 4 January 2016).

16 Ms Grazyna Monka, *Submission 148*, around 80 minutes into DVD no. 3.

What is land banking? Effectively, it has been around since medieval days; it is not actually new. It essentially [is] the banking of land for the future—ideally to be converted from farm land to residential, high-value use. The strategy is generally reserved in Australia for the very wealthy and is commonly used by them to create wealth.

...

The 21st Century Group, being a financial innovator that does not like strategies being monopolised solely by the rich and believes that it should also be accessible to the middle class, decided to innovate with the use of property options combined with land banking to help solve the housing affordability crisis that this country urgently faces.¹⁷

3.16 Investors were being offered relatively affordable option prices (around \$20,000 to \$40,000 each),¹⁸ which were often marketed as 'wholesale' options or at a cheaper price because of the buying power of the promoter of the scheme. Ms Liesl Baxter, an investor, heard the same sales pitch at three Market First investment seminars in Perth in 2013, explaining that the seminar was:

...an introduction to the idea of land banking, which they described as buying wholesale lots in potential development sites before planning approval was given, and then there would be a public release after that. The idea was to take advantage of the uplift that comes with the better use and development of urban fringe land. What I understood was that we were coming in at the ground level before the bulldozers came there. I am from a rural family. I have seen it done many times before where a paddock close to town is sold and then you cut it up into little bits...¹⁹

3.17 Mr McIntyre confirmed that this was part of the strategy for 21st Century Group informing the committee that the developer was effectively selling land at 'wholesale' in exchange for getting 'presales for its project in advance'.²⁰ Market First also made big claims about the discounted pricing of their developments in a marketing brochure:

We've been talking about the premium prices paid for 'Rolls Royce' high end properties. However, you may be thinking these properties must be way too expensive for the average investor to afford.

So here's possibly the best news about Market First: as our member you get heavily discounted 'pre-retail pricing'. In other words, you get 'Rolls Royce' properties at 'Holden prices'.²¹

17 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 12.

18 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 29.

19 Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 40.

20 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 13.

21 Mr & Mrs Jim and Alison Guy, *Submission 150*, p. [41].

Success stories

3.18 Spruikers often relied on assumptions about property as well as making selective and often unsubstantiated claims about the local area where the development was located to convince potential investors that the promoted scheme was a good deal.

3.19 For example, the main upside of investing in land banking options that Mr McIntyre outlined for the committee is that land in Australia generally increases in value over time.²² He gave the example of Mr Harry Triguboff of the Meriton Group, who:

...reportedly made \$200 million alone from increases in the value of his group's landholdings. Property options have also been used in the property industry for decades to acquire land—as a way to secure the land without needing to initially borrow or to be obligated to eventually purchase the land. Large land developers also use options regularly.²³

3.20 While this may generally be true (though there are exceptions), there was no evidence before the committee that the fee investors paid for their option to purchase land reflected its value. After all, investors who paid an option fee were not actually purchasing any land at the time they entered into the option agreement.

3.21 Spruikers built on these property success stories with unfounded promises of incredible returns. The suggested returns on land banking schemes were higher than the typical returns for property, which ASIC's *MoneySmart* website suggests are around 6 per cent per annum.²⁴ Notably, while the figures that were discussed at seminars or distributed to potential investors were very clear, the connection between the figures and the actual investment being promoted were not. For example, Market First provided one investor with two optimistic sets of calculations titled 'Property Investment Projections over 40 years' and 'Property Investment Analysis'.²⁵ The documents did not specify which property the calculations were about, but did estimate that a property valued at \$590,000 in year 1 would be worth an incredible \$38.351 million in 40 years.²⁶

3.22 Similarly, 21st Century Group's Moira Park Green City spruiker showed the audience slides outlining capital growth at 8, 10 and 12 per cent per annum—growth

22 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 13.

23 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 12.

24 ASIC *MoneySmart*, *Investment Seminars*, <https://www.moneysmart.gov.au/investing/investment-warnings/investment-seminars> (accessed 5 November 2015).

25 Name withheld, *Submission 149*, pp. [1–7].

26 Name withheld, *Submission 149*, p. [6].

which is both higher than average and which was not directly linked to the investment being promoted.²⁷

3.23 To justify the investment and the claims made about high returns, marketers often made assertions about the local area or the special features of the development that would increase the value of the investment. This was particularly the case with land banking schemes, as the land being proposed for redevelopment was located in regional or farmland areas that were inexpensive compared to the price of land in capital cities. 21st Century Group's Moira Park Green City spruiker highlighted a number of features of the Shepparton region that would apparently increase the value of the land, including fruit and vegetable farms in the region. One slide during the presentation stated:

It [Shepparton] is one of the wealthiest regions in Australia. Shepparton has more BMWs and Mercedes Benz per capita than anywhere else in Australia.²⁸

3.24 The connection between the abundance of farms, expensive motor vehicles and the outlook for the development, which was 8 kilometres outside of Shepparton, was left unexplained. Similarly, while discussing the environmentally sustainable design elements for the Moira Park Green City development, another slide stated that 'Residents are prepared to pay the same prices for properties outside of Melbourne, as for inner suburb properties if they are unique and different'.²⁹

3.25 Interstate investors unfamiliar with local market conditions were particularly susceptible to paying above market value for developments. For example, it appears that both Market First and 21st Century Group held many seminars in Perth during the mining boom; all four investors who gave evidence to the committee were Western Australians who invested in Victorian land banking schemes.

Risks

3.26 In addition to making unsubstantiated and exaggerated claims about the developments they were promoting, spruikers often failed to disclose risks associated with the schemes. The confusion about the nature of the investment in land banking schemes (discussed earlier) is a clear example of how investors were not aware of the complexities surrounding these highly speculative investments, including the timeframe for rezoning and development and the intricate web of mysterious people behind the schemes.

3.27 As well as being marketed as affordable and accessible, land banking schemes were often promoted as risk-free or very low-risk. For example, a 21st Century Group's salesperson, in a presentation on the Moira Park Green City development,

27 Ms Grazyna Monka, *Submission 148*, around 43 minutes into DVD no. 4.

28 Ms Grazyna Monka, *Submission 148*, around 82 minutes into DVD no. 3.

29 Ms Grazyna Monka, *Submission 148*, around 4 minutes into DVD no. 4.

compared options to putting purchases on 'layby' at a retail store because of the alleged maximum flexibility associated with options agreements.³⁰

3.28 Mr McIntyre told the committee that the biggest risk in land banking was that the project does not receive development approval (which often includes approval for rezoning). Most investors, he claimed, were willing to accept that risk:

The answer to the question 'What happens if it does not get rezoned and the development is not approved?' is that most investors are happy to take the risk, as the upside is very good and there is low potential downside'.³¹

3.29 Wealthy investors with diversified investment portfolios who make a small investment in start-ups, for example, may be prepared to wear the risk that they either lose or do not receive the expected return on their investment. The investors targeted by Mr McIntyre's land banking schemes were often those who did not have enough savings or access to credit to invest in an investment property. In most cases, the decisions made by investors in land banking schemes do not align with their risk profile and point to unsound advice on the part of the so-called 'educator'.

3.30 The messages emanating from investment seminars and promotional material were often designed to appeal to inexperienced investors aspiring to own property but lacking either the savings or the access to mainstream credit to purchase investment properties directly. For example, Mr Guy explained to the committee that he invested in a land banking scheme because of his financial situation:

My background is that in 2010 my company was liquidated and we had no money. We just went broke. What we tried to do was look for some future investment that could get us some long-term income and value, and this looked like a good opportunity, so we did that. However, when the bank knocked us back we thought we still had opportunities so we raised the capital ourselves out of our own cash. We supplied \$43,000, as directed, to another law firm.³²

3.31 In outlining one of 21st Century Group's land banking projects in Victoria, Mr McIntyre described the investors that the project was aimed at:

Our land banking division was able to offer home buyers and investors who might not be ready yet to build a home, or who cannot afford it but still want to be investors, the right to acquire land in the future in one of our planned estates.³³

30 Ms Grazyna Monka, *Submission 148*, around 47 minutes into DVD no. 4.

31 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 13.

32 Mr Jim Guy, *Committee Hansard*, 30 September 2015, p. 35; Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 36.

33 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 12.

3.32 It is important to note, however, that it is not only clients who might be considered to be vulnerable who are caught out by these schemes. Some people with previous experience in property investment have invested in land banking schemes, and many of those who invested have experience in buying property through purchasing their residential home. It may be the case that people who have some experience with purchasing property think they understand property investment better than other investment options, such as managed investments.³⁴ Investors, of course, require some savings (either inside or outside superannuation) to invest in options or off-the-plan contracts, or assets with which to use as security for a bank guarantee. For example, Ms Liesl Baxter, an investor in a Market First project, had prior experience with property investing and went to the seminar because she was looking for a good investment opportunity:

I had had two very successful developments in Perth that I had been a part of where I had subdivided and built projects and made a reasonable amount of money through hard work and research, and I was looking for my third investment opportunity.³⁵

3.33 The Victorian Parliament report pointed out that even relatively well-educated consumers had been caught by rogue traders, with evidence suggesting that all consumers require extra protection in certain markets and situations.³⁶

Exclusive membership

3.34 Seminar attendees were encouraged to purchase education products like DVDs or books, and to become members of 'exclusive' clubs which offered special investment deals, mentoring and individualised property advice. For example, Market First's website promoted its membership program as 'first class membership with first class advantages':

Market First members get access to blue chip, A-grade, real estate at prices and terms the average investor could rarely negotiate or obtain.

These deals are only possible because our members' combined group buying power gives us the ability to negotiate mass discounts with property developers on behalf of our hundreds of members. The net result is our members can secure prestige properties at exceptional prices and terms.³⁷

34 Parliamentary Joint Committee on Corporations and Financial Services, *Property Investment Advice—Safe as Houses?*, June 2005, p. 6.

35 Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 40.

36 Victorian Parliament Law Reform Committee, *Inquiry into Property Investment Advisers and Marketeers*, Final Report, April 2008, pp. 45–46.

37 Market First, *Unique Benefits: First class membership with first class advantages*, <http://www.marketfirstgroup.com.au/about-us/first-class-membership-with-first-class-advantages> (accessed 18 September 2015).

3.35 In some cases, potential investors were told they needed to purchase a membership with 21st Century Group or Market First to gain access to the wholesale price. At one of its investment seminars, a 21st Century Property Direct spruiker (a related company to the 21st Century Group) told potential investors that to invest in the Moira Park Green City development, one of the earliest land banking schemes offering options, 'You have to join first and be a member—full stop, that is the bottom line'.³⁸

3.36 Similarly, Mr Guy, an investor in a Market First scheme, told the committee about his experiences at a Market First investment seminar in Perth in 2013:

We were told that it was also a private buying group—a small buying group—that we were buying into so that we could get the land at wholesale price, and we had to pay a \$5,000 platinum membership to be in that little group.³⁹

3.37 It is therefore unsurprising that all four investors who provided evidence to the committee paid membership fees for access to the land banking schemes; three investors became members after attending Market First investment seminars, while one investor (Ms Monka) became a member of 21st Century Group after receiving promotional material from 21st Century Group as a 'home study' participant.⁴⁰ A promotional Market First flyer provided to one investor promised a number of membership benefits, particularly for 'Platinum' members, including:

- a personalised strategy session;
- unlimited property purchases;
- residences and land with 3–5 year settlements;
- options settlement period 5–7 years;
- \$12,000 investment grant;
- up to 100 per cent finance for residences;
- up to 90 per cent finance for self-managed super fund (SMSF) residences;
- a consumer protection plan with a 10-year rental guarantee; and
- a value guarantee ('to cover any market downside at settlement').⁴¹

3.38 These were some of the many promises made to investors about the benefits and accessibility of land banking schemes. In an investment seminar titled 'Property Education Seminar 2013', Market First's CEO, Mr Burn, outlined his 'ultimate

38 Ms Grazyna Monka, *Submission 148*, around 75 minutes into DVD no. 3.

39 Mr Jim Guy, *Committee Hansard*, 30 September 2015, p. 36.

40 Mr Jim Guy, *Committee Hansard*, 30 September 2015, p. 36; Mr Trevor Haynes, *Committee Hansard*, 30 September 2015, p. 39; Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 40; Ms Grazyna Monka, *Committee Hansard*, 30 September 2015, p. 7.

41 Name withheld, *Submission 149*, p. [9].

property investment strategy' that centred on investing in Market First's Foscari or Veneziane developments on the outskirts of Melbourne. The promised benefits of the strategy are highlighted in Figure 1. These outlandish and unproven benefits are typical of those promised for land banking schemes operated and promoted by Market First and 21st Century Group. As ASIC's *MoneySmart* financial literacy website warns consumers: 'Big promises equal big risks'.⁴²

Figure 1: Slide from Mr Rowan Burn's presentation on Market First's land banking schemes⁴³



Endorsements and appearances by celebrities

3.39 Investment seminars often featured guest speakers who purportedly became wealthy using the tips and tricks taught at the seminar ('success stories') or who were well-known celebrities paid to promote the investment. For example, 21st Century Group brought Mr Arnold Schwarzenegger, famous film star and former Governor of California, to Australia to headline its 2013 'national tour' and give the event (and 21st Century Group) significant publicity.⁴⁴ In promotional material, Mr Schwarzenegger is reported as saying:

42 ASIC *MoneySmart*, *Investment Seminars*, <https://www.moneysmart.gov.au/investing/investment-warnings/investment-seminars> (accessed 5 November 2015).

43 Mr & Mrs Jim and Alison Guy, *Submission 150*, around 9 minutes into DVD no. 2.

44 21st Century Group, *21st Century Financial Education Summit*, <http://21stcenturyfinancialeducationsummit.com/#success> (accessed 18 September 2015).

Jamie McIntyre is an extraordinary human being who has helped hundreds of thousands of people achieve their full potential. I love that he has a PhD in results...⁴⁵

3.40 One investor, Mr Haynes, reported attending a Market First seminar primarily to watch Mr Richard Branson, renowned entrepreneur and founder of the Virgin Group, speak at the Perth Convention Centre. Attendees had to first sit through two days of presentations in the lead-up to Mr Branson's presentation. When asked what it meant that Mr Branson was appearing at this seminar, Mr Haynes told the committee:

It made it more legitimate than it was. He is obviously a person everyone admires in some way. By putting him on last, you had to put up with everyone else speaking first. I guess it is that simple.⁴⁶

3.41 Even for investors who were not drawn to the seminars because of the star speakers, the celebrity presentations often gave the scheme being promoted an air of authenticity and credibility. Mr Guy provided the committee with a poster of the 2014 'Property Millionaires Tour', which featured TV personalities, real estate agent Mr John McGrath and Mr Burn, Market First's CEO.⁴⁷ The tour was 'proudly supported' by Century 21 real estate agents and Smart Property Investment magazine.⁴⁸ The committee is not suggesting that these other parties had any improper involvement in land banking schemes, but their association was certainly intended to convince potential investors of the integrity and viability of the products.

3.42 Mr Benjamin Kingsley, Chair of the Property Investment Professionals of Australia, told the committee that spruikers hired celebrities to speak at investment seminars 'for instant social credibility'.⁴⁹ It appears that, in many cases, celebrity endorsements and appearances at investment seminars helped convince attendees of the legitimacy of the scheme and the probity and trustworthiness of the spruiker.

3.43 The celebrity endorsements and national seminar tours often continued to provide this sense of legitimacy long after investors had invested in their scheme. Ms Monka noted:

I was just thinking that he [Mr McIntyre] is getting his circle of very influential friends and it is just getting bigger, because at the time when I attended the seminar, it was only Tony Robbins, the motivational speaker.⁵⁰

45 'Jamie McIntyre', <http://jamiemcintyreexposed.com.au/> (accessed 14 January 2016).

46 Mr Trevor Haynes, *Committee Hansard*, 30 September 2015, p. 39.

47 Mr & Mrs Jim and Alison Guy, *Submission 150*, p. [1].

48 Mr & Mrs Jim and Alison Guy, *Submission 150*, p. [1].

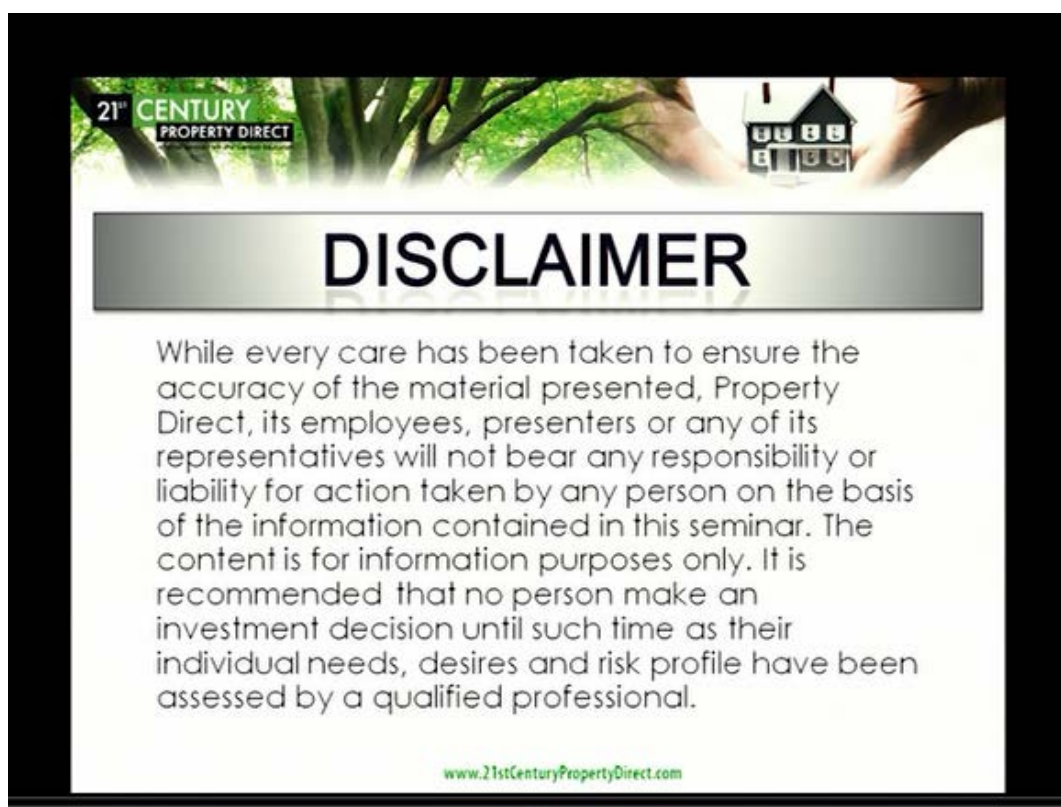
49 Mr Benjamin Kingsley, Chair, Property Investment Professionals of Australia, *Committee Hansard*, 30 September 2015, p. 57.

50 Ms Grazyna Monka, *Committee Hansard*, 30 September 2015, p. 10.

Disclaimers—the fine print

3.44 The land banking schemes examined by the committee commonly included lengthy disclaimers at the start of investment seminars and on marketing brochures and other documents provided to investors. For example, the slide at Figure 2, which was displayed by a 21st Century spruiker illustrates the type of disclaimer used at seminars intended to alert attendees to the reliability of the information provided.

Figure 2: Slide from 21st Century Group's presentation on the Moira Park Green City development⁵¹



3.45 The slide was accompanied by the following statement by the presenter:

So basically I am here to give you lots of information, a lot of it is general in nature. I am going to tell you where we find this information so you can go and double-check it, triple check-it for yourself and get further updates on this information. At no point am I here to give you any specific financial advice for your specific situation. Is everyone ok with that? Please say yes. Alright, terrific.⁵²

51 Ms Grazyna Monka, *Submission 148*, around 1 minute into DVD no. 1.

52 Ms Grazyna Monka, *Submission 148*, around 1 minute into DVD no. 1.

3.46 Other examples of disclaimers can be found at the end of Market First's emails to investors and in Market First's marketing brochures.⁵³ One Market First brochure for the Foscari project included this disclaimer (extracted in part):

This is a conceptual brochure created for the purpose of providing information to both current and prospective purchasers. Accordingly, it is not to be relied on as to the accuracy, completeness and suitability of the information contained in this brochure and in the described materials ('the information'). The brochure is presented for illustrative and educative purposes and shall not be represented or treated as real estate advice, legal advice, investment advice, tax advice and other similar advices. The brochure does not and will not form part of an offer or contract between the parties.⁵⁴

3.47 The optimistic sets of calculations (discussed earlier) in the Property Investment Analysis documents provided by Market First to one investor both featured the same disclaimer, which acknowledged that these calculations were essentially speculations based on unknown assumptions:

Disclaimer: Note that the computer projections listed above simply illustrate the outcome calculated from the input values and the assumptions contained in the model. Hence the figures can be varied as required and are in no way intended to be a guarantee of future performance. Although the information is provided in good faith, it is also given on the basis that no person using the information, in whole or in part, shall have any claim against Market First Property Consulting Pty Ltd - Melbourne, its servants, employees or consultants.⁵⁵

3.48 While such disclaimers may be used as a device to protect the promoter from claims of misleading advertising, they are ineffective as a means of alerting investors to risks associated with the investment, especially considering the context in which disclaimers are issued.⁵⁶

High-pressure sales tactics

3.49 Having listened to compelling arguments to invest in a land banking scheme and been presented with testimonials extolling its virtues, attendees were often pressured to sign up to such schemes through high-pressure sales tactics. As noted earlier, potential investors were encouraged to feel as though they had exclusive access to the special deal on offer: that they would be the only ones to have heard

53 Mr & Mrs Jim and Alison Guy, *Submission 150*, [p. 6]; Name withheld, *Submission 149*, pp. [38, 121].

54 Name withheld, *Submission 149*, p. [38].

55 Name withheld, *Submission 149*, pp. [1, 6].

56 Notably, the use of disclaimers does not necessarily prevent a finding that these representations were misleading. For example, *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2013] HCA 54.

about investment strategies usually available to wealthy people only, not 'mum and dad' investors.⁵⁷ Promoters would then emphasise the importance of grasping the opportunity before it slipped away. Thus, land banking schemes were often promoted with a sense of urgency, as potential investors were told they had to invest quickly, usually by signing up at the seminar, or otherwise risk missing out on the chance. For example, a 21st Century Property Direct spruiker emphasised that the time frame to invest in the Moira Park Green City development was limited and the demand high:

If you wait, guess what is going to happen? You are going to miss out, full stop. Because we have plenty of other people who want to see this around the country. You will still get your five years to buy your five blocks, or seven blocks, or how many blocks you've got going, no problem. But this deal will be gone. So this is why you have got to be thinking to yourself, you need to be thinking how do you get the maximum result from this, because this is a deal which can't actually be repeated.⁵⁸

3.50 Such practices negate any guidance offered in disclaimers to obtain independent professional assistance. Instead, potential investors were pressured into making decisions without first taking the time to reflect on their actions and without seeking outside professional advice.

3.51 ASIC recognised that property spruiking events and investment seminars were often high pressure environments where participants could 'be rushed into making a decision'. ASIC informed the committee of its concern that high pressure tactics employed by some promoters urging investors to sign up to arrangements, meant the investors were not given enough time to consider their investment carefully. They 'do not adequately read the agreements that they enter into to, or seek independent advice in relation to the scheme'.⁵⁹

3.52 In summary, while investors in land banking schemes were provided with an overwhelming amount of information and promises about the developments, this information and the way it was promoted was designed to persuade prospective investors to sign up to the scheme. None of the information provided by Market First or 21st Century Group was presented in a way that encouraged the investor to make an informed choice. In reality, investors were taken in by professional marketing techniques and overly optimistic predictions despite the ubiquitous use of disclaimers. They were rushed into making a decision without time to consider the investment or to consult other sources for guidance or information.

Conclusion

3.53 Land banking schemes were sold through property investment seminars or wealth creation programs and through glossy brochures. The seminars:

57 Ms Grazyna Monka, *Submission 148*, around 60 minutes into DVD no. 3.

58 Ms Grazyna Monka, *Submission 148*, around 77 minutes into DVD no. 3.

59 ASIC, answers to written questions on notice Nos. 13 and 18.

- were usually attended by retail clients who were interested in knowing more about property investment but who were not usually knowledgeable about the industry;
- offered privileged access to purported special deals;
- featured persuasive marketeers who relied on property myths, concept plans and unsubstantiated claims to make the schemes seem like a good deal;
- used endorsements and appearances by celebrities to attract attendees and to give legitimacy to the products being promoted and respectability to the promoters; and
- used high-pressure sales tactics to push 'exclusive' membership offers and make big promises.

3.54 Although it may not have been in their financial interest, consumers sometimes succumbed to the 'hype' generated by investment seminars, with their celebrity endorsements, offers of special 'exclusive' deals and high-pressure sale tactics. A legitimate property investment adviser would have no difficulty allowing a consumer time to speak to their friends and relatives about any proposed deal and to research the offer as well as encourage their client to seek advice from independent financial advisers, lawyers, accountants or brokers.

3.55 The overriding message coming out of the evidence is that consumers must be wary of trusting documents and material provided by spruikers and resist the pressure to sign up to a deal without first seeking independent advice. But, the developers and promoters of these schemes should also be held accountable for their actions.