Master of Applied Science in Building Studies (Research)

Do valuations assist residential property investors prior to purchase?

An industry perspective

by

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CERTIFICATE OF AUTHORSHIP

I certify that the work in this thesis has not been previously submitted for a degree except as acknowledged within the text. This thesis has been written by me and any assistance received in the preparation of it has been fully acknowledged. All information sources and literature used are indicated in the thesis.

Student:__________________________

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I thank my family who continued to encourage and support me through this work. A note of thanks is also extended to my editor Frank Riley.

Lastly, I dedicate this thesis to my profession, the valuation profession, being the foundation that inspired me to undertake this research. The present challenges of the valuation profession are confronting for some valuers. As some valuation work and fees continue to contract, others await and beckon the valuation profession. It is the task of the valuation profession to seize the opportunities before it.

> ***"Sometimes we stare so long at a door that is closing that we see too late the one that is open."*** Alexander Graham Bell 1876.

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ABSTRACT

As residential property grows as an investment vehicle, with an increase in this asset class included in retirement planning, greater focus is now concentrated on the price paid for property and the relativity of that price to its value and how that value is determined. In addition, consideration has also begun to centre on the quality and suitability of residential property purchased for investment purposes and the risks associated with inappropriate property being purchased, particularly by investors nearing, or entering retirement with limited capacity to replace their capital.

This thesis considers the issues confronting residential property investors, the level of understanding about the attributes of property that contribute to value, the level of information available and the quality of advice provided to property investors. The thesis brings to the fore the present uses of valuation advice and the suitability and limitations of that advice for property investors in formulating the price to be paid for property.

A survey of seven professions confirms support for the use of valuation advice by residential property investors and their investment advisers prior to purchase. The survey is in contrast to literature which raises doubts about the quality, format and information currently provided in valuation advice and its appropriateness and usefulness in serving residential property investors in meeting their investment objectives.

In conclusion, issues that may be addressed by the valuation profession in assisting residential property investors provides a way forward for the profession to break free of the dominance of providing point-in-time values for lending institutions. Recommendations addressing the quality of property investment advice and the use of property investment seminars as a conduit of sale have been made.

Chapter 1 - Introduction

1.1 Residential real estate investment and investors

The Productivity Commission (2003) noted an increase in residential property investment and confirmed by the Reserve Bank of Australia (2003), whose analysis also shows a 132 percent increase in the debt-to-asset ratio for residential investment property between 1992 and 2002. Regardless of what drives residential property development and investment, the continual increase in demand for residential property investment is a confirmed fact and supported by the survey results discussed later in this thesis.

Prior to discussing the issues associated with residential property investment from the investor's perspective, consideration is first given to property development and the selling risks associated with it. Establishing certainty and stability in the success of a residential development is crucial and best evidenced in the sale of the finished product at or above the anticipated gross realisation for the development. This does not diminish the importance of ensuring the development is completed on time and within budget, however, the final stage of a development, marketing and disposal, is usually the most distant part when the development is in the planning stage.

Property development is a business subject to a variety of risks and changes in market circumstances that may impact on the degree of success or failure of a development. It is the practice for lenders financing development projects to take a position of minimising their own risk in the event of the development being unsuccessful, or less successful than anticipated at the outset of the project. As part of their risk-management strategy, lenders seek pre-commitment or pre-sales of property in the development as an added measure of protection and evidence of demand for the finished product at the anticipated sale price.

It is common for pre-sales of up to fifty percent of the gross realisation to cover the debt to be raised in order for a developer to negotiate finance on more favourable terms and conditions. Many of these sales occur through property investment seminars, with high pressure marketing techniques used, which is one of the issues discussed in this thesis.

The containment of risk and generation of profit from residential property development is no different from the motive of any other business. In achieving this objective the attainment of commitment is the proof of success by the developer and the agents used to sell off property in the development. These agents may comprise a mix of real estate agents, in-house marketing team and financial advisers and planners. It is the relationship between the parties selling property and the purchasers, along with the methods of sale used through property investment seminars, that has drawn the attention of the Australian Securities Investment Commission (ASIC). Sale methods used and the qualifications of property promoters and seminar presenters are presently under review by a Government Parliamentary Joint Committee.

Among the issues associated with the property marketing and investment of residential property that have drawn the attention of regulators are: two-tier marketing (discussed in 2.1 of this thesis), seller rebates and unrealistic and un-sustainable returns and capital gain projections provided to investors by the various agents engaged by the developer to market and sell investment property.

In addition to the above, further identified risks presently being reviewed by Government will be discussed in this thesis, including the following issues:

1) The risk that the price paid for property and the level of transaction information available to investors may not be enough to assist them to formulate the purchase price of property based on similar property transactions.
2) The risk that investment advice may be currently being given by persons not adequately equipped to provide it.
3) The risk that investment advisers may have conflicts of interest arising from the sources of income.
4) The risk that property investment seminars may be structured more as marketing tools rather than free investment education programmes.
5) The risk that sufficient consumer protection through the availability of independent property investment education is not provided.
6) The risk that inexperienced investors do not obtain independent valuation advice in forming their investment decisions.

In relation to the above issues, the central problem for the inexperienced investor is that of knowing the maximum price to pay for property and still have it perform adequately as an investment. This is paramount when the investor is being advised about the merits of property investment, with reference to a specific property in which the adviser is being remunerated by the developer, or a selling intermediary of the developer.

The two primary difficulties that confront novice property investors are their inexperience and their inability to separate the property purchase from the financial investment appraisal. Novice investors tend to have limited skills in property investment. This leads them to rely unduly on external advice. Where the advice is biased towards facilitating the purchase of property, it will not adequately inform their understanding of the investment value of their purchase. In many cases, the buying process of identifying the property, organising finance, inspections, legal or conveyance and the purchase, overrun the fundamental considerations of the performance and suitability of the property. These considerations include the property location, its inherent and external features, the security and consistency of the rental return and its relationship with its value and the purchase price of the property itself.

The basis of this thesis is to determine whether a valuation undertaken by an independent valuer engaged by the investor would assist the investor and his or her adviser if applicable, in determining the purchase price of property. The provision of valuation advice may also address some of the issues identified by the Joint Parliamentary Committee on Corporations and Financial Services. These may include transaction information contained in the valuation and education about the market and property type in which the investor intends to invest. Current mortgage lending valuations focus on the purchase price of the property and its relationship with the sale of similar properties. These valuations do not meet the needs of the property investor. This is in part reflected in the depth of information provided in the report and by the fee paid for these valuations. The question to be asked of the valuation profession is whether pre-purchase valuation advice to investors provides sufficient relevant detail of the property and market in which it is located for the investor to make an informed decision as to the price they may be prepared to pay for the property.

Another key question is whether valuation advice in its present format would be of any assistance to the investor other than to provide a valuer’s opinion of a point-in-time value of a property to be purchased. This consideration does not diminish the importance of the present use of a valuation to assist the investor to determine the value of property, particularly in two-tier market cases. Lending institutions obtain valuation advice to establish the relativity of the price of property to its value. Whilst many lenders do not disclose the valuation figure determined by their panel valuer to an investor, the investor is also at liberty to engage a valuer prior to the property being purchased. This choice is particularly pertinent where investment property is being purchased interstate, or in locations unfamiliar to the investor, *Australian Competition & Consumer Commission v Oceanna Commercial Pty Ltd* [2003] FCA 1516.

1.2 Thesis research question

The subject of this thesis is to test whether valuations undertaken by residential property investors prior to purchase would assist them or their advisers in formulating the purchase price of property. More formally, **"Do valuations assist residential property investors prior to purchase?"** This investigation is in unison with the fact that lending institutions, prior to approving loans to finance the purchase of investment property, in many cases seek their own valuation advice of the property being purchased.

Residential property investment has increased as a form of unstructured superannuation and wealth-creation means in recent times, which has been evidenced by the survey conducted in this thesis. The importance of this study is more critical now that this activity has been accompanied by exploitation of investor ignorance of the value of property and the price paid for property by some retail residential investors. This exploitation has manifested in the use of two-tier marketing schemes and property investment seminars that are fundamentally marketing strategies for the sale of new residential property.

In addressing the research problem, the following objectives are addressed:

- Determine whether property and other professionals surveyed believe that investors should seek independent valuation advice prior to purchase.
- Determine whether property and other professionals believe that investors are including residential property as a retirement asset.
- Determine whether present valuation practices and reports would serve property investors in the property investment process.

- Review court cases where valuers have been sued and objectively assess the robustness of valuations in meeting the objectives of property investors.
- Compare how valuations rank against other property related information that a purchaser may obtain in the property purchase process.
- Examine the influence and impact property investment seminars have on some property investors.
- To determine whether property investors have sufficient financial literacy in assessing the price they pay for property.
- Determine which profession is best qualified to assist residential investors select the most suitable investment property
- Assess whether the present regime of allowing financial planners and investment advisers to be remunerated by both client (investor) and developer (selling agent) in the property purchase process is appropriate.

1.3 Justification for the research and its contribution

The traditional marketing of real estate by agents has been based on the inherent and external features of property, these include location and improvements. As residential property has gained momentum as an investment vehicle, and the measurement of this asset's performance gains importance, agent's and marketer's sales pitches have evolved to include selling property on the merits of annual returns, potential capital gains and its suitability as an investment vehicle for whatever purposes a potential purchaser may desire.

The focus of property as an investment vehicle over the past ten years, has primarily been attributed to the evolution of two factors, these are:

1) The accumulation of wealth for financial independence and the provision of retirement, with direct residential property being incorporated amongst the assets of self-funded retirees and semi-self-funded retirees and;
2) The rapid expansion of the mortgage lending industry and mortgage brokers who obtain funds from banks and insurance companies with a focus on:
    a. the lending of money for the purchase of property, and
    b. the provision of insurance for the protection of the asset and its cash flow.

With the evolving assessment of the suitability of a property in meeting the needs of an investor, a number of considerations about the property and its performance need to be known. Included among these is the most fundamental financial point regarding the value of the property based on its future return. As the process of locating, financing, inspecting and purchasing investment property may conceivably preoccupy the investor, this thesis seeks to assert the importance of property being purchased based on valuation advice that confirms the present value and the relativity of that value to the property's return.

1.4 Abbreviations and definitions

The following abbreviations and definitions have been used throughout this thesis. The full title of each abbreviation is used in conjunction with the abbreviation the first time it appears in the following chapters. Only the abbreviations will be used each time after its first use.

1.4.1 Abbreviations

ACCC:	Australian Consumer and Competition Commission
ADI:	Approved Deposit Institutions
APRA:	Australian Prudential Regulation Authority
ASIC:	Australian Securities Investment Commission
API:	Australian Property Institute
DFT:	Department of Fair Trading NSW
FPA:	Financial Planning Association
FSR:	Financial Services Reform
LMI:	Loan Mortgage Insurers
MCCA:	Ministerial Council on Consumer Affairs
PJCCFS:	Parliamentary Joint Committee on Corporations and Financial Services
RBA:	Reserve Bank of Australia
REIA:	Real Estate Institute Australia

1.4.2 Definitions

Investment advice: There is no specific definition of investment advice within the property discipline. The term investment advice also remains undefined by the Corporations Act 2001 (Commonwealth). For the purposes of this thesis Financial Product Advice has been identified by the corporations legislation, with its application to property investment advice broadly applying to advice for the following:

1) Negative gearing

2) Capital gain projections

3) Recommendations for property as an investment.

The intention of drafting the definition of financial product into the legislation was to ensure it was flexible and adaptive to deal with developments in financial engineering (Baxt et al 2003).

Property investment is a *loose* term broadly defining the act of purchasing property for a purpose or financial objective. For the purposes of this thesis the two main bases for investment in residential property are 1) for owner occupation or a home, and 2) the annual return and capital gain from the property. Real estate investment has been perceived in a number of ways, including as a physical product or entity, (Cooper *et al* 1989). It is rental return and capital growth that are the focus of the definition in their context to property investment in this definition.

Retail investor is referred to as a **retail client** under section 761G of the Corporations Act 2001. At present under the Corporations Regulation, a price threshold of generally $500,000 or less in the value of the asset qualifies the investor to whom the product or advice is being provided as a retail client. Relating this to residential property, the term *retail investor* may be referred to as ‘novice or first-time’ residential property investors.

Valuer is “a person who holds himself out as a valuer must be more than merely a man of intelligence and commonsense” *Broken Hill Pty Limited v Municipal District of Broken Hill (1901) 1 SR (NSW).*

“A competent valuer is one who possesses ability to discover, classify, and rate the separate influences which combine to create, sustain or destroy value, and is therefore skilled in the technique of valuation” (Real Estate Institute of Australia 1979:98).

Valuation of land “has to do with ascertaining its value in exchange. Effectual valuation practise calls for the application of established principles and logical methods leading to estimates of price which land and interests in land may be expected to realise if offered for sale on reasonable terms and conditions" (Rost and Collins 1984:18).

Value is "the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion" (Australian Property Institute 2000:21). In addition to the above holistic definition, the Australian Institute of Valuers and Land Economists (1997) describe the value of an income-producing property as, the present value of all future income in perpetuity.

In this thesis a **valuer** is taken to be a professional qualified under the statutory provisions of the law that govern them in the applicable state of Australia. The valuer is a professional with the requisite experience and expertise to undertake the task of determining the value of a property at a specific point in time. A **valuation** is a professional estimate of a property value which reflects all relevant circumstances and information relating to a property and the market in which it is located. The assessment of a valuation is made by reference to transactions of other similar property that guide the valuer in the assessment of value based on those transactions. The requisite adjustments made for differences between sales and the property being valued, and the market conditions that prevailed at the time of those sales and the date of valuation, form part of the valuation.

Consumer awareness about the valuation profession and the assistance that a suitable valuation would provide to a residential property investor needs to be addressed by the valuation profession. Even investors who are aware of the role of the valuer need to understand that their retention is not just the domain of Government, lenders and the legal profession. The Parliamentary Joint Committee on Corporations and Financial

Services (2005) implicitly recognised this when it recommended investors seek independent valuation advice prior to purchasing residential investment property.

1.5 Research methodology

This research is being conducted by examining current literature relating to property investment, property valuation and investment advice. The literature has been sourced from a number of relevant institutions and stakeholders involved in property investment, valuation and investment advising services. Included in the literature are recently implemented statutes by Government and cases deliberated on by the courts.

Industry surveys and cases before the courts are another method of data collection that is used. In analysing case studies, the researcher will collect and analyse data that may support, and in some cases refute, the literature considered and analysed. Cases provide a matter of fact and assist in qualifying the interpretation and application of literature reviewed and may provide circumstance and further discussion and analyses of the literature.

Electronic surveying of literature enables the writer to source and use a large sample of data through library databases via the Endnote engine search, government reports, listed journal articles, past and current discussion papers, statutes and related cases. This type of research material is referred to as secondary resource material as defined by Sorenson (1995). In addition, as the issue being examined is current, the author has used primary research material which has been incorporated through the use of a survey of several professional groups conducted by the writer. Sorenson (1995) has defined primary research as research conducted by the writer himself.

The limitation of the use of questionnaires has been highlighted by Teitelbaum (1989), with the central issue being the validation of responses. This issue has been addressed through the use of a well-structured and balanced questionnaire.

1.6 Limitation of this study

There are three areas of investigation that are not the subject of this thesis which follow:

(i) This study does not quantify the cases in which residential property investors have paid in excess of market value. In part, this thesis identifies and discusses two-tier marketing through the literature and survey information undertaken by secondary sources. Reference to a specific case is covered in the conceptual framework and case study chapter.

(ii) The focus of this thesis does not qualify the basis upon which investors arrive at the purchase price of property, although some discussion is centred on the affordability, asking prices and reference to property transactions. This specific issue is the subject of separate research into investment and decision theory.

(iii) Whilst this thesis does not present a detailed study of valuation methods used to value residential investment property, an overview of accepted valuation practice in Australia is presented in chapter 4. This thesis assumes the valuation methodology is in line with accepted industry practice and professional bodies, such as the API and REIA.

1.7 Thesis structure

This thesis, presented over eight chapters, introduces a conceptual frame and literature review on key areas that define and surround the research question. Chapters four and five provide an evolutionary discussion of the valuation profession in specific context to Financial Services Reforms and their implications for the property professions. This is followed by a review of the existing limitations of valuers and valuations and their potential uses by residential property investors. Discussion centres on the opportunity for valuations to be incorporated into property investment advice. Furthermore, the potential expansion of the role of valuers to incorporate property investment guidance is explored.

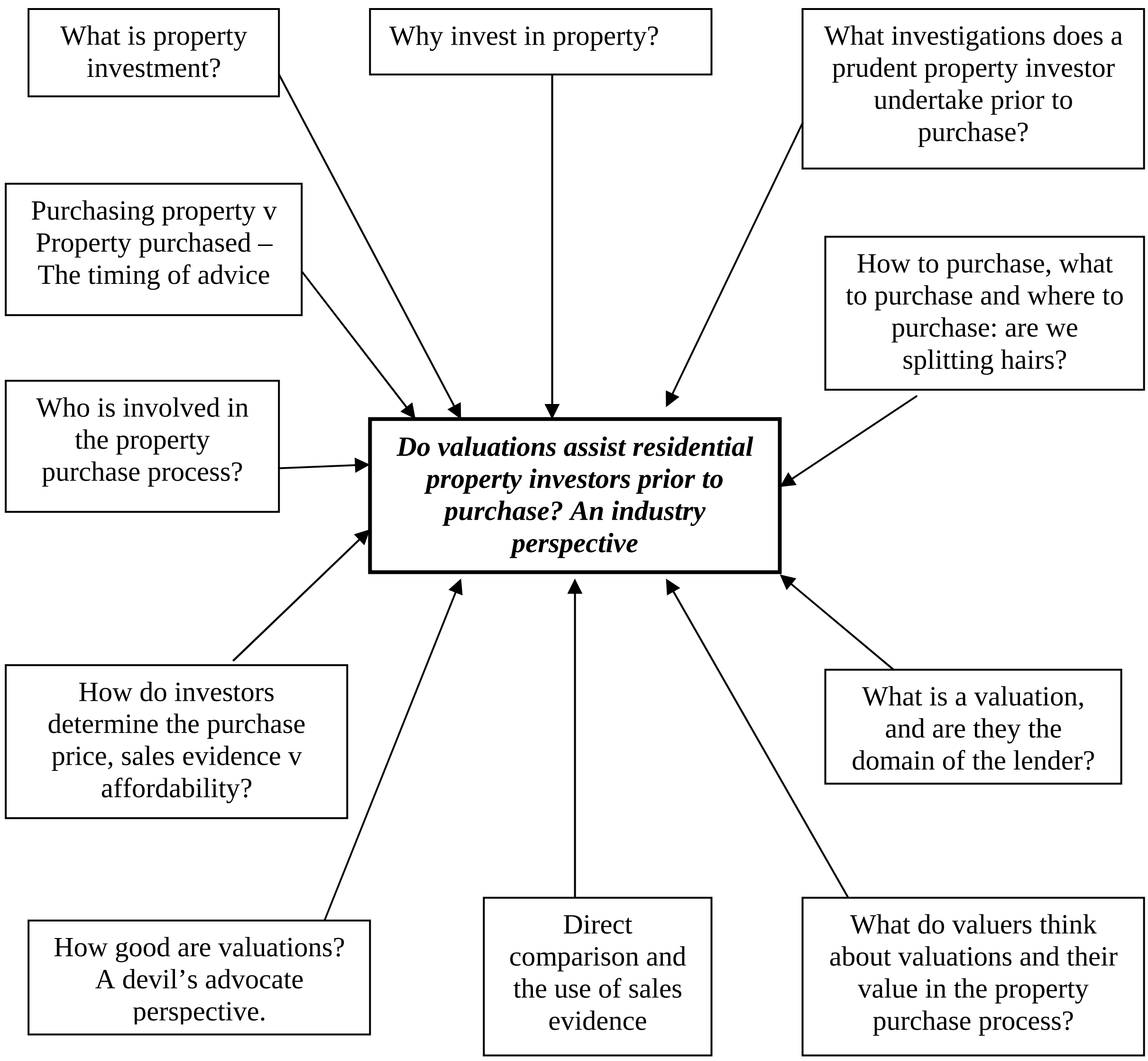
Chapter six of the thesis presents an overview of the primary methodology used in the survey to test the research question and rationale for its use. The subsequent chapter summarises the results and discussion of the survey findings. The research question is conclusively resolved in the final chapter, with reference to chapters four and five, in conjunction with the survey surmisal. The conclusion extracts the key points identified in the thesis, with a closing dissemination of each of the issues and their address within the thesis.

Chapter 2 - Literature review

2.0 Literature construct and introduction

In selecting the literature used in this review, consideration was given to the myriad issues associated with the thesis question. The selection of the literature and the key elements it addresses was determined by identifying and prioritising several sub-questions and components that underpin the basis for the research question to be asked, investigated and addressed. Figure 2.1 is a representation of the sub questions / topics identified:

Figure 2.1: Literature construct



The following literature review begins with the very issue that warrants the thesis question to be asked. Literature relating to Two-Tier Markets, Loaded Prices and Property Investment Seminars are the primary conduits used to sell property at inflated prices. Following this, literature covering consumer / buyer behaviour in relation to residential property is reviewed, which is then followed by a review of the increasing appetite for direct residential property investment in Australia, along with the increasing debt levels being committed to by investors in achieving property investor status.

The literature turns to the participants of the property selling / advisory and marketing roles in the property sale and purchase process. A review of both marketers and agents is covered. So, too, is the emerging role of the buyers advocate / agent reviewed. The literature includes experiences from the United States, where buyer advocates have existed for over 20 years. Included in this section of the literature is a review of Financial Planners and the ‘Know-your-client’ rule, which draws a contrast with property and marketing professionals who are asset-focused, as opposed to planners who are client-focused.

The final stage of the literature examines the veracity of valuation advice. An appraisal of predatory lending practises and equity stripping of investor’s homes to fund debt of over inflated property is also covered. In justifying the recommendation and use of valuation advice by investors as an option prior to purchase, a critique of the valuations profession, including cases against valuers, has been undertaken to establish adequacy of valuation practises up until the present. Valuer independence is reviewed and an analysis of the relativity between sale price and value is examined, with the scrutiny of two important cases. In a review of the market value definition and sales evidence and analysis, the foundation is laid for debate of the current practise of valuers being traditionally engaged by lenders to confirm purchase price, as opposed to valuers assisting investors make informed decisions about the price they pay for property.

2.1 The Issue

2.1.1 Two-tier markets and Loaded-pricing

Two-tier marketing, put simply, is a process whereby uninformed purchasers buy property in a development at a higher price than informed purchasers. McDonald (1999) defines two-tier marketing as similar property exchanging at differing levels of market value. It involves inflated property prices to cover the additional cost of marketing and double commissions due to the large proportion of targeted investors coming from interstate and overseas (McDonald 1999). The API Victoria (2003) similarly interprets two-tier marketing as the process of establishing a two-price regime for the same property being marketed. A lower price being for local investors and a higher price for interstate and overseas investors. When examining two-tier markets, Reed & Robinson (2003) ask, which tier reflects market value? Central to determining the value of property is the following statement: "Property comprises a series of highly localised sub-markets in which exists a lack of transparency in negotiations, and a lack of market knowledge of prices and sales volumes" (p3).

"**Loaded-pricing** or over pricing is the marketing of property based on depreciation and negative gearing benefits, rental income and capital growth. The selling price is loaded to cover an on-selling profit margin, broking and marketing costs over and above the market value, which many purchasers are typically unaware they are paying" (Australian Property Institute Victoria 2003:335).

In attributing blame for poor advice on the price paid for property, some investors have criticised lending institutions for not alerting them to deceit in the price they pay for property. "More than 3000 investment home units, overpriced by $40,000 to $54,000 each were sold on the Gold Coast alone last year, according to Herriots Pty Ltd." (Synnott

1999:53). The loaded prices can be up to 30% above market value (API Victoria 2003).

The key issue of concern for the investor and investigating agencies is the price paid for the property.

> "The investor subsequently realises that he or she has in fact paid much more than they should have, given the price of comparable properties at the time of purchase. The charging of 'sourcing fees' by the promoter, which appears to be quite common, often compounds the investor's sense of having been cheated." (Ministerial Council on Consumer Affairs Working Party MCCA, 2004:21).

In addition to the process of loaded prices in creating a two-tier market operation, property being sold needs to be financed. This is done through another questionable practise known as **'Selling Rebates'** or '**Contract Discounting**'. The API (2003) describes this as a process where a buyer settles on 80% of the agreed purchase price of a property. Finance is extended at 80% of the non-rebated or non-discounted purchase price of the property. This results in the financier effectively financing100% of the real purchase price of the property. The API Victoria (2002) further affirms that this demonstrates the risk to purchasers, who may assume that the discounting factor of 20% justifies the 80% of the price paid for the property.

2.1.2 Property investment seminars

The growth in property development over the past ten years saw the growth in the means for distribution through investment seminars as a conduit for sale. This activity has seen the proliferation of the property investment seminar industry unfold.

The following literature highlights the use of investment seminars in the sale of property and the vast sums of money turned over through property investment seminars as a business.

The property marketeer may find it difficult to identify and communicate with potential buyers, until and unless a potential investor has recognised the need for such a major financial undertaking. (Gibler and Nelson 1998). The process of maximising the greatest number of people that may be candidates as potential buyers may be through property investment seminars.

The API (2003) indicated that many of the *fraudulent practises* operating commence with a free wealth-creation seminar, that leads to yet another seminar which costs investors up to $15,000. The next step is to coax the investors into property that have been vetted by the seminar organisers. Elaborating on the soliciting of Loaded Prices & Two-Tier Marketing, the API (2002) highlights the use of initially free and subsequent paid seminars used to lure people to the marketing strategists of new developments.

Investment seminars have proliferated over the past decade, with increasing intensity over the past 2-3 years. "Seminar workshops and courses are frequently advertised and promoted as 'educational' services only and as not involving the giving of advice. ... promoters generally offer to arrange finance for people who cannot afford to pay for seminars and other materials from their own resources." (MCCA 2004:18). It was further noted that one seminar operator earned up to $37.5m in turnover in one year, (MCCA 2004). The following example demonstrates the concerns of authorities, who are reviewing the activities of a number of property investment seminar providers.

> Mr Kaye and NII are involved in running investment training courses, which purport to teach people various methods for increasing their wealth through investment in property. The courses, which comprise seminars, conferences, workshops and other training programs, also promote and provide information about investment in mezzanine finance products and cost between $4,000 and $55,000 to attend. Neither Mr Kaye, NII, or Novasource hold an Australian Financial Services Licence (AFSL) to give financial product advice, as required by ASIC (2003:03-237).

A key concern with investment seminars is that they provide one solution for all circumstances. In a seminar of 500 people, there may be 500 different set of circumstances. According to ASIC (2003:27):

> The worst kind of investment seminars promise a lot but deliver very little, except to wet your appetite with golden promises of financial freedom and enormous wealth. The presenter’s job is to get the audience revved up, using high pressure sales techniques, so they happily shell out more money to the seminar company. Sceptical questioners get rough treatment. The best kind of investment seminars put information and education first, welcome questions and give you food for thought without pressure selling.

Preston et al (1998:75) added that "At the current time there are two distinct markets which operate within the Gold Coast area and these include: (a) the market controlled by specialist sales companies who do not operate under normal REI of Queensland Commission guidelines, and (b) the second market being those sales made under traditional guidelines".

2.2 Consumer & Buyer Behaviour

2.2.1 Knowledge & Financial Literacy

"Knowledge is the most powerful engine of production, it enables us to subdue nature and satisfy our wants" (Schultz 1979).

In contrast, the lack of knowledge and understanding may leave an uninformed party the subject of unconscionable conduct. Keogh (2000), refers to the commentary of Kitto J in the High Court decision of Blomley v Ryan (1956) relating to unconscionable conduct and the extent of its application to Sect 51AA of the Trade Practices Act in the following summary:

> "whenever one party to a transaction is at a special disadvantage in dealing with the other party because of illness, ignorance, inexperience, impaired faculties, financial need or other circumstances affecting his ability to [protect] his own interests and the other party unconscientiously takes advantage of the opportunity".

In dealing with the concept of Financial Literacy, Morgan (2003:2) defines the concept of financial literacy as "The ability to make informed judgements and to take effective decisions regarding the use and management of money". That is, enabling people to be able to make informed decisions about investing as well as other related issues.

Morgan (2003) found from a survey of 3,548 telephone participants, 67 percent of adults claimed to understand the term compound interest either well, or fairly well. Upon further questioning, the survey revealed that only 28 percent would be described as having a good level of comprehension of this topic. The same survey showed the following reasons for investing in property (p34):

59% property may grow faster than money in the bank

49% negative gearing

26% extra income from rent

33% meeting loan repayments

32% money tied up/not accessible

25% not growing as fast as interest in a bank account.

“In dealing with property investment 59 percent of respondents identify potential increase in property values as an advantage, rather than 12 percent who identified the potential decrease as a disadvantage” (Morgan 2003:40). The benefit of an informed investor is defined by Cooper *et al* (1989:X) as follows:

> “Because real property investments are, unlike stock investments, heterogenous and affected by a relatively inefficient marketplace, better than average performances are available to better-than-average real estate investment decision makers."

In response to the importance of understanding the concept of value when purchasing investment property, The Office of Fair Trading Queensland (2003), have introduced Mandatory Warning Statements in Contracts for Sale of Property. The warning sets out for purchasers of property, to seek "Independent Legal Advice" and "An Independent Valuation". This in part was prompted by developers engaging passive legal representatives and valuers paid by the developer, to provide advice to buyers of property developed and marketed by them.

2.2.2 Cognitive bias and risk assessment

The potential for novice and first-time investors of property to make uninformed decisions and rely on information obtained from non-arms-length parties has been observed. Bettman & Sujan (1987) have identified that first-time buyers are more susceptible to external influences in determining what criteria they use during the decision-making process of property and may rely more heavily on the salesperson.

A similar phenomenon was described by Crowell (1994:1) in the purchase of shares and the reliance on company reports, which may constitute the most apparent information for investors, particularly when the report is sequential and appears informative.

> "People readily understand stories and the path that you outline from the company's current activities to its future profits will seem far more likely, since it is presented in story form the listener will naturally reject the myriad of alternate outcomes for the stock as far less likely, since they cannot see the path to these alternatives".

Analysis of figures and statistics, to the trained eye, may be qualified and placed into perspective in the weighting and context of the relevance and importance of the information; but to the un-trained, they may be the dominant criteria for the decision to invest.

> "The reason for cognitive bias, the tendency of intelligent, well-informed people to consistently do the wrong thing, is the fact that the human brain is made for interpersonal relationships not for processing statistics" (Crowell 1994:4).

Gibler & Nelson (1998) have identified that in contrast to more experienced buyers, novice buyers of property may use non-compensatory decision-making processes when buying property. This entails the use of less deductive, or non-conforming reasoning, which may overlook or disregard the considerations made by an informed purchaser. The use of the comparable sales method of valuation requires the valuer to identify which property characteristics are being used and then remove the property comparables in which these characteristics have not been considered by some purchasers.

On the issue of determining the value of investment property, in the absence of sale evidence, buyers tend to associate quality with price. The higher the price within a buyers range is considered to be the better quality of property, which in turn will sell sooner (Wilson 1996).

One of the key elements associated with property investment is the assessment of risk. The differential merits between risk avoidance and management have been defined as: "the real successful ones manage risk, the idea being not to avoid risk but to be skilled at identifying it and then living with it under acceptable circumstances" (Montgomery 1976:14).

2.3 Property investment and wealth

2.3.1 Property ownership and investment in Australian

Definitions of property investment provide a breadth of views and objectives which encompass elements of financial and physical considerations. Real estate is often characterised by bricks and mortar, which provides a tangible association as an investment. In contrast to this idea, Graaskamp (1972) highlights the essence of real estate investment being the space, or the void, and not the solids. In distinguishing between the void or space and the solids he states "walls, floors and ceilings are worth very little; they are simply ways of delineating cubage. In fact, bricks and mortar are very clumsy standards for the delineation of space." (p513). From a financial perspective, investment in property has also been defined as “monies placed in property with the expectation of producing a profit, assuming a reasonable degree of safety and ultimate recovery of principle; especially for permanent use, as opposed to speculation” (REI Australia 1981:51).

The great Australian dream of property ownership has continued to thrive over the decades. From the quarter-acre block to the investment property, the desire for property investment, home ownership and home ownership affordability has not gone unnoticed by Government:

- the number of households with investment property has increased from 8 to 12 per cent over the past decade.
- over the same period, investment loans as a proportion of total household loans has grown from 15 to 33 percent.
- Australia has approximately 8 million dwellings at a value of over $2200 billion (including the land)
- Housing related debt ($390 billion) accounts for 84 per cent of total household debt. (up from 69 percent in 1990)
  (Productivity Commission 2003:14)

Further to the above, Baekgaard & King (1996) identified in the corresponding previous decade (1992-2002), rental property ownership increased from 3.4 percent to 8.3 percent.

In referring to taxation arrangements, namely capital gains tax and negative gearing, the high rate of home ownership, Andrews (2001:2) states "One explanation for Australia's relatively high dwelling wealth is that government policies have made housing in Australia relatively more attractive than in other countries". This proposition is further endorsed by Rees (2000), who observed an increased popularity in private education and health care being at the expense of household savings. The typical life cycle wealth creation process is that young households borrow to invest, typically in residential property, but increasingly in the share market. Negative gearing is an efficient way to grow wealth.

The Commonwealth, in the review of barriers to first home ownership, noted that in the review of property investment, there were no time limits or restrictions on how long a property could be negatively geared and maintain a tax deduction, (Productivity Commission 2003). This proposition is coupled with the Reserve Bank of Australia (2003) observation, in which housing debt, accounting for 83 per cent of total household debt, has increased over the past decade.

2.3.2 Financial independence and retirement

An analysis of wealth distribution undertaken by AMP (2002), shows that in the 50-64 year age bracket, 60 percent of the wealth is held by the top 25 percent. The average wealth in 2002 per person in this age bracket is $240,000, of which half was tied up in the family home.

Of the financially independent baby boomers entering retirement in Australia and the United States, by 2030, AUD $70 Billion and US $41 Trillion respectively will be bequeathed to the next generation by the mid 21st century. Of these amounts, over half will be from property and with decreasing family sizes, there will be fewer beneficiaries sharing estates, (AMP 2003). This phenomenon is supported by Baekgaard & King (1996), who confirm the largest transfer of assets to the next generation will come from property and un-spent superannuation.

The study of wealth distribution in Australia and the changing trends in wealth distribution pre- and post-1960 are highlighted by Kelly (2002), who has identified a reversal of wealth equality since 1960, of which some inequality has been produced through an inequitable tax system. The emphasis of the role of taxation, as defined by the former Treasurer Paul Keating, was for the redistribution of wealth (Kelly 2002).

The importance of self sufficiency in retirement is an issue for Government, particularly for retirees, many of whom may be unaware of the amount required to live in comfort during retirement,

> "Most retirement advisors and financial planners estimate that a person will need a retirement income equivalent to around 60-70

> per cent of their annual pre-retirement income to be financially comfortable. At the same time, government support in retirement is through the Age Pension, that provides a maximum income of 25 percent of the average total male earnings. (Kelly, Harding & Percival 2002:16).

In referring to non-superannuation savings, Ralph (2000) identifies that many Australians are saving for retirement, both within and outside structured superannuation, of which direct property investment is considered as un-structured savings. Since the amendments to superannuation in 1999, with preservation rules locking up money until retirement, "re draw mortgages and re-gearing of housing equity appear to provide the only simple, tax effective vehicle for such saving" (p 20).

Finally, with the collapse of major companies, including HIH and Ansett, coupled with poor-performing superannuation funds and the realisation of people having to provide for their own retirement, an increase in residential property investment has been noted (PJCCFS 2005).

2.4 Real estate agents and real estate marketers

2.4.1 Real estate agents

Inquiries into the regulatory framework governing real estate agents have been undertaken by ASIC and a joint State and Commonwealth working party. The purpose of these inquiries is to determine the effectiveness of legislation governing real estate agents and to attempt to bring into line the role of real estate agents against those of financial and investment advisors. Each of the inquiries mandates are as follows:

> "The existing regulation of real estate agents should be reviewed. Real estate agents providing investment advice should be required to hold a financial advisors licence unless the review

> clearly establishes the adequacy of existing regulation" (Australian Securities Investment Commission 1999:7).

> "Many real estate agents give general financial advice to potential buyers of investment properties. Typically, this takes the form of advice about the likely capital appreciation or rental incomes from a property - basically, its investment return potential. Sometimes agents' advice will include some general taxation advice as well, such as the benefits of negative gearing." (MCCA 2004:15).

Whilst the review of real estate agents is a primary focus of this review, ASIC is aware and concerned with the activities of sales persons who are not licensed or registered under State or Territory regulatory regimes, but who are involved in the sale of real estate to property investors. These people are referred to as "real estate marketeers" or “real estate marketers" (ASIC 1999).

Comments were sought by ASIC from interested parties regarding the review of financial advice provided by real estate agents. Particular issues on which comments were sought included:
1) To what extent real estate agents providing advice about real estate that had a significant component of investment related advice?
2) Are the existing competency, integrity and financial requirements relating to real estate agents adequate to equip them to provide financial advice?
3) Does the public have sufficient access to information about real estate agents and the services they offer to enable them to compare and choose real estate agents?
4) Are the rules of conduct applicable to real estate agents appropriate to deal with the giving of financial advice?

5) Are the existing mechanisms to deal with complaints resolution adequate to deal with complaints concerning the financial advising activities of real estate agents?

6) Are there adequate remedies available to consumers to deal with situations involving the giving of financial advice by real estate agents?

7) Are the existing disciplinary mechanisms appropriate to deal with situations involving the giving of financial advice by real estate agents (Australian Securities Investment Commission 1999:11).

In addressing the concerns raised by ASIC in the 2000 report on the activities of real estate agents in NSW, the NSW Office of Fair Trading, in the review of the Property Stock & Business Agents Act 2002, has incorporated a number of new consumer protection provisions; these include the following:

> **46 Financial and investment advice by real estate agents**
>
> (1) The regulations may make provision for or with respect to requiring a real estate agent who provides financial or investment advice to a person in connection with the sale or purchase of land to provide to the person specified information or warnings.
>
> (2) A real estate agent who fails to comply with a requirement of the regulations under this section is guilty of an offence.
>
> **48 Duty not to act for both buyer and seller of land** [1]
>
> (1) A licensee must not act in his or her capacity as licensee on behalf of both the buyer and the seller of land at the same time.
>
> (2) A licensee must not enter into agency agreements in respect of the purchase or sale of land if the performance of services by the licensee under the agreements will or can result in the licensee acting in his or her capacity as licensee behalf of both the buyer and the seller of the land at the same time.

[1] Land means land and or land and buildings

In relation to issues raised about conflicts of interest and potential conflicts of interest in property transactions undertaken by agents, the following was said: “In contrast to real estate agents, investment advisors have an obligation to give securities recommendations according to the particular needs of the circumstances of the investor. They must also disclose any commission or other benefit which they might receive by recommending a particular security and they must disclose any conflict of interest.” (Cameron 1999:1).

Prior to the 2002 review of the Property Stock and Business Agents Act, real estate agents were not subject to these requirements, thus: “It is essential that consumers of real estate services are given protection and every opportunity to make an informed opinion about the quality of the advice being given, and impartiality of the person giving it.” (Cameron 1999:1) In NSW section 47 of the Property Stock & Business Agents Act 2002 (NSW), now addresses this issue as follows:

> **47 Duty of disclosure to client and prospective buyer of land**
>
> (1) A buyer’s or seller’s agent acting on the sale or purchase of land must disclose the following to the person for whom the agent is acting ("the client") and (in addition, in the case of the seller’s agent) any prospective buyer of the land:
>
> (a) any relationship, and the nature of the relationship (whether personal or commercial), the agent has with anyone to whom the agent refers the client or a prospective buyer for professional services associated with the sale or purchase,
>
> (b) whether the agent derives or expects to derive any consideration, whether monetary or otherwise, from a person to whom the agent has referred the client or a prospective buyer and, if so, the amount or value of the consideration,
>
> (c) the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale or purchase, or for promoting the sale or purchase, or for providing a service in connection with the sale or purchase, of the land.

2.4.2 Real estate marketers

Real estate marketers or marketeers, have traditionally been engaged by project developers of residential developments and are neither licensed in the state they operate, nor work for an agency licensed in that state, (Australian Securities Investment Commission 1999). The Queensland legislation has been highlighted for its inclusion of marketeering provisions which prohibit misleading and deceptive conduct by marketeers in that state. One of the criticisms of the MCCA (2004) is that state-based legislation covers traditional roles of agents, which includes, selling, buying and letting real estate. What are not covered, however, are advisory, marketing and education-providing activities.

Investment in property attracts large sums of money, financial commitment and a largely unregulated forum for the administration of investment advice. The key issues identified by the PJCCFS (2005:3) are:

- The lack of disclosure of commissions and arrangements and relationships which promoters have with developers;
- The lack of opportunity for consumers to have their questions answered, and thoroughly consider a possible investment;
- misrepresentations that proposed investment strategies are risk-free or very low risk; and
- failure to provide promised refunds on seminars and courses and the difficulties consumers experience in obtaining redress.

2.4.3 Real estate investment advice

The PJCCFS (2005:3) states, "real property is not considered to be a financial product, so advice related to investment in real property is excluded from the financial services laws." Further to this at (p35), "The Committee recommends that a definition of property investment advice should be inserted into the Corporations Act 2001."

The existing role of the real estate agent has been to take a commission from their client for selling their property. The concern of the ASIC is where an agent undertakes a role in either of the following capacities:

i) acting as a buyers advocate in assisting a client purchasing a property and;

ii) in the capacity of selling property for the client, formulating investment advice by reporting and forecasting on annual returns and capital growth.

Whilst the role of the legislation in NSW, namely the Property Stock and Business Agents Act 2002, prohibits agents acting for both buyer and seller, it is the concern of the ASIC (2002) that agents do not have the requisite skills and training to provide investment information to buyers.

In NSW, the advent of the buyer's agent has further raised concerns of Government, "Buyers' agents appear to operate under a normal real estate license, although their focus is on buying rather than selling property. While their business is helping buyers source investment property, they still usually obtain their fee or commission from the vendor." (PJCCFS 2005:7). The extent to which the Committee intend to extend and apply financial reforms to property investment are best demonstrated as follows:

> "…if real estate agents provide historical information on a property (e.g. current outgoings, recent rent levels achieved, past capital appreciation) - the Committee considers that to be factual information. But, if they provide comments on possible future costs or future rents or future capital appreciation or the use of deposit bonds or negative gearing, that becomes advice." (p34).

ASIC's (2000) concerns about prospective investors being exposed to general financial advice provided as an incidental part of selling real estate have been addressed as discussed under section 46 of the Property Stock and Business Agents Act (2002). These have further been strengthened by regulation 10 of the Property Stock and Business Agents Regulation (2003) which provides the following warnings:

- the advice is general advice, and therefore has not been prepared by taking into account the individual needs and financial circumstances of the person to whom it is given; and
- intending purchasers should assess the suitability of any investments in the property in the light of their own individual needs and circumstances, which they can do themselves or by consulting an appropriately licensed investment adviser
- where general advice is provided, that the agent informs the purchaser or seller that the advice is general and does not take account of their specific circumstances.

Eves & Wills (2003:2) have identified the practices of real estate agents in the selling process as: "currently promoting the sale of residential property to investors on the basis of the taxation benefits of negative gearing and the long term capital gain that can be obtained by investing in residential property". In addition to this, Davis & Wills (1998) note that many salespeople are unaware of how to calculate returns from residential real estate, or understand what they actually mean.

The concerns of ASIC (2000) in relation to real estate agents providing property investment advice are presently dealt with in State-based legislation. The Corporations Act 2001, the Commonwealth legislation governing investment advisers and other defined financial products, does not include property or property investment as yet Robinson (2002) qualifies what financial product and financial product advice includes:

What is a financial product?

It is a facility or arrangement by which a person:

- Makes a financial investment
- Manages a financial risk
- Makes non-cash payments

Financial product advice

The decision influenced may be to:

- Purchase
- Not purchase
- Sell or switch
- Increase / decrease existing interest

The fact that property is not included under the Corporations Act 2001, does not exclude advice relating to property investment from its reach. What may be included as advice is negative gearing, or other tax related matters.

2.4.4 Agency regulation and hazard

Results of a study conducted by Benjamin *et al* (2002) suggest that minimal pre-licensing education requirements may reduce complaints, yet more stringent requirements do not appear to lead to further reductions. The most effective way to reduce complaints is found to be through vigorous efforts at compliance and enforcement. Data from 1983 onwards show that real estate licensing activities and complaints against real estate agents from the National Association of Real Estate Law (US) indicate that restrictions on entry into the business imposed by tougher licensing standards raise the quality of service, but at the same time are conducive to lessening competition. The above contradicts the notion that the sole purpose of occupational licensing is to enhance the prestige and economic status of the profession; tougher licensing standards also appear to yield substantial benefits to the consumer in terms of higher levels of service quality.

In an overview of the evolving role of the agent, Russer (1999) has identified the "Internet Empowered Consumer (IEC)" as a more informed party to the property purchasing process. An information-rich society, via access to the vast amount of property information on the internet, has resulted in a more well-informed property consumer being provided with information that has traditionally been the bastion of real estate agents. The changing trend of traditional agency relationships is defined by Anderson *et al* (2000:189), as:

> "In many locations, the traditional agency relationship between the parties no longer exists, and agents no longer have a fiduciary responsibility to their clients. This change prompted responses by sellers, who appear unwilling to pay the typical commission to agents whose actions on their behalf, as well as their legal obligations, have been reduced."

The moral risk facing sellers is raised by Gwin *et al* (2002:29) who identify difficulties in monitoring agents loyalties:

> "After listing with a broker, the seller faces a moral hazard problem for the individual cannot observe the effort level of the broker. The seller may benefit from additional broker effort (sell the real estate at a higher price or more quickly). However, additional effort can be costly to the broker. The broker may be better off avoiding costly effort. A conflict may arise between the seller's best interests and the broker's preference to avoid work or additional expenses".

2.5 Buyer advocates and brokers

2.5.1 Who is a buyer's advocate / broker?

Until 2002, with the review of the Property Stock & Business Agents Act in NSW, buyer's agents remained unregulated. Whilst the activity of acting as a buyer’s agent is mentioned under this Act s48, there was no definition for a buyer’s agent stated. Buyer agents operate in Australia and have been in operation in the United States for over 15 years in some states. Machado (2005) highlights that in NSW there is concern among exclusively-retained buyer agents that the loose, and non-descriptive term buyer’s agent, allows any licensed real estate agent in NSW to act as buyer and selling agent of different property. The role of the buyer’s agent is to source a number of properties for their client and once the client has chosen a property of interest, the broker assists in negotiating the purchase. The buyer’s agent does not provide any investment advice according to Machado (2005).

The REI of NSW (2000:14) define the role of buyer and seller agent. “Buyer’s agents do not compete with selling agents. Their goal is to complete a purchase for a client who is ready to buy - which is of course, just what the selling agent is seeking for their vendor" The merits of using a buyer’s agent are highlighted, as dealing with a fully prepared buyer with finance approved and to assist with exchanging of contracts.

2.5.2 Buyer brokers in property transactions

In the larger and more sophisticated real estate markets in the United States, designated agency seems to have become the preferred policy of real estate brokerage firms. This policy allows the principal broker to designate certain agents as "seller's agents" to the firm. The agent who lists the property for sale is designated as the seller’s agent and all others, in or out of the firm, are considered buyer's agents, (Newsome and Zietz 2001).

Newsome and Zietz (2001) stress that the buyer should be made aware that the seller’s agent is obligated to pass on to the seller any information he / she can obtain that would put the seller in a superior bargaining position. Buyer's agents, in turn, must use the same diligence to obtain information that would put the buyer in a superior bargaining position. Further studies show that under the existing commission-based structure, brokerage commissions may compromise the allegiance of a buyer’s agent for properties in the lower price range.

When both parties to a real estate transaction have separate representation, their net pay offs are shown to be higher and the sale price lower than under traditional brokerage arrangements. The result is dependent on several factors including: market conditions, relative bargaining power of the parties, method of broker compensation and disclosure of the status of the buyer broker (Bajtelsmit & Worzala 1997).

Bajtelsmit & Worzala (1997) report that 50 percent of all law suits instituted against real estate agents in the U.S. involve some aspect of agency disclosure. This fact implies that there may be some problems associated with the agency relationship in real estate transactions. The law in most states holds that the co-operating broker in a fee-splitting commission arrangement is the sub-agent of the listing broker. This implies that the co-operating broker has a fiduciary obligation to the seller in the real estate transaction and does not owe a duty to the buyer.

Bloggs (1998), in reviewing the broker role in the United States, highlighted that the traditional legal relationship resulted in the selling broker usually ended up representing the seller along with the listing broker. Often the "selling broker" would be categorized as a "sub-agent" of the listing broker, having the same legal obligation as the listing broker to obtain the best price and terms for the seller legally permitted. Naturally, this state of affairs was usually satisfactory to the seller, but frequently less so to buyers, if indeed they understood the relationship.

Bloggs (1988) further highlighted that as buyer dissatisfaction and attendant litigation mounted, reforms of the prevailing system were initiated. Florida, like most states, started with simple disclosure requirements, which brokers delivered to the parties, telling them who they represented. Obviously, this was not a solution to the buyer's lack of representation, but it probably did increase buyer understanding of the situation. As more and more buyers gained insight, a demand for brokers representing the buyer worked its way into the marketplace, and as might be expected, greater regulation of the brokerage and agency relationship followed; not only in Florida, but throughout the country. In Florida legislative activity from 1994-1997 is good evidence of this point.

The following Notice of Non-Representation has been adopted in Florida.

> FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE AT FIRST CONTACT TO ALL POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.
>
> You are hereby notified that . . . . (insert name of brokerage firm) and I do not represent you in any capacity. You should not assume that any real estate broker or salesperson represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation. Your signature below acknowledges receipt of this form and does not establish a brokerage relationship.
> [Florida Stat., sect. 275.276 (3)]

Wolfson & Shreiber (1998) define the role of the broker or buyer agent within the real estate community and contend that the use of a buyer's agent by a consumer is not necessarily a bad thing. However, some realtors maintain that the separation of agency into two camps (Buyer's Agents and Seller's Agents) is unnecessary. Traditionalists believe one agent can effectively serve both buyer and seller at the same time, with no adverse effects to either party. Proponents of Dual Agency (the term used to describe the situation where one agent handles both sides of the transaction) argue that this method of representation works effectively, with no one the worse for the arrangement. As long as both sides are aware of the dual agency, they argue, and the professional handling of the transaction is scrupulously fair in his/her treatment of all parties, then one agent working both sides of the fence should not be seen as problematic.

Wolfson & Shreiber (1998) further contend that in the majority of real estate transactions, buyers are better served working with an agent who represents just them, as is the case with an Accredited Buyer's Representative. That way, buyers have the peace of mind of knowing that a true agent-client relationship exists; they have the guarantee that any time they confide in their Buyer's Agent, their remarks remain confidential; and they can rest assured that someone is looking out for their interests (which has to be more comforting than knowing someone is just "being fair" to them).

2.6 Valuing property v valuing the client

The difference between property professionals and investment advisers / financial planners is the requirement of the ‘Know-your-client’ obligation. Agents, Brokers and Valuers are said to be aptly qualified to undertake processes involved in property transactions. The area of providing advice in relation to any investment vehicle, including property, is fast evolving into a separate profession with its own set of qualifications and skills. "The Committee recommends that the regulation of property investment advice, but not of real estate transactions generally, should be a Commonwealth responsibility." (PJCCFS 2005:23).

2.6.1 Know-your-client obligation

Davey (1999) defines a cornerstone of financial planning advice being embedded in the "know your client rule". In order to know a client and their circumstances is also to know their tolerances to risk and how those tolerance levels relate to the various investments that may be recommended to them. What may be considered a basic consideration to assess has led to its apparent interpreted simplicity, accounting for the superficiality of its treatment in the financial services industry to date. In assisting clients making choices that are consistent with their risk tolerances, two assessments need to be made. First, determine the riskiness of available choices and, second, assessing the client's risk tolerances.

Davey (1999) refers to the research on assessing risk tolerance, which shows that the major cause for inaccurate results was due to insufficient questions being asked of the client by their adviser. Multiple questions must cover a range of aspects in order to build a valid client profile. In undertaking a qualitative assessment of a client, the planner needs a system which covers a definition of risk tolerance, a scale upon which risk tolerance can be measured, a questionnaire, a process for determining a score on a scale and a report.

When drawing a comparison between the requirements of a securities adviser and a real estate agent, reference is made to ASIC's Policy 122 on "Know Your Client" obligation. The key issue of this rule is for the adviser to have a reasonable basis for making recommendations to a client, which includes:

a) have regard to the information the securities adviser has about the client's investment objectives, financial situation and particular needs;

b) conduct reasonable investigations about the securities recommended; and

c) prepare their recommendation in light of the previous two considerations.
(ASIC 1997:23)

The test of satisfying s851 under the provisions of Policy Statement 122 which the ASIC will take into account, include:

a) ***Products recommended***

An adviser should have adequate knowledge about the products they recommend. Such information includes prospectuses, annual reports, fund managers information releases and analyses made by specialists.

b) ***Factors concerning securities that should be considered***

When assessing the appropriateness of any investment product, the adviser should consider market and industry risks, economic and political environment, the issuer's record of achievement and the underlying investments and assets.

c) ***Comparable investments***

An adviser should also have adequate knowledge about a reasonable range of other comparable investment products.

In accordance with corporations law and its application to financial advisors, Perry (2001:1) identifies the statutory responsibility of an advisor to their client:

Investors should be satisfied that their advisor knows

a) the products that are recommended
b) how it compares with other products
c) whether the product fits the investors requirements.

When consulting an advisor, investors would expect that the advisor would have carried out adequate investigations and proper research as part of his/her due diligence in recommending an investment. "…under section 851 of the Corporations Law (Know-your-client obligation), financial advisers are required to provide clients with investment advice that is appropriate for their particular needs and objectives" (Perry 2001:1).

In maintaining consistency with investors objectives and ensuring outcomes that match these investment objectives, Perry (2001) identifies the necessity of financial advisers to be able to demonstrate that they have conducted adequate research of comparable products in selecting investments for clients.

2.6.2 Financial planners

In relation to direct property investment, O'Brien & Herman (2002:1) state that “Despite potential downside, there are opportunities for financial planners to recommend good investment opportunities with solid returns, provided these investments are properly understood and supported by strict investment guidelines and rigorous independent research."

Defining sound property advice, O'Brien & Herman (2002) highlight the need for property to be able to generate sufficient capital appreciation over a 10 year period. Also highlighted are the differences in return profile between new and established residential property.
New property has lower maintenance costs, tax advantages and fewer tenancy problems. This is in contrast to established residential property, which they identify the merits being increasing scarcity and higher gains. Qualifying the investor profile of new residential property, the authors draw reference to the lack of time and tax advantages drawing time-poor investors in the highest tax bracket to new residential property. The merits of capital gains are raised with a benchmark average to 8 – 10 percent for Sydney and Melbourne; however, this is not benchmarked against the gains from established property. The importance of high gearing and negative gearing is stressed by them as

being more favourable in the earlier part of one's career whilst earning steady income.

Choice magazine (2003) commissioned a survey of financial plans prepared and undertaken by financial planners. Included in the assets recommended was property investment, both direct and indirect. 124 plans were commissioned; of these, 28 were not provided in writing to the client, 2 plans were ranked very good and 31 ranked good; the balance being either "okay, Border-line Poor or Very Poor". Identified as common weaknesses in financial plans by Choice (2003:14) were,

- Pushbutton plans
- Not Comprehensive
- Investor goals ignored
- Alternatives ignored
- Expensive recommendations
- Sale of existing investments
- Gearing (Borrowing to invest)
- Tax implications ignored
- Diversification
- Inadequate retirement planning
- Insurance not addressed
- Estate planning overlooked
- On-going relationship and its cost

In the context of the new Financial Services Review Legislation, planners will have to improve their practices to comply with rigorous statutory provisions. ASIC will have to monitor this compliance closely.

2.7 Finance and mortgage lending

The lending market for housing has expanded to provide easier access to money for investment in property. The RBA (2003) has listed home equity loans, split-purpose loans and deposit bonds as being innovations that have assisted home investors into the market.

The advent of mortgage originators in the early 1990s has led to a more competitive market for investors who have multiple sources of finance available to them, each which different lending criteria. Over the past decade, Mortgage Originators and Mortgage Brokers have advanced the Australian home lending market. Originators raise funds by issuing securities in the money markets, better known as securitisation. Brokers, help borrowers find and arrange home loans (Productivity Commission 2003).

The increase in household debt has been significant in Australia, compared with international standards. Australia over the past decade, has moved from the lower end of the debt-to-income range to be much closer to the top (Productivity Commission 2003).

2.7.1 Mortgage lender valuations

In an attempt to provide guidance to investors on price to be paid for real estate, Synnott (1999) highlights the emerging trend of banks, with reference to Westpac revealing valuations made on property prior to purchase. In referring to real estate transactions on the Gold Coast, "the value of more than 40 percent of real estate traded there was inflated by property marketers." (p53).

"The Committee recommends that the disclosure of valuations by lending institutions to prospective borrowers be made mandatory." (PJCCFS 2005:47). Further to this, "The Committee recommends that any loans for investment in property which are secured by home equity should be subject to a waivable 14-day cooling-off period." (p49)

The compounding impact of a market moving up makes it easier for values to be supported in subsequent transactions. Key and Nabarro (2004:143) noted "An increased capacity to lend comes at a point when further lending to real estate looks particularly attractive, as projects realised in the early stages of the upswing show high profits and sound loan quality".

2.7.2 Predatory lending

One of the areas of concern to regulators in Australia, following on from the lessons in the United States, is in the area of 'equity stripping' of people's homes, this is achieved through reverse mortgages. Gilber and Reed (2003:3) explain,

> "Complete home ownership is often achieved in the middle to later years of the working life, when the mortgage is paid out. After retirement has commenced and a regular cash inflow has ceased, a reverse mortgage can commence. Over time, this will decrease the level of equity in the house, although the loan is structured so not all the equity is removed."

They established in the United States that reverse mortgages were slow to commence; however, by 1999 more than 38,000 elderly homeowners had taken reverse mortgages. Whilst equity lending through reverse mortgages may be a useful way of funding retirement for some, a number of unconscionable practises have been identified. Smith (2003:450) highlights,

> "There is one breed of predator that doesn't prowl in the jungle. The predatory lender stalks consumers, seeking to seize their homes through high-cost, abusive lending practices. The elderly,

> people in low income brackets and those who are under financial pressure are often the targets" (CNN cited in Smith 2003:449)
> "When Citigroup, the parent of a regulated lender, bought the Associates First Capital Corp. last year, and then were charged with predatory lending by the Justice Department, the company agreed to pay a fine, rather than suffer the bad publicity of a trial. So, Citicorp wrote a cheque for 27 million and was then out of the news and back to business."

In New South Wales, as part of the conveyance process, which entails a mortgage, is the requirement for the conveyancer to explain the mortgage document to the client prior to their signing it.

The role of the licensed conveyancer is itemised under the review of the Conveyancers Act 1995 and identified as follows:
- Preparation and advising on a contract for the sale of land.
- Conduct of the title searches and making enquiries of government departments
- Preparation and advising on mortgage documentation
- Attending to exchange of contracts and settlement procedures
- Preparation and advising on lease documentation
- Preparation and advising on documents ancillary to the conveyance

(Office of Fair Trading NSW 2003:17)

2.8 Mortgage lending valuations

Valuations are integral to mortgage lending, property investment and property development decision-making processes. The importance of valuations and their place in these activities has prompted the Australian Prudential Regulatory Authority (APRA) to undertake a survey of lender valuation practises in 2005. The following material identifies some of the issues associated with valuations and its relationship with mortgage lending.

2.8.1 Valuers and their liability

The issue of liability confronting valuers is no different from other professions. Like other professions, valuers are sometimes victims of their own disregard. "There is hardly any professional man who does not from time to time do that which the courts would castigate as negligent" (Lavers & Spurges 2002:27). Claims against the valuer may fall into two broad categories, those brought about by economic circumstances, particularly where the market has fallen subsequent to the date of valuation which was at the height of an economic period, these are referred to by Connell (1990) as 'waves' of claims. Lavers & Spurges (2002) refer to the second category being those described as routine or 'static element' cases.

In contrast to the legitimate cases against valuers, Lavers & Spurges (2002:27), state "Clients whether investors in property or lenders, incur losses in some of their transactions, through misjudgement, misfortune, and on occasion, over-ambition. They see a claim against the valuer as offering a means to recoup or at least partly offset those losses."
The four causes under which claims are brought against valuers in mortgage valuations, referred to as 'causal themes' are:

1) insufficient time
2) market expertise
3) outdated technical knowledge
4) uncertainty over basis of valuation.

In the role of providing professional valuations to property buyers who may assign the valuation to lending institutions for finance, I & L Securities Pty Ltd v R S Melloy Pty Ltd [2002] QSC 306 is an important case for valuers in understanding their liability and the extent of that liability. McLeod (2003:380) identifies the first issue being "Mere reliance on instructions from borrowers or developers is not reasonable and does not discharge the valuer's duty to make the proper inquiries". The content, rationale and investigative substance that underpin the valuation is essential in arriving at the value. In referring to the valuations in the above case, in addition to negligence they, "were so unreasonable and lacking in substance and so unsupported by the sort of proper investigation required to adequately perform this valuation that it constitutes deceptive and misleading conduct" (p379).

In determining the benefit of valuation advice and the value it adds to banks and lending practices, Hunt (1999) raised the concern of the actual value adding of valuations, when most valuations come back at the purchase price. The issue of concern for the lender is that while the valuation figure may reflect the risk, it does not singularly identify the risks. A point-in-time value implicitly encompasses any risk the valuer may perceive within their valuation figure. This issue is compounded with short-form valuation reports in which the opinion of the valuer is not articulated.

Emphasis is placed on the importance of obtaining advice from professionals in the decision-making processes when purchasing a property. Kincaid & Murdoch (2003) stress the importance of contributory negligence in assessing the responsibilities of the parties to property purchase. Where the lender has engaged a valuer after the event, namely the purchase of the property, the lender is to ensure the price paid for the property is determined on value, not on what the purchaser can afford to pay, or their lending limit.

Referring to the nature of sales evidence in their most comparable and recent form, Rooke (2002) states that they are at variance with a rising market, "Recent experience has shown that current major mortgage lending institutions are applying great pressure for valuers to place greater emphasis on the subject sale" (Rooke 2002:48). The context of this quote is supported by reference to INEZ Investments v Dodd, in which Carmichael J stated with further elaboration, that to ignore the sale of the subject property is potentially to ignore the best evidence of value. A perspective perhaps not understood, or chosen to be ignored, by valuers is highlighted by Smith (2003:454), "if the residential loan production appraiser understood that they were being used by the lending industry as a free form of insurance, fees would be higher to account for the known risks". Mangioni (2006) highlights the transformation of lending institution valuers over the past two decades, who were formerly employed by, but are now contracted to lending institutions. This transformation has been at the peril of the valuation profession as a whole and greatly assisted by its primary master: mortgage lending institutions, as highlighted above by Rooke (2002). Coupled with briefer valuation methods for mortgage lending purposes (APRA 2005) is the reduction in valuer development, knowledge and skill in the craft of property valuation and the potential for residential valuation to evolve into a more complete and rounded profession. It cannot be said that a valuer engages in the act or art of property valuation by providing a point-in-time value of a property that has just transacted in which the primary objective of the valuer is to confirm the purchase price as a property's value.

In determining the potential for conflict, where lenders allow borrowers any input in the valuation process, Crosby (2000) refers to *Banque Bruxelles Lambert SA v Eagle Star Insurance Co [1995] 1 EGLR 129,* "The research issue is whether there is enough evidence of abuse in this process to prove that it impacts adversely on the efficiency of the lending process" (p5). The example used is of the borrower or their broker seeking 'armchair valuations' from a succession of valuers and submitting the highest valuation to the lender. To elaborate on this proposition, the practise of obtaining 'armchair valuations' is not necessarily confined to the borrower or their broker, as the lender may also choose to do the same in writing a loan. By default, the valuer who allows his/her valuation to be assigned to the lender by the borrower is effectively assigning his/her valuation which constitutes an insurance policy to the lender.

A survey of 3000 valuers undertaken by the API (2001) revealed details of claims made against valuers. There were 13 claims made against valuers for residential valuations primarily undertaken for mortgage lending, which represents 37 percent of all claims against valuers being for residential valuations.

2.8.2 Analysis of cases against the valuer

In advocating the case for valuers to take a greater role in providing valuation advice to purchasers as part of the property purchase process, examination of the profession and cases against valuers is warranted.

The following three cases are important in analysing and assessing the value of residential property valuations. Each case has four common themes, these being:

1) Each property valued is a stand-alone residential house.
2) In each case the properties were being valued for financing purposes.
3) There were no sales over any of the properties being valued as at or close to the date of the valuation, to guide the valuer.
4) Sales of property used as evidence to the subject property were not comparable and in each case there was a lack of comparable sales.

An overview of each case, the arguments of each side and judgements are as follows:

Trade Credits Limited v. Ballieu Knight Frank (NSW) Pty Ltd (1985) Supreme Court NSW

Overview

The Plaintiff sued the defendant valuer on the basis of over valuation of a residential property in Abbotsford Sydney, which was used as security for a business venture which had failed. The property was valued at $850,000 in December 1981. The plaintiff's first expert valuer valued it at $680,000 during 1981 and again at the end of 1981 at a figure of $600,000. The plaintiffs other expert valuers valued the subject property at $575,000 and $550,000 respectively at the end of 1981. Each of the plaintiff and defendant valuations was a retrospective valuation.

Case brought against the valuer.

- The Plaintiff wished to lend a maximum of 80 percent of the value of the property.
- A lack of comparable sales evidence existed at the date of valuation and the valuer relied heavily on a summation method of valuation.
- The two sales that were used were superior to the subject and inadequately discounted by the valuer.
- The defendant valuer was carried away by the unique quality of the property.
- The valuer failed to consider other sales of non-waterfront property, or property of lower value to the sale relied upon.
- In using the summation method of valuation, the valuer failed to distinguish the difference between cost and value of the improvements.

Judgment summary

The expert valuers who were called gave evidence as to the acceptable margins of error which ranged between 5 and 15 percent. None of the valuers regarded 22 percent as an acceptable margin of error. In attempting to determine the value arrived at by the defendant valuer, the judge stated, “I have no doubt there was in this case gross overvaluation, and one looks to see whether or not there is an explanation of it,” (Clark J 1985:225). In conclusion, the judge placed most emphasis on the second valuation of the subject property conducted at the end of 1981, as the other two experts called by the plaintiff had not inspected the property and had the benefit of hindsight. As at the date of valuation the judge, Clark, found the value of the subject property to lie in the range of $630,000 and $650,000. The plaintiff valuer was found to have been negligent in determining the value at the figure of $850,000.

Ta Ho Ma Pty Ltd v Allen [1999] NSWCA 202 (28 June 1999)

Overview

This case was an appeal by the plaintiff against the decision in the Supreme Court of New South Wales. A valuation was undertaken by the defendant valuer of a residential property in Dural for mortgage valuation purposes. The valuation was found to be negligent in which the property was valued at $565,000 in November 1992. Some nine months after this date, money was lent on the strength of this valuation the lender whilst aware of the valuation, had not sighted it. In October 1992, the property had been submitted to auction, but did not sell and was passed in without a bid, with the reserve price being $485,000. Another valuer who gave evidence in this matter testified that the property at the time of auction was worth in the region of $400,000.

Case brought against the valuer.

- The property had been overvalued and the valuation made negligently.
- The valuation was made for the mortgagor; however, the valuer was aware that it would be relied upon by a potential mortgagee.
- The valuation prepared by the valuer could be relied upon nine months after the date of valuation and was not a matter for rigid definition.

- The appellant imposed no limitation as to time.
- That the market at worst has not increased, but also had not decreased.

Judgment summary

On appeal from the Supreme Court of New South Wales, Hannley JA, Giles JA and Shepard AJA agreed that the appeal be dismissed. Whilst it had been proven that the valuation had been made in excess of the market value as at the date of valuation, Shepard AJA stated at paragraph 105, "In my opinion the appellant was not justified in solely relying upon the valuation as it was without at least approaching the respondent to ask whether the value in the valuation remained applicable…but in the light of all that I have said about the facts and circumstances of the case by the time nine months had elapsed the appellant was not reasonably justified in relying on the valuation at least without checking the figure with the respondent."

MGICA Ltd v Kenny & Good Pty Ltd & Anor [1996] 766 FCA

Overview

A valuation of a waterfront property was undertaken in Hunters Hill for mortgage insurance purposes in 1990. Based on a valuation of $5,500,000, being "value on completion" basis, and $5,350,000 "as is" basis. Insurance was provided on a LVR of 65 percent indemnifying the lender for $3,575,000. The value of the property as at the date of valuation was determined by the court to be $4m, a difference of 27 percent. The property was subsequently contracted to sell for $2,650,000 in January 1992. A number of valuations of the subject property were undertaken subsequent to the date of valuation of the respondent, in which the court recognizes the benefit of hindsight that these valuations reflected.

Valuation undertaken

	Date of Valn	Value As Is	On Completion
Respondent	**18/4/90**	**$5,350,000**	**$5,500,000**
Egan National Valuers	18/4/90		$3,900,000
L.J. Hooker (NSW)	18/4/90	$3,450,000	
Jones Lang Wootton	23/2/90	$4,000,000	$4,200,000
Landsbury's (Aust)	18/4/90		$4,500,000

Details of claim brought against the respondents' upon include:

(a) Failing to have regard for the existence of a right of way.

(b) Failing to have proper or any regard to available 'comparable sales' and having regard to so-called 'sales' which were not truly comparable.

(c) Failing to have regard to the fact that electronic gates and surveillance cameras said to have been installed were not in fact installed.

(d) Failing to have regard or sufficient regard for the fact that the general design and style of the house was not of a standard to be expected of a residence of the value ascribed to it by the respondents.

(e) Ascribing to the buildings constructed on the land, a value greater than could reasonably be ascribed to them. The over estimation of the value of the buildings appears to be partly attributable to an incorrect calculation of the floor area of the buildings and partly to the allocation of an excessive rate per square metre for the value of the building.

(f) Failing to have regard for the fact that improvements such as the pontoon and jetty fronting the Land Cove River which were included in the property valued, should not have been so included for the reason that there was no title to them and no permissive occupancy in respect of them had been granted.

(g) Failing to apply proper principles of valuation in reaching a valuation for the property."

Judgment summary

The respondents breached the duty of care and skill owed to MGICA and in the result provided an “as completed” valuation of $5,500,000 whereas the true value of the property was only of the order of $3,900,000 to $4,000,000. The respondents contravened s 52 of the Trade Practices Act and s 42 of the Fair Trading Act. The respondents are liable to the applicant for all the loss which it suffered from having entered into the transaction, not only for that represented by the amount of difference between the valuation supplied and the true value. The respondent should be ordered to pay damages of $1,977,513.67.

Of particular note in the above three cases is that each of the valuations was undertaken in slump years, which further compounded the difficulty in proving the values with sales evidence, which were scarce and did not directly support the values written.

2.8.3 Australian prudential regulation authority – A survey of residential valuation practices

A survey of mortgage lending valuation practices was conducted by APRA. 96 authorised deposit-taking institutions (ADIs) and eight lender mortgage insurers (LMIs) were surveyed. Not one valuation firm or valuer was surveyed or included in the survey. Of the eight LMIs surveyed, six were owned by ADIs. It is apparent that ADIs have hedged themselves by moving into reinsurance of their risk book.

"ADIs and LMIs should not be using alternative valuation methodologies as a complete replacement for full valuations, especially for high LVR loans" (APRA 2005:6).

Some of the strengths identified with the current risk management strategies of ADIs and LMIs include:

- valuer panels tend to be fairly stable
- many institutions have a Service Level Agreement with their valuers
- disputes between ADIs, LMIs and individual valuers rarely become litigious, although there is no guarantee that this would remain the case in a property downturn and less benign credit environment.

(APRA 2005:6)

The pressure on ADIs to reduce valuation costs has been noted by APRA (2005). This result could see even fewer properties being valued.

The term 'alternate valuation methodologies' applies to the following valuations:

- restricted (or kerbside)
- electronic
- contract of sale; and
- Valuer-General's assessments.

(APRA 2005)

According to APRA (2005), one of the most significant changes over the past 3 years by ADIs is the use of the contract of sale as a valuation source. In addition, some ADIs use contacts of sale and restricted valuations.

The three most significant issues raised by LMIs are the use of non-comparable properties as sales, zoning or assessment of condition of the subject property and marketability risk, which has increased, (APRA 2005).

A number of ADIs do not have a formal valuer appointment process and only 39 per cent of surveyed entities have a service agreement with their valuers. The 61 per cent of valuers who do not have service agreements are in breach of the Valuers Regulation 2003 (NSW) Rules of Conduct. The service agreement defines the parameters of the valuer's appointment and protects both sides. Over the 12 month period preceding the survey, no valuer was found to be unacceptable, with seven claims made against valuers over the survey period of July 2003 to June 2004.

2.8.4 Valuer independence

The concern levelled at the independence of property valuers is illustrated by Wolverton & Wolverton (1999), who asserts that in the United States, similar to the current mortgage market in Australia, draft reports are sent to clients for review. If the draft report does not meet the investment manager's needs, the appraiser is given the option of terminating the contract for a partial fee, or adjusting the value and completing the assignment for the full fee. Wolverton *et al* (1999:94) discuss the ramifications of this action;

> "Terminating the contract may also result in the removal of the appraiser's firm from the investment managers approved roster of appraisers, effectively costing the firm a client. So the appraiser is forced to choose either to knowingly violate an ethical rule in order to satisfy a client of the firm, or to honour the ethical code and risk losing a client."

The routine practise of disclosing the sale price of a property being appraised is raised as an issue (Wolverton et al 1999). In referring to this, Mundy (1992:494) suggested that the reliance on the normative appraisal process will facilitate separation of an appraiser's judgement. Empirical research undertaken by Gallimore and Wolverton, cited in Wolverton et al (1999), demonstrates appraisers are unable to ignore biases that sale price knowledge generates when solving valuation problems. Gallimore (in Black et al 2003) found that valuers may inappropriately give greatest weight to the most recently considered information. Further to this finding was that expert valuers indicated that they make early, preliminary judgements and then seek evidence in support of these opinions.

2.9 Concepts of value

The definition of market value may initially put into context the role of the valuer in its application to property. The debate is whether the valuer determines market value by reference to the market as at a point in time, namely the present or date of valuation, or in fact contributes to the performance of the market by reference to where it is heading.

2.9.1 Market value

Market value is defined by the International Assets Valuation Standards Committee, which has been adopted by the API (2000):

> "…the estimated amount for which a property should exchange on the date of valuation between a willing buyer and willing seller in an arm's length transaction after proper marketing wherein the parties have each acted knowledgeably, prudently and without compulsion."

The definition of market value, whilst defined by professional property bodies, is often misinterpreted by valuers. Albritton (1994:7) states "The prevailing definition of market value evolved through a series of definitions which were acceptable in the various courts of the land".

> "Imprecision of language, particularly in an international community, can and does lead to misrepresentations and misunderstandings. This is particularly a problem when words commonly used in a language also have specific meaning within

> a given discipline. That is the case with the terms price, cost, market and value as they are used in the valuation discipline" (API 2004:39).

The interpretation and modification of market value in recent times has been adopted by valuers for alternate application and for various market phenomena. The complexity of using valuation principles to determine market value for a variety of purposes and then attempting to ensure that the value determined for those purposes conforms to the definition of market value has led to much confusion of the definition, rather than the purpose and circumstance to which values have been derived for (Albritton 1994).

There are several considerations for the valuer when determining market value of property. Albritton (1994) discusses these considerations which include:

1) Whether market value definition assumes reasonable exposure commencing at the appraisal date or having already occurred at that date.
2) If the property were to be sold, if it were to be sold for cash or vendor finance.
3) If finance were to be used to purchase the property, the terms and conditions of that finance.
4) The marketing strategy for the property and competitive environment in which it is offered.
5) The terms and conditions of the contract of sale under which the property would be offered.

Questions about the valuation profession and its adequacy have been raised in light of differences in valuation opinions of the same property (Bond 1993). Wendt notes "a cardinal principle of appraisal theory is that an estimate of value must first be predicated upon a statement of purpose" (cited in Bond 1993), and adds that the valuer and client need to be clear on the valuation and what it means, once this is established, the appropriate method of valuation may be adopted.

2.9.2 Sales evidence

The formulation of 'market value theory' and deriving of market value of property is largely predicated on evidence that supports the market value assigned by the valuer. Without evidence, the valuer's opinion is no better informed than the lay person. This assertion is highlighted in Reading v. The Valuer General (1923), 6 L.G.R. 132, in which Pike, J. stated:

> Every expert is entitled, if he sees fit, to ascertain the market value – and that is what I have to ascertain here – to rest on his own opinion apart entirely from any market transactions, but if he does so he is liable to be met by three things:
>
> 1. The opinions of other people.
> 2. Values based on sales; and
> 3. Any previous opinion that he himself might have expressed as regard to values.
>
> Mr….., like all of us, was not born with an opinion of land values. (Rost & Collins 1984:86)

The importance of sale and market evidence and the time required in sourcing it has been noted by Albritton (1994:3) "Much of the fee appraiser's time and effort is expended in data search and analysis. The validity of an appraisal is directly related to the quality of data and the appraiser's qualifications and experience, all of which are necessary to analyse the data properly in relation to the specific appraisal subject." The abundance of sales evidence is important to the valuation process and the degree and articulation of those sales is even more crucial, particularly when the sample of sales is few and adds (p17) "One sale does not usually establish the market, but several sales of similar properties can be strong indicators of diverse market attitudes".

In dealing with the accuracy of property transaction information, including residential property, the issue of increased confidentiality has been highlighted by Reed & Robinson (2003:4):

> "Property transactions take place in a market in which prices are set in a climate of confidentiality, negotiations are cloaked in secrecy citing a requirement for a *commercial-in-confidence embargo*, information is not instantly available from a central repository, inaccuracies abound in the recording of such information as is available".

This issue and the timeliness of sales evidence has also been noted by the RBA (2004). A key factor impacting on the availability of sales evidence is attributed to the lack of a centralised system for the settlement of transactions. Due to the heterogeneous nature of housing, the composition of sale samples from one reporting period to another by comparison of median and average prices, coupled with varying numbers of sales in these periods may show change, when in fact the price for a specific type of house has not changed. In dealing with the timeliness of property transaction information, the RBA (2004) have considered the alternatives of agents reporting the sale price once a contract price is agreed, or lenders providing information once they have agreed to provide funds for purchase.

2.9.3 Sales analysis

Questioning buyer behaviour and the valuer’s ability to interpret this when valuing property using comparable sales analysis is the step that follows on from the selection of the sales sample to be analysed (Daly et al 2003). Part of the sales analysis process in the adjustment of sales by valuers is made through interpreting buyer behaviour (Daly et al 2003).

In saying this, a preliminary requisite in the sales analysis process is the selection of the most suitable sales. This maybe difficult, as determining the most suitable sales may require an element of buyer behaviour analysis. Gallimore (in Black et al. 2003) found that valuers may inappropriately give greatest weight to the most recently considered information. Further to this was the finding expert valuers indicated that they make early, preliminary judgements and then seek evidence in support of these opinions.

In contrast to the comparability of property, Hunt (1998) looks at the comparability of the sale, which encompasses additional information including: the special conditions of the sale, vendor/purchaser/agent motive, method of sale and market dynamics.

> “The issue of outdated sales information and the timeliness of valuers obtaining sales data, is said to attribute to valuers determining "where the market was rather than where the market is. This leads to criticism of 'over-valuation' in falling markets and 'conservatism' in rising markets”, (Hunt 1998:106).

Determining the performance of a particular market category, additional indicators need to be considered by the valuer, Hunt (1998:107) includes:

1) development and building approvals
2) take-up rates
3) availability and cost of finance
4) vacancy rates
5) movement in rental prices
6) movement in building costs
7) proposed changes in zoning or planning
8) changes to how property is bought and sold
9) demographic shifts

10) proposals for altering traffic flow patterns
11) shifts in market sentiment

Mannell (2005) discusses the use of sales grids, which entails adjusting each attribute of each sale against the corresponding attribute of the property being valued. Sales grids have been dubbed by minimalists, as a method that would not be used by buyers and that method may compound error upon error. However, a subconscious process has been identified as a tool used by buyers being a less formal approach to sales gridding. Mannell (p368) states "One thing for certain, there is no right or wrong way to perform a comparable sales analysis". Whilst guidelines and industry standards are set, valuation practice is seen as one that is evolving. "The Uniform Standards of Professional Appraisal Practice (USPAP), being the generally accepted professional practice standards in the United States, recognises the inability of governance bodies to set exacting standards".

2.9.4 Sale price and market value

One of the key distinctions drawn between value and price is best highlighted by Albritton (1994) where an appraiser / valuer's estimate of value varies from and in particular is lower than the contract price, "The monetary sum paid for real property is customarily reported as price and represents fact. Conversely, value is always expressed as an opinion or estimate" (p16).

What appears at face value to be the sale price of a property is a façade for a variety of incentives and benefits that are not readily distinguishable from the sale price. It has been difficult enough for valuers to determine the value of property in the 'seminar market' due to the potential inclusions that are not made known to them, however, are matters they need to be aware of. These include: rent guarantees, furniture packages, low deposits, cash rebates and vendor finance, (Preston *et al* 1998). With this in mind, if difficulty exists for valuers in determining market value, the issue is surely compounded for the investor who does not have the aid of a valuation.

The issue of two-tier marketing has brought the role of the valuer to the forefront, with their advice being sought by the purchaser prior to sale rather than their price being confirmed by valuers through finance providers after the purchase. In response to this, Heriott (2001:684) adds "The challenge facing responsible valuers is quite evident, we must continue to live up to the trust the government and the people are putting in us". This is despite Rooke's (2002) analysis, discussed above (see p 49-50), which indicated recent experience showing that current major mortgage lending institutions are applying pressure for valuers to place greater emphasis on the subject sale.

In the main, most valuations remain uncontested. This in itself does not confirm that writing value at the purchase price is evidence of value. Of concern for the investor and the valuer, who is to support the purchase price of the property in their valuation, is knowing exactly when a rising market has peaked and when transactions after that peak occur cannot be supported, not by sales evidence, but by virtue of the fact that the market had peaked, or in fact commenced to decline (Key & Nabarro 2004). "On average, all loans issued from 1987 to 1990 would have been in technical default - LTV's of more than 100 per cent - at some point in their life" (Key & Nabarro 2004:142).

2.9.5 Sale price v market value – A case review

Since the deliberation in Inez Investments Pty Ltd v. J.L. Dodd (1979) Supreme Court (unreported), the use of the purchase price has been suggested to represent the best evidence of value. The following two cases, which includes this case, is a critique of the proposition that the sale price of a property is in fact the best evidence of value.

Inez Investments Pty Ltd v. J.L. Dodd 1979 SCNSW 5565 of 1976

Overview

Valuations of two adjoining residential sites in Port Macquarie were undertaken by a Dodd valuer in 1974. Each property was valued at $72,000, with the total valuation of the property being a development site being $144,000. The valuation had regard to development approval of each site granted in 1973. The approval granted 9 x 2 bedroom units and 3 x 3 bedroom units on each site. The valuation equated to $6,000 per approved strata unit site which related to comparable sales. The subject sites at the time the valuation was being undertaken were in the process of being sold to Inez Investments Pty Ltd for a contract price of $100,000. This figure was available information for the valuer to consider.

Case brought against the valuer.

- Since the default by D. U. Walton (Guarantor for Alston Enterprises Pty Ltd) the properties were found not to be worth $144,000 at the date of valuation.
- The said properties were grossly overvalued
- The said valuation failed to have any or sufficient regard for the sale of comparable properties in the area.

- The said valuation failed to have any or any sufficient regard to the fact that the said Donald Utrick Walton (Alston Enterprises Pty Ltd) was purchasing the property for $100,000.

Key evidence presented.

- In cross examination of the first valuer it was revealed that he based his opinion of value of $100,000 solely on the purchase price of the subject property itself.
- The second valuer, under cross examination, stated that the subject property at the date of valuation was $115,000, however he stated that the figure of $144,000 was not one he could substantiate, "but another valuer using evidence which he thought was comparable, perhaps could".
- The expert valuer for the respondent (Dodd) based his assessment of value on a nearby sale of a similar site for $54,000 which showed $6,000 / unit site. His valuation of the subject land was $138,000.
- Dodd chose not to seek out the purchase price of the subject, as in his mind it was his task to determine the value of the property by reference to other sales, not to confirm the purchase price as value.

Judgment

Carmichael J determined the value of the property in the order of $120,000 and awarded $25,155.74 to the Plaintiff plus interest on that sum. In reaching this verdict, the judge considered a number of cases and precedents. The issue of the relevance of the sale over the subject property being valued was considered and issues relating to potential conflicts that might have existed in relation to the sale itself were discussed by Carmichael J:

> "I conclude therefore that the prime matter for investigation when a valuation is sought is to ascertain whether there is a current contract for sale of the property and, if so, to make an analysis of

> that sale to see how it complies with the test of value as laid down in Spencer's case. Failure to carry out these functions is to risk ignoring the best evidence of value. That was a risk the defendant deliberately took in this case and in my opinion he thereby failed in his duty as a valuer."

In contrast to the above case, the following case demonstrates the role of the valuer in determining if the price paid for a property is market value and debunks the proposition that the purchase price of a property is the best evidence of value.

ACCC v Oceanna Commercial Pty Ltd [2003] FCA 1516

Overview

This case involved the sale of residential units at the Gold Coast in the years 1997 and 1998. The case was bought about by the Australian Competition & Consumer Tribunal against thirteen parties referred to as respondents, of which the third respondent, the Commonwealth Bank of Australia (CBA) and the case bought against them under the Trade Practices Act 1974 is of relevance. The Gleesons purchased a property on the Gold Coast for a sum of $164,900. The CBA undertook a valuation of the property which showed the market value to be approximately $100,000. The Gleesons tendered additional security to secure the loan over the property as well as other loans. The bank did not disclose the valuation to the Gleesons and proceeded with the loans. (This case has been presented in full as a case study in the next chapter and is only mentioned here as a juxtaposition to the previous case.)

2.9.6 Two-tier markets, valuations and the future

The advent of and identification of two-tier markets is something that the valuer will need to live with as part of their role in analysing the market and transactions. This will entail the valuer knowing whether they are valuing property transacting in either the two-tier market or not. Preston *et al* (1998:75) state "At the current time there are two distinct markets which operate within the Gold Coast area and these include: (a) the market controlled by specialist sales companies who do not operate under normal REI Queensland Commission guidelines, and (b) the second market being those sales made under traditional guidelines”.

It has been difficult enough for valuers to determine the value of property in the 'seminar market' due to the potential inclusions that are not made known to valuers, however, these are matters they need to be aware of. As highlighted above these include: rent guarantees, furniture packages, low deposits, cash rebates and vendor finance.

The provision of more information to purchasers will not substitute the role of the valuer. The potential for valuers to play the more critical role in the analysis and interpretation of evidence will become their forte. This has been articulated by Endsley & Motta (2003:593-4) who state:

> "The democratisation of information will continue apace, and more and more data will be available from disparate sources to more and more people. Successful valuers of the future will not be information gathers, but information arbiters"
>
> "Just as the invention of laser-and magnetic-imaging techniques and the discovery of new medicines have not eliminated the need for medical doctors, the future is bright for those valuers willing to embrace new technologies and expand the scope of their diagnoses." … "Market analysis is the art of real estate valuation that cannot be duplicated by the science of statistics"

In pointing out the benefits of alternate valuation models, Automated Valuation Systems has been flagged as a potential system which allows the assimilation of a larger number of sales to be analysed in the valuation process. "Automated Valuation Systems will allow appraisers to spend less time collecting data and doing repetitive calculations and spend more time bringing their judgements and experiences to bear on the valuation process. AVMs will not replace, but rather enhance the work product of the appraiser" (Greer *et al* 2001:636). In an information-rich society, the process of data mining is part of the science of determining value.

Gilbertson (2002:11) states "Data mining is part of the science. But the client is willing to pay for the interpretation of the data to determine an opinion of value, which can be relied upon. The interpretation is the art" and adds (p12) "Imagine a photograph of a ball in flight. Is it going up or going down? That is what the client wants to know. He would really like to know where that ball will be after an agreed period of time".

Whilst the future for valuers may be defined by the former comments, the method in which valuation information is imparted to clients has been raised. Newell (1999:607) found the weaknesses in valuation reports as surveyed are:

1) Failure to understand complexities and market position of a particular project
2) Inadequate market analysis
3) Failure to comment on likely market trends
4) Lack of details and discussion of analytical aspects
5) Limitations on assumptions and qualifications of valuation report
6) Limited use of comparables
7) Too much reliance on historic aspects of market performance

The imperative for valuers to establish their independence as a profession is fast approaching. Hoyt *et al* (2003:30)"…the credibility of valuers and their usefulness to society is based around the expectation that they will observe certain professional behaviours such as independence and competency and not succumb to pressure such as advocacy and conflicts of interest".

Chapter 3 - Conceptual Framework and Case Study

3.0 Introduction

This chapter comprises a framework of two models which illuminate the issues to be addressed and answered in the thesis question. To put these issues into context, a case study has been incorporated in the second part of this chapter. The case study is a review of a court case that demonstrates the options available to the residential property investor when determining the purchase price of an investment property.

3.1 Conceptual framework

The conceptual framework demonstrates the questions to be asked and issues to be addressed in this thesis. There are two frameworks used: one, a macro view of the property investment process; the second, a framework addressing the specific thesis question that results from the property purchase process.

Framework Model 1 articulates the relationships between the parties to the sale / purchase of the property. One particular item for identification is the '**divide of independence**'. This point addresses one of the contributory factors which have led to the review of property investment advising activities by Government. In essence, it is the absence of the divide of independence that is of concern and a factor that many novice property investors are unable to grasp. When considering whether the regulation of property investment advice is necessary, the recognition of the divide of independence and the lack of understanding that this advice is a commodity that also needs to be paid for is evident. The issue highlighted in Framework Model 2, relates to valuation advice and when and from whom this advice is best sought. As will be shown in this model, property being lent against requires a valuation by the lender for the purposes of confirming the relativity of purchase price to value.

3.1.1 Model 1 – Marketer and investor relationship

Developers engage a mix of in-house marketers, financial planners and licensed agents to sell property (on completion and in some cases, off the plan). The MCCA (2004:16) state "property marketers have been primarily concerned to stimulate sales of real estate, especially of units in newly built or (more commonly) planned CBD apartment developments in, in particular, Melbourne, Sydney, Brisbane and Perth". In some circumstances, the developer has in-house financiers and solicitors / conveyancers, which the purchaser may be compelled to use, ASIC (2000). In other circumstances, the developer refers the purchaser to a panel of these professionals, who are promoted as being independent of the developer. In either case, these professionals are referred to as passive parties.

In each case, the in-house marketer, financial planner and agent are engaged and remunerated by the developer. These parties have no fiduciary obligation to the purchaser. In each case these parties act to sell property to the purchaser, using a variety of methods which include selling the merits of negative gearing, projected capital gains and the benefits of depreciation allowances. In some circumstances, valuations are provided by the developer, with some developers not permitting independent valuations to be undertaken by the purchaser.

The divide of independence in Model 1 (p76), demonstrates the importance of purchasers engaging and paying for professional advice independent of the developer and their agents. The risks for the developer associated with the purchaser obtaining independent advice are:

1) The advice provided by the independent professional may be that the property is not suitable for a number of reasons.
2) The asking / selling price is too high.
3) In the event of money paid by a prospective purchaser for advice in relation to 1) and 2) above, the advice may lead the purchaser not to purchase the property, or not purchase the property at the asking price, which may lead to the property not being sold to them.

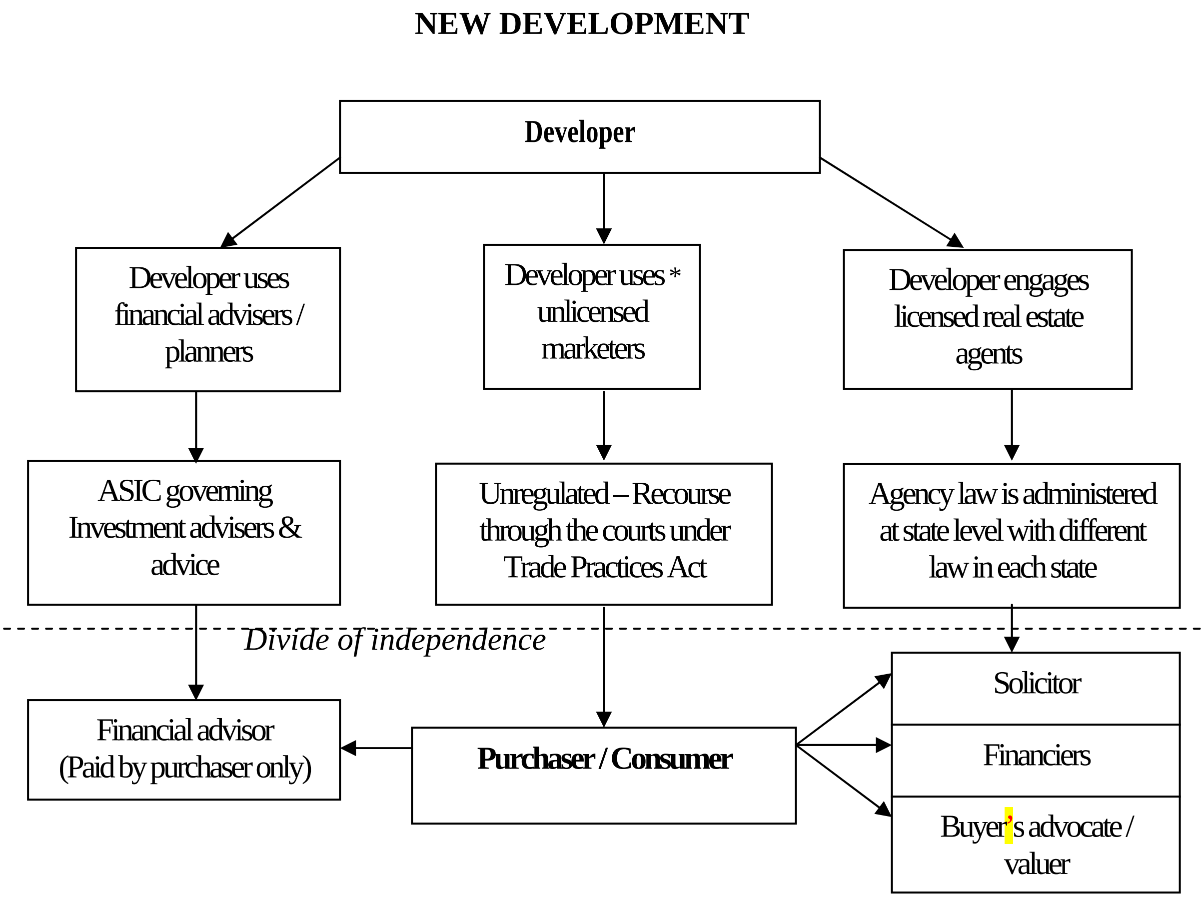
The merits of an informed investor may mean that the investor is unable to purchase the property as less-informed investors may proceed to purchase the property at a higher price. An issue of concern to the prospective purchaser seeking independent advice is that the advice being paid for is not seen by them as assisting them, as it has not resulted in the purchase a particular property. This latter point will be covered in greater detail in chapter 4.

The second point of concern is that some prospective investors innately feel satisfied that the process they have undertaken in speaking to the developer's selling agent, planner or marketer meets their understanding or interpretation of a due diligence investigation. Their understanding of the process of developing independent reliable advice is less evolved or non-existent, compared to more experienced property investors. In these cases the merits of the divide of independence in the investment / purchase process does not exist, or is unknown to them.

It is important that the valuer, given the potential gap that may exist in his or her role in assisting to determine value, understands how the purchase price of property has been determined by previous purchasers in the subject and surrounding development. The body of sales evidence relied upon by the valuer remains unexamined and is accepted prima facie that the sale has transacted and settled and by virtue of this fact, it becomes pseudo evidence. This is particularly the case where the valuer establishes correlation between and among existing sales evidence. The issue to be addressed by the valuer, particularly in the case of the present scenario, is whether a considerable body of sales evidence may be considered ratified or corrupt based on the premise or basis that a similar price has been paid by more than one purchaser in the same building, complex or geographic location.

One of the gaps associated in the valuation process is the determination of how investors have established the purchase price of property, which is hidden within the sale evidence, analysis and valuation process. In addition to this issue, consideration will be given to the quality and reliability of sales evidence and the processes involved in collecting this evidence that largely serves the valuation profession and their decision making processes.

Figure 3.1: - Model 1 Marketer and Investor Relationship



3.2 Model 2 – Traditional and alternate purchase process

A property selected and determined to be a good investment raises a number of questions that would need to be satisfied in making that determination. Implicit in answering these questions, must be the consideration of the price at which the property should be purchased. For some novice investors, this process is usually addressed after the purchase price has been determined between the buyer and seller.

On the basis of the property being purchased having low vacancy rates, good capital gain prospects and annual rental returns in line with investor expectations, consideration of the relativity of purchase price and value must be or should be considered. In contrast to this point, has

* In the past, operated unregulated in NSW, Vic,Qld & WA.

a premium been factored into the purchase price for any reason not understood by the purchaser?

The current practise in the property purchase and finance process is for the lending institution to engage a panel valuer to answer the above later question after the purchase price has been formulated, but before money is lent. It therefore becomes the role of the valuer to confirm the value after the purchase price has been determined between buyer and seller. In theory, if the valuer is unable to substantiate the purchase price agreed on between the purchaser and developer as market value, the lender would not finance the purchase, or would require the purchaser to provide additional collateral to support the loan. This is demonstrated as follows:

Purchase Price:	$800,000
Valuation:	$750,000
Loan Value Ratio:	90%
Maximum Loan Amount:	$675,000 (Based on valuation)
	$720,000 (Based on Purchase Price)

In this case, the purchaser must provide a deposit of $125,000 plus acquisition costs. In reality, the lender may seek a second valuation to support purchase price before seeking additional collateral.

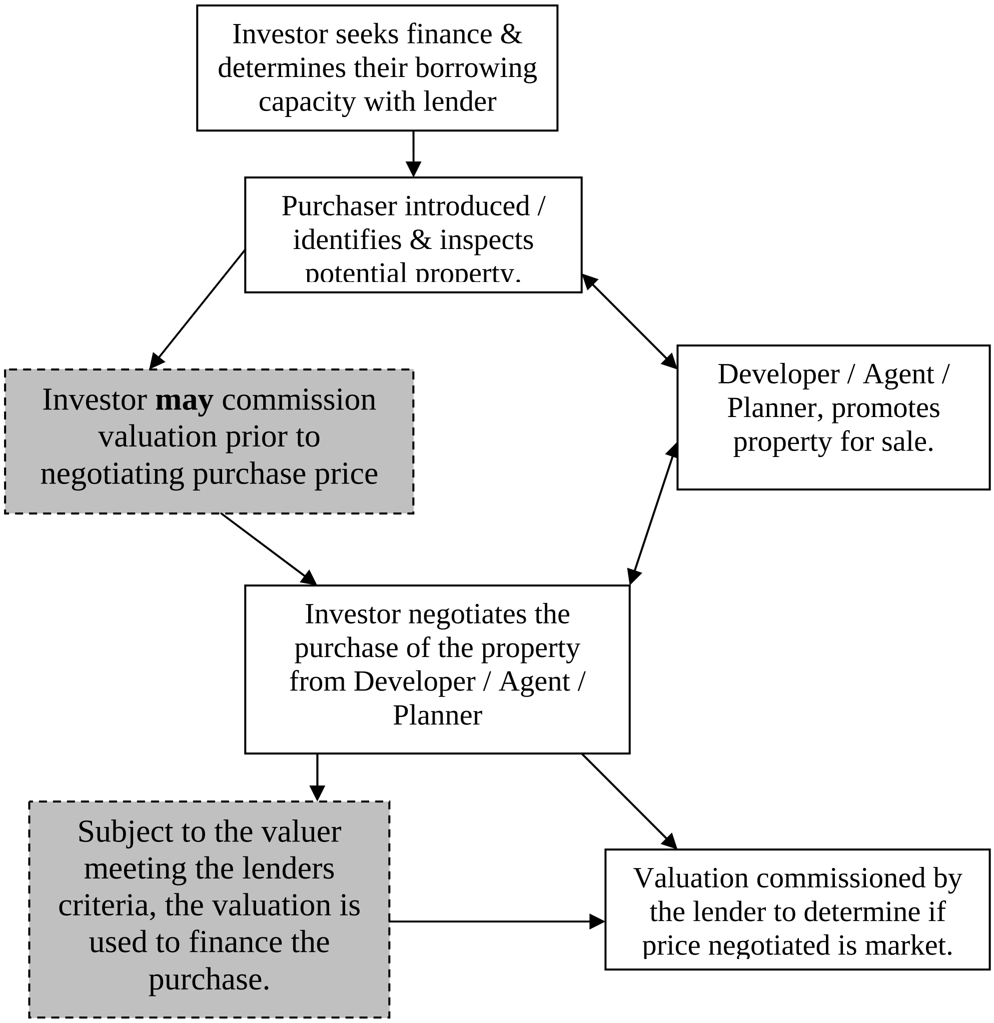
In Model 2, the clear text boxes highlight the process traditionally engaged by purchasers in the property purchase process. The shaded text boxes highlight the alternative approach that may be adopted by the purchaser. Purchasers have always had and continue to have the option to engage a valuer prior to purchase; however, this has been the exception rather than the rule. In contrast to this, the validity and importance of the valuation is understood by the lender and is evident by the fact that over 70 percent of loans on residential investment property in Australia require some form of valuation to be undertaken by the lender to confirm value, (APRA 2005).

In many circumstances, purchasers are *lay valuers* in determining the price they pay for a property. The purchaser, after committing to the purchase by exchange of contracts, informs the lender of the purchase price agreed on. The lender advises their valuer of the purchase price and instructs the valuer to provide them with a valuation of the property. In cases involving new property development, some developers or their agents, have lenders available who engage their panel valuers and legal representatives for purchasers to use in assisting them expedite the process. These parties are referred to as passive advisers, as they have been introduced to the purchaser by the developer / selling agent, but are paid for by the purchaser. However, purchasers are not compelled to use passive advisers in all cases.

In the circumstances where a valuer is engaged by the purchaser, their valuation may not be accepted by the lender if that valuer is not on the lender's panel of valuers. In cases where the bank engages the valuer from their panel to confirm the purchase price as value, this valuation has not traditionally been disclosed by the lender to the borrower / investor. It may be argued by lenders that they are not in the business of providing valuation advice to the purchaser, this is despite the fact that the borrower pays for the valuation.

The question to be asked, resulting from model 2, is why lenders undertake valuations of property to be financed and why overwhelmingly purchasers do not undertake valuations of the same property being purchased prior to purchase. This question raises a further question to be answered, that is, 'how do purchasers determine the price they pay for investment property?' This question is beyond the scope of this work, however it warrants future investigation.

Figure 3.2: Model 2 Traditional and alternate purchase process



3.3 Case study

The following case study is a court case resulting from the overpayment for two properties by the applicant, whose case was presented by the Australian Consumer and Competition Commission (ACCC) against the developer's marketing agent and the applicant's finance provider, the Commonwealth Bank. In essence, the applicant litigated against their lender for not disclosing to them that the valuation undertaken by the lender was considerably lower than the price they had paid for the two properties. The findings and conclusion reached by the court and the reasons provided by the judge contribute towards answering the questions raised in this thesis.

3.3.1 Australian Competition & Consumer Commission v Oceanna Commercial Pty Ltd [2003] FCA 1516

Overview

This case involved the sale of residential units at the Gold Coast in the years 1997 and 1998. The case was brought by the Australian Competition & Consumer Commission against thirteen parties referred to as respondents of which the third respondent, the Commonwealth Bank of Australia (CBA) and the case bought against them under the Trade Practices Act 1974 is of relevance. The Gleesons purchased a property on the Gold Coast for a sum of $164,900. The CBA undertook a valuation of the property which showed the market value to be approximately $100,000. The Gleesons tendered additional security to secure the loan over the property as well as other loans. The bank did not disclose the valuation to the Gleesons and proceeded with the loans.

Case brought against the bank

- It was alleged that the CBA knew the following:
    - Purchase price of the Unit 29 was $164,900.
    - Market value of the Unit was approximately $100,000
    - The market value of the unit was not sufficient of itself to support the loan in the amount applied for by the purchasers (Gleesons)
    - The Gleesons were unaware of the market value of the unit.
    - That the total value of the security offered by the Gleesons was ample for the loans sought and that the benefits to the CBA would be greater if the loans sought were provided than if only loans sufficient to purchase unit 29 at its market value were provided.
    - Did not disclose the contents on the valuation of the unit 29.

- If the Gleesons had been aware of the above matters, they would not have proceeded with
    - The purchase of the property, and
    - The loan agreement with the bank

Judgment summary

In finding for the CBA and dismissing the case brought against them by the ACCC, Kiefel J stated:

321 The bank's terms and conditions should not be overlooked as unimportant. Clause 11.5 clearly advises the Gleesons that the bank would not be disclosing its valuation. They were not to infer from the bank's offer of a loan to them any representation from the bank about the property's value.

331 The disadvantage that the Gleesons laboured under, which might be said to be evident to the bank, was not such as to seriously affect their ability to make judgement as to their interests. They were able to form that judgment and protect their interest if they had obtained the necessary information. That they did not do so does not constitute the disability, or weakness, of which the cases speak.

In qualifying the rationale for the bank's not making a recommendation to the Gleesons that they obtain valuation advice was highlighted in the following paragraphs:

339 The bank is then faced with the prospect that they might take steps on the basis of that advice, which the bank did not wish to give and which it had warned them it would not. The reason for the bank removing itself from the position of adviser is clear enough. It would place itself in a position where it might be held responsible for the steps then taken by the purchaser.

340 The Commission submitted that the bank might avoid a finding of unconscionable conduct by simply advising the Gleesons to seek advice. Mr & Mrs Gleeson were always able to obtain that advice, if not before their entry into contract, then afterwards. The only reasonable conclusion to be drawn from their continuing with the contract, in my view, was that Mr Gleeson wished to do so.

3.4 Chapter summary

The judge, in summary, has not held the bank to be in a superior position to the Gleesons, as a valuation is not information that the Gleesons could not have also sought for themselves. The fact that the bank has exercised due diligence in commissioning a valuation in protecting their financial position and interest, does not extend to the purchaser as they have the same due diligence opportunities and obligations to themselves.

In the context of the conceptual framework, the Gleesons, in obtaining their own valuation advice prior to purchase, would have adopted the alternate purchase process highlighted in Model 2 of the Conceptual Framework.

Chapter 4 - The evolution of property valuation and property services

4.1 Overview

This chapter discusses the evolution and functionality of the property valuation profession, early settlement and the evolving need for valuers and their increasing use. As will be shown in the survey results covered in chapter 7, property investment has gained momentum over the past decade, with an increased inclusion of property as an investment and retirement asset. Of particular importance in the investment process is property selection and the price paid for property, which has also increased over the past decade. What has traditionally been a profession that has largely served government, lenders and the legal fraternity, valuation is now slowly becoming known to property investors, from large corporations reporting on their financial assets to 'mum and dad' investors seeking to know the value of property for sale and purchase purposes.

An overview of the beginning of the valuation profession through to the regulation of valuation practitioners and the expanding uses to which valuations are used will be discussed in this chapter. The foundations to support the extent to which valuation advice might assist residential property investors in achieving their investment objectives will also be discussed. This is then juxtaposed with the issues raised and potential shortcomings of valuation advice and of the profession, which are discussed in chapter 5.

4.2 Evolution of valuation in Australia

Property valuations evolved out of the early statutory application of the alienation of land from the Crown through grants, leases and sale

(Brennan 1971). A provision attached to land alienation was the requirement to hold and improve the land for a minimum term certain of tenure as set out in the alienation agreement. In some cases, a minimum 5-year period was a condition upon which land was granted or sold; after which, in some cases, the Crown had the first right to purchase the property back at a figure by agreement. As land was continually alienated and began to transact in the 19th century, a basis of value was established by reference to the price at which property was traded between settlers. Hence, sales evidence was established and a basis of direct comparison method of assessing was born.

As time evolved and revenue was required to be raised for the establishment of towns and associated infrastructure, including roads and community facilities, among the taxes introduced by government in the early 20th century were taxes on land. The basis for the assessment of this tax was based on land values, formerly known as the unimproved value of land. The assessment of the unimproved value of land incorporated the use of land categorisation and valuation by reference to the underlying value of the land.

A need for further infrastructure was required to support expanding towns into cities. It then became necessary for government to resume land for which compensation was paid. The compensation amount was determined, and still is, by reference to market transactions which were supported by evidence. During the 1880s, the process of assessing value was undertaken by employees of the crown with legal or accounting backgrounds. The occupation of the valuer had not yet been identified.

The following is a chronology of land tenure in Australia, which facilitated the need for valuations with the evolving settlement, granting, taxing and subsequent resumption of land by the Crown, according to Brennan (1971).

Crown grant period (1788 – 1830)

- Governor Phillip grants land to emancipists in the order of 30 acres, with an additional 20 acres if married and 10 acres per child.
- Free immigrants 50 acres and non-commissioned officers 100 acres
- All grants were free from taxes and quiet rents for an initial 10 years, after which a quiet rent of one shilling per ten acres was payable to the crown.

Land sale and pastoral license period (1831 – 1861)

- In 1831, Crown land commenced being auctioned at a reserve price of five shillings per acre. This static price was to be short lived.
- By the end of 1831, the Wakefield Theory, a new land sale policy, was adopted to curb labourers who settled in Australia to serve the wealthy from becoming independently wealthy too soon and rendering master without servant. This was achieved by increasing the price of land.
- In 1837, the speculation in land saw land for town blocks in Port Phillip Melbourne, which was still part of New South Wales, sold for £31.15. Over the next 3 years, some of these blocks changed hands at prices up to £4,250. Following the unsustainable price paid for land, the recession of 1841-1843 saw land prices tumble.
- Continual immigration during the recession resulted in squatting on land, during which time the leases of crown land were granted to squatters with an option to purchase at £1 per acre around the State.

Selection before survey period (1861-1894)

- The vast tracts of land held by squatters were deemed to be too choice for squatter's leasehold. The Peacock Technique was used to break the squatter's power of large land runs. This became known as the policy of free selection before survey and conditional purchase. This entailed a scheme whereby anyone could settle at any time on a squatter's leasehold, have its boundaries surveyed and by residing there and paying off the £1 per acre by small instalments and thus lay claim to the property.

- In 1877, land tax was introduced in Victoria and applied to land holdings of greater than 640 acres. The less-than-perfect valuation of land saw the raising of land tax against a hybrid of value and £/acre basis. This was not understood, or accepted, by large landowners. Its desired affect of breaking up large estates began to take affect by 1900.

In 1920, valuation education commenced in South Australia and in 1926 the Commonwealth Institute of Valuers (CIV) held its inaugural meeting in Adelaide. A number of name changes and mergers have seen the CIV evolve into the Australian Property Institute, (Squirrel 2000). During the post WWII years, up until 1975 in NSW, valuers operated under the auspices of their professional body. The issue for the valuation profession was that other parties not members of the valuer’s professional body were also able to practise without impediment. The way forward sought by the then named Australian Institute of Valuers was to seek statutory regulation of the profession; this was achieved in NSW with the introduction of the Valuer’s Registration Act 1975. Consideration as to whether valuers needed to be regulated again occurred in 2003, to which the retention of legislation was supported with the following comment, “When consumers or businesses engage the services of a valuer they need to be confident they are using a competent and recognised individual. Registration helps to provide the requisite level of confidence.” (NSW Parliament 2005:4). Table 4.1 is a summary of the past and present status of valuer’s regulation in some states of Australia.

Table 4.1 Past and present regulation of valuers

State	Initial Regulation	Present Regulation
NSW	Valuers Registration Act 1975	Valuers Act 2003
Victoria	Valuation of Land Act 1960 Pt II	Valuers regulation repealed 1 Jan 1995
Queensland	Valuers Registration Act 1992	Valuers Registration Act 1992
South Australia	Valuers Licensing	Land Valuers Act 1994
Western Australia	Land Valuers Licensing Act 1978	Land Valuers Licensing Act 1978

Source: Various State Acts of Parliament (past and present)

At the time of introduction of the NSW act, a majority of valuation work in NSW was undertaken for lending and government-related valuation work. In 2003, the Valuers Registration Act was superseded by the Valuers Act, which was amended again in 2005. The need for updating of the Valuers Act in 2003 was driven by consumer protection considerations, which were identified by the API, which the NSW Parliament (2003:1) quote as follows:

> "The API has reported that the proportion of direct consumer work is growing rapidly and valuation practices are increasingly seeking work from consumers. The API has indicated that individual consumers seek valuations in relation to a range of matters, such as property settlement after divorce, prenuptial agreements, entry into, and renewal of leases, acquisition and resumption of property by governments, capital gains tax assessments, asset valuation for business entities, payment of stamp duty, purchase of real property, pre purchase inspection of off-the-plan properties and purchases where debt funding is not required".

The necessity for knowledge of property values and the reasons, therefore, have continued to evolve at an exponential rate over the past decade. In the area of property transactions, the focus on property values has been highlighted through legislated changes, requiring selling agents in NSW to account for their estimates of selling price to both sellers and buyers. After the accountability of trust monies by agents, the issue of accuracy of selling price estimates looms next in line, with the focus on marketing now moving to accuracy of the value of the property. The importance of transparency of value, and the evidence that underpins it, has now extended itself to Government, who are also the gatekeepers of consumer protection at State and Commonwealth Government levels. To this Mangioni (2006:130) adds;

> "In 2002, the NSW Parliament passed the Property Stock and Business Agents Act 2002 and the subsequent Regulation to that Act was passed in 2003. The key provisions of this legislation have brought accountability on selling agents. Section 74 of this Act provides a requirement for a selling agent to provide evidence of the reasonableness of any estimate of the selling price. If this level of scrutiny is being imposed by Government on real estate sales persons, it may be appropriate for the same level of scrutiny to be employed in relation to land tax payers seeking the actual sales evidence that supports the value that underpins their land tax assessment".

As the valuation process becomes more accountable, the level of accountability in substantiating a valuation is the sales and leasing information that supports the valuation amount. In recent years, rate payers and land tax payers have become aware that their rates and taxes are determined based on value, which is underpinned by a valuation process. This illumination has further highlighted the importance of the use of the valuation profession and the fact that access to the valuation profession is not just the domain of Government, lending institutions and the legal fraternity.

4.3 Value, valuers and valuations

A valuation is a snapshot of the market value of a property at a specific point in time, better known as the date of valuation. This is the date at which a willing buyer would purchase a property from a willing seller at a given price, both parties being fully cognisant with property and the circumstances that may impact on its value. The definition of market value has been quoted in chapter 2 above.

Some consumers of valuation services may not fully understand the context, use and limitations to which valuations may be put. This proposition may also extend to some valuers, who fail to understand the purpose for which a valuation may be sought. This is particularly the case where a valuation constitutes a pre-emptive guide in the property purchase process. The question to be answered is, 'is the valuation just a number and is that what that the client really wants?' Most valuation reports provided by valuers will state that the valuation figure is to be read in conjunction with the information contained within the report. This puts into context the figure provided by the valuer in their report.

In essence, the valuation process may not be fully understood by some clients; however, the accountability of the valuer is no less diminished by the expectations of the client's perception of what a valuation actually is. In any litigation of a valuer for negligence, the checklist of what should have been done will no doubt be benchmarked against what was actually done by the valuer. The question that may be asked is, whether clients are, in part, paying the valuers to protect themselves against the client in the event of any future litigation against the valuer. This question is sometimes packaged as a proposition as to whether the valuer has engaged due diligence in the undertaking of a valuation.

Notwithstanding, the direct comparison valuation approach and the result it may yield in the valuation of residential property also needs consideration. Whilst the above highlights the valuation process and the client's potential lack of understanding of its extent, what has not been accounted for is the cognitive transition of the evidence used by the valuer in the determination of the value of the property itself. This particularly becomes an issue when a valuation is tested against the sale of the subject property. Whilst not the specific subject of this thesis, it may be viewed that one of two matters are to be addressed. The first being that the valuer has incorrectly valued the property in which detail of the cognitive map used by the valuer is to be analysed in addressing the shortcomings of their determination of value. The second matter is the cognitive shortcomings of the client in understanding and utilising the valuation provided. This, in part, rests with the valuation profession in educating itself and then the consumer of its services in understanding what a valuation is and the context and application of its use.

4.3.1 Valuation methods

The valuation of residential property may be undertaken using a number of methods. The primary methods are direct comparison, summation and capitalisation. It may be argued that direct comparison has traditionally been the most common method used by valuers to value residential property, as Rost & Collins (1984) highlight that this method of valuation is suited to established parts of cities where uniformity of improvements exist and minor adjustments for state of repair, age and location need to be made. The valuation of residential income-producing property should also include a check method of benchmarking income or potential income derived from a property against the value of the property. Whipple (1996) highlights the fact that an income-producing property gives the valuer an alternate method of assessing the price it would likely obtain in the market. This is due to its productivity being among other considerations a basis for the measurement of the property's value. In its simplest form, capitalisation of income deriving a return from the market place to apply to a property being valued has an important place in the valuation of residential income-producing property.

It may be asserted by some valuers that the direct comparison method of valuation is the best or the most reliable method of valuation; however, this cannot be concluded until a fundamental fact has been determined by the valuer. This fact is the approximate ratio of investment or income-producing property versus owner-occupied residential property in a building, street, suburb or location. The specific ratio that would determine whether an income-producing or capitalisation method of valuation is adopted will need to be determined by the valuer on a case-by-case basis. What is being highlighted here is the fact that this is but one of the considerations to be taken into account by the valuer when valuing an income-producing residential property and selecting the most appropriate method of analysis and valuation. For the purposes of this thesis which deals with residential investment property concentrated in specific locations, the use of capitalisation or the income method of analysis and valuation would be an important consideration for the valuer. It is incumbent on the valuer to ensure that valuations undertaken for income-producing residential property are also assessed on their income return using capitalisation, which is likely to have been in part the factor upon which an investor would have considered when determining whether to purchase an invest property and the purchase price itself.

The third method of valuation available to the valuer in the valuation of some residential property is the summation or cost method of valuation. Rost & Collins (1984) define the summation method as the addition of the constituent parts of the property (land and improvements) to arrive at the sum of its value. This method is identified as a method to be used primarily for valuing houses which do not conform to the direct comparison method or capitalisation method of valuation. In these cases, it may be considered as a check method for the valuer.

4.3.2 Valuation purposes

Like the evolution of the valuation profession, the uses to which valuations are sought, has also evolved. Since the initial use of valuations by Government for statutory purposes, the use of valuations has expanded into corporate Australia for financial reporting purposes and is also used in the decision making processes of both new and existing businesses in the establishment of business plans and the making of operational decisions, for example, whether to lease or buy their premises. Table 4.2 is a summary of the purposes for which valuations may be required, followed by discussion on the risks and rationale for some of these purposes.

Table 4.2 Residential valuation purposes and their uses

Valuation Purpose	Instructing Party & Use	Risk Rating Scale 1-5
Rating & Taxing of Land	• Government – To assess land & council rates • Rate & land tax payers to object & challenge values	**2**
Compulsory Acquisition of Land	• Government assess compensation • Dispossessed parties to assess compensation and challenge compensation if necessary	**2**
Capital Gains Tax	• Cost Base for the assessment of CGT on disposal of property. • Assessing CGT on the transfer of property.	**1**
Stamp Duty	Party transferring land	**1**
Goods and Services Tax	Margin scheme for development sites	**3**
Family Court of Australia	Matrimonial breakdown	**2**
Selling Price	Vendor selling property	**4**
Buying Price	Purchaser buying property	**4**
Financing & Refinancing	Banks, lenders and brokers	**5**
Unit entitlement distributions	• Original proprietor • Owner's corporation on redistribution.	**2**
Liquidation and bankruptcy	• Courts • Receivers	**4**
Financial Reporting	• Public companies • Government (State & Local)	**3**
Probate	Supreme court validation of a will	**1**
Life Estates	• Life Interest & Remainderman Interest	**2**
Litigation against valuers	• Plaintiff • Defendant	**4**
Insurance	• Strata / Property Manager • Owners Corporation	**2**

The use of valuations for the above purposes, among others, has seen the role of the valuer expand over the past three decades. In many of the above cases valuations are necessitated under legislation and codes of practice that underpin their use by the instructing party. The risk rating in column 3 of Table 4.2 has been derived from discussions with several leading valuers and is an indication only of the variation in risks associated with the respective valuation purpose. The lowest risk is ranked 1, whilst the highest risk is ranked 5. The assigned risk is a perceived measure of risk of the valuer being litigated at some point subsequent to the valuation being issued by the instructing party. It goes beyond the scope of this thesis to discuss the specifics of the risk for each valuation purpose, the objective is to identify that each valuation purpose has its own risk profile.

4.3.3 Valuation risks

As shown in Table 4.2, valuations are sought by a variety of parties, for a variety of purposes. Implicit among these purposes is a gradient of risk attached to the valuation associated with each purpose. The primary determinant of risk for the valuer is associated with the relationship between the value arrived at by the valuer against the subsequent sale of the subject property. This is particularly the case where a property that has been valued and re-sells within a short period (say 6 to 12 months) subsequent to the date of valuation.

One particular issue associated with the use of valuations is the presumption by the instructing party that at a date subsequent to the date of valuation, the value of the property would be higher than at the date of valuation on the belief that property prices always move up. At the very least, it may be presumed that the sale price would be no less than the valuation. This was proven to be a flawed presumption in *Ta Ho Ma Pty Ltd v. Allen [1999] NSWCA 202*. In part, the evolution of the valuation and its uses has not necessarily been matched by an understanding of a valuation and their limitations by the consumer of valuation services.

In relation to the above purposes and use of valuations, different levels of risk may be associated with the purpose to which the valuation is sought and used by the consumer. This issue is clearly identified by the fact that the valuer’s instructions will provide detail of the purpose for which a valuation is sought and to be used by a client. In drawing on two examples from Table 4.2 to demonstrate this differential, a comparison is made between the valuation of a property for stamp duty purposes on transfer of title, versus a valuation for litigation purposes, where the valuation may be called into question and the valuer is required to defend the valuation under cross examination before the court. The detail required of a valuation to be tendered as evidence before a court is likely to require articulation of more detail of the subject property and the evidence used to substantiate the value of the subject property. This does not suggest that the valuation carried out for stamp duty purposes would not be the subject of scrutiny; however, the forensic judgement of the valuer would not need to be articulated to the same degree of detail in a valuation to be used for stamp duty purposes, as opposed to the valuation to be tendered as evidence before a court. It is this level of forensic judgement that largely contributes to the difference in the valuation fee based on the purpose of the valuation rather than the value of the property. This is sometimes confusing for the consumer of valuation services to understand why the purpose of the valuation has anything to do with the fee to be charged.

A further requirement of professional indemnity insurance providers of valuers require valuer's instructions to state the purpose to which a valuation is required by the client. This greatly assists in minimising the parameters of litigation against the valuer. The importance attached to the evaluation is borne out by the fact that the Valuer's Regulation 2003 requires valuation instructions to be confirmed by the valuer back to the client, in which the valuer should confirm the purpose to which the valuation is sought by the client. The purpose would also be stated in the valuation itself. This is an important part of a valuation and valuation instruction in limiting the use and liability of that use to the valuer.

4.3.4 Valuations for sale and purchase

This thesis focuses on two important evolving valuation purposes highlighted in Table 4.2; these are sale and purchase of property. In each case, the valuation provides a basis for making an informed decision, based on independent professional advice provided by a valuer who is independent of the sale or purchase process. In both instances, the valuer provides an important role in establishing a basis for a decision to be made. This advice is provided by a party who specialises in determination of value and who is engaged and remunerated by the party relying on the advice provided. In contrast to the asset being purchased, in this case property, once the decision is made to buy or sell, the question that follows is at what price? In addition to the former comment, it may be that the purchaser's or seller's decision to buy or sell is in part determined by the value of the property. This may mean that intrinsic in the sales pitch is reference to the value of the property.

Valuations undertaken for the sale of property are common and have continued to grow in NSW over the past five years (NSW Parliament 2003). Traditionally, when property is sold by an estate, the executor will commission a valuation to ensure that the property of the estate is offered for sale at market value. This is also a prudent due diligence process undertaken by an executor in ensuring they act in the best interests of the beneficiaries of an estate. Since the review of the Property Stock and Business Agents Act 2002, as discussed earlier in this chapter, section 74 has placed additional requirements on the selling agent to substantiate the recommended sale price of a property. In some cases, where the value of the property may not be easily ascertained, the selling agents may be inclined to recommend that the seller engage a valuer in establishing the value of the property. This would distinguish the difference in the roles of the agent and the valuer. The agent is a marketer of the property, whilst the valuer is charged with determining the value of the property where necessary.

The process of determining the value of a property, or any asset prior to purchase, is a fundamental part of the investment process, as Wright

(2006:41) points out “Many investors look too closely at the asset they are purchasing rather than the price they are paying for it”. Property is a heterogeneous investment within its own asset class. It goes far beyond breaking the asset down into sub-categories of residential, commercial, industrial property. In the case of residential property, sub-categories within residential property may be defined by location, single dwelling or unit / townhouse, style or age, accommodation (number of bedrooms), etc.

In NSW, the selling agent has a responsibility to a prospective purchaser of property being sold by auction, to provide a fair estimate of the selling price. In some cases the selling agent may provide an estimate and in other cases, comparable sales may be provided to the prospective purchaser. This issue has gained importance where a selling agent indicates a selling price of a property to a purchaser for a property to be sold by auction and the property passes in at that price or a higher price to that purchaser or another purchaser. In the case of auctions, the consequences of underestimating the selling price to prospective purchasers are highlighted in *Australian Consumer & Competition Commission v Gary Peer & Associates Pty Limited* [2005] FCA 404.

With the sale of property by private treaty, off the plan, interstate and locally, the role of the valuer is becoming more important. This is particularly relevant with the resale of some property at a price lower than the initial purchase price. This may have been attributed to two-tier marketing or the purchaser’s being unaware of or disregarding an independent opinion of value at the time of purchase. In demonstrating the role the valuer has to play in the purchase process of new property, the relationship between the buyer / investor and the selling agent is briefly discussed.

The understanding of what a valuation is and what it should achieve needs to be considered. It may be viewed that where a prospective purchaser has engaged the services of a valuer to assist in the purchase of a property, the question to be asked is what is the actual role of the valuer? The answer to this question may include:

1) To assist the purchasers decision to purchase the property, or
2) To assist the purchaser buy the property at or about market value, or
3) To ensure the purchaser is made aware of the market value and perhaps a lower and upper range of value in which to negotiate.

In the third case, the prospective purchaser must be advised by the valuer of the specific role and parameters of the advice being provided to them. This may result in one of the following:

a. The property is not purchased as the valuer is able to show that the property is vastly overpriced.
b. The property is not purchased as the valuer shows that the property is marginally overpriced
c. The valuer shows that at the time of purchase, the property is being sold at about market value in the context of other sales evidence, however, due to their local knowledge and thorough investigations find that other similar developments are to be developed in the immediate vicinity, which will impact on the future value and capital gain of the property over a five- to ten-year time horizon.

The above points may be viewed as a barometer of the usefulness of valuation advice by an investor, which is in part dependant on the outcome of the purchase or non purchase. The crucial factor being the perceived usefulness of the valuation, which, to a degree, is determined by the information and advice provided in it. Table 4.3 shows a barometer of the outcome of obtaining a valuation.

Table 4.3 Barometer of value and suitability

$600,000	Asking price	Reject
>550k	Well above value	Reject
$530-550k	Marginally above value	Possible Purchase
$510-530k	Value range	Purchase
< $510k	Below value	Purchase

This table demonstrates the guidance that a valuation specifically tailored to the needs of a property purchaser would provide. Assume an asking price of $600,000 and the valuer determines a value of $530,000 for the property and considers every thing above $550,000 should be rejected. In contrast to a specific point-in-time valuation, a range of values and their relevance to the property being purchased provides the purchaser with the ability to define the lower and upper tolerances, or amounts for which a property may be purchased.

The three points discussed earlier may lead to different outcomes and thus leave the benefits of obtaining the valuation open to opinion. In the event that a valuation leads to or assists in the purchase of the property, it may be viewed that the valuation was worth obtaining as it has achieved its objective. In contrast to this, in the third case, where the valuation leads the purchaser not to purchase the property, a different conclusion may be reached, as the benefit of the valuation may not be fully understood by the consumer commissioning it. Whilst the valuation may point to all the right reasons as to why the property should not be purchased, the valuation does not provide any alternative as to where or what property the investor should be investing in. It should be noted that this is outside the scope of present valuation requirements and is more in line with investment advice. This advice could then be open to scrutiny by the investor’s advisor, particularly if they have any relationship with, or are obtaining any commission or remuneration from the developer, their agent or marketing team. It is at this point that consideration needs to be given as to what a valuation is and to what extent it may offer the investor alternatives in relation to property. The question to be asked at this point is whether valuers are considered to be providing property investment advice in their role as valuers in relation to points a, b and c above, and if not, should they?

4.4 Valuers, property services and financial service reforms

As discussed earlier, property services which encompass the valuation, leasing, management, marketing and sale of property have traditionally been regulated by State Governments across Australia. The sole governance and scrutiny of property, agency and related services drew the attention of the Commonwealth Government after the Financial Services Inquiry of 1997. ASIC undertook a review of agent's activities to determine if they provided investment advice in their role of marketing property:

> The existing regulation of real estate agents should be reviewed. Real estate agents providing investment advice should be required to hold a financial advisors licence unless the review clearly establishes the adequacy of existing regulation" (p7).

This statement is silent on valuations and the role of the valuer in the provision of property investment advice. The following sections of this chapter show the potential expansionary role of the valuer in the pricing of property for purchase and sale purposes. This is relevant due to the tightening of regulations governing agents in the provision of buying and selling estimates of property they provide to buyers and sellers.

4.4.1 Existing regime in New South Wales

Since the introduction of the Property Stock and Business Agents Act 2002, which was initially introduced in 1941 in New South Wales[1], the legislation has been adjusted and reviewed in a piecemeal approach. In 2002, this Act was significantly re-drafted and expanded, with wholesale changes to address the evolving needs and regulation of real estate agents in New South Wales.

Amongst the key issues addressed and reforms instigated under the review of Property Stock & Business Agents Act were:

1) A regulatory framework for conducting the sale of property by auction.

2) Requirements for agents to provide accurate estimates of value to vendors selling property and also buyers purchasing property.

3) Cooling off periods for the signing of agency agreements.

4) Significant strengthening of consumer protection in the transaction of property.

The amendments to the Property Stock and Business Agents Act 2002 in addressing the obligations of the agent to the purchaser are limited, as the agent acting for the vendor primarily has a fiduciary relationship and obligation to their client, the vendor. This is demonstrated by Fridman's definition of agency:

> The relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property (cited in Lang 1996:331).

The legislation that governs the relationship between agent and their principal in the marketing and sale of property cannot impose the same commitment and fiduciary duty to a third party, referred to as a stranger in the above definition. This is particularly the case when an agent is

[1] Known as the Auctioneers and Agents Act 1941

remunerated by their principal. At best, the legislation can define the duties and responsibilities of an agent when providing information and undertaking transactions on behalf of their principal with a purchaser. In addition to the issue of consumer protection for the purchaser, the agent’s fiduciary obligation remains the protection of the principal that “An agent performs a service for his principal; he represents him to the outside world; he can acquire rights for his principal and subject his principal to liabilities” (Fridman, cited in Lang 1996:331).

In concert with the agent’s role in acting for a vendor in the sale of property, the principal has a duty to indemnify the agent as a part of the agency relationship, (Fisher 2000). The scope of agents’ responsibilities towards purchasers, referred to as the consumer has expanded, with greater care needed and statutory responsibilities to be exercised when acting as agent for a principal. The time for an agent not to subject their principal to greater liability has arrived with the review of the Property Stock & Business Agents Act in NSW. This liability has been extended with the inclusion of the following provisions relating to FSRs:

1) Section 46 - prohibits the provision of financial or investment advice by real estate agents to sellers or purchasers.
2) Section 73 – prohibits false representations made to the buyer regarding the underestimating of the selling price.

In relation to a principal’s indemnity of an agent for the above two provisions, which are now articulated in the Act, the principal’s indemnity of the agent has been placed in context, “indemnity does not extend beyond the liabilities the agent has incurred in the course of performing the agency so that the principal is not prejudiced.” (Fisher 2000:131). In qualifying this limitation of indemnity, Fisher (2000) cites the following case: *Rankin v Palmer (1912) 16 CLR 285*, where the agent acts outside the scope of the Property Stock & Business Agents

Act 2002, it may be determined that an agent has acted outside the scope of their statutory responsibility and hence their authority.

In qualifying the definition of 'Financial or Investment Advice' under section 46 of the Property Stock and Business Agents Act, there has been no definition provided under Section 3, which provides the definitions of terms to this Act. To date, there have been no reported cases or matters pending in relation to the breach of, or enforcement of section 46 of the act.

4.4.2 New Commonwealth regime

In contrast to the existing state government's regime in NSW, the framework that operates at the Commonwealth level seeks to bring the existing state government regime for property professionals under the umbrella of the Commonwealth regime. This is the case where the service provided by the property professional is considered under Chapter 7 of the Corporations Act 2001 to be providing "investment advice" to purchasers in the course of selling property. The key issues identified by ASIC (2000: 1.21 – 1.23) in defining investment advice are:

- Does the author of the opinion benefit from the decision.
- Are they paid by the consumer for the opinion
- Whether the author has made representations to the consumer that would make it reasonable for the consumer to rely on that opinion or recommendation.
- Whether the author is required by law to act in the interest of the consumer, or has undertaken to do so.
- The author's reputation is likely to influence the consumer in making the decision.

In the case of a selling agent providing information to a prospective purchaser in incorporating point one above, the agent may be deemed to have provided what constitutes ‘financial product advice’, particularly where the agent has provided and discussed returns from a property and its capital gain prospects. It may well be argued that the author of an opinion benefits from the purchasers decision in the event of the agent selling the property to the purchaser, notwithstanding that the selling agent is remunerated by the seller. Conversely, in the case of a buyer’s agent assisting and advising the purchaser, where they are remunerated by the client purchasing the property, namely the consumer, the above issues are more pertinent. This is particularly so where the buyer’s agent provides information in relation to the property’s performance and suitability as an investment to a purchaser.

The above issues are further defined by Robinson (2002) who qualifies the context of influence a property professional may have on a prospective purchaser who is paid by that purchaser for that very service, which may include the valuer.
The decision influenced may be to:

- Purchase
- Not purchase
- Sell or switch
- Increase /decrease existing interest.

Advice provided by property professionals may include assumptions and predictions for:

- Predicting future earnings for an investment
- Advice on negative gearing as an investment
- Recommendations relating to investment acquisitions
- Valuations to be used as advice to investors for managed investment schemes.

The potential implication for property professionals under the financial services framework is difficult to assess at this early stage. Whilst property has not been specifically listed as a financial product under the new regime, the adaptive application and interpretation of the legislation by the ASIC is not known, or yet been tested in the courts. The broad application of the legislation in relation to what may be deemed a 'financial product' is highlighted by Baxt et al (2003), who emphasis the design of the legislation to be flexible and adaptive to deal with on-going developments in financial engineering. This apt description was mirrored in the Financial Systems Inquiry Report (1997), which referred to the former regulatory regime as not offering legal certainty for some financial participants in some areas. The difficulty in assessing the application of the FSRs to property is with the broad and nebulous definitions given to the terms 'Financial Product', 'Financial Product Advice' and 'Investment Advice', in relation to financial products.

4.4.3 Financial service reforms and property 1996 - 2005

As established earlier in the introduction of this work, property is not yet itself considered or listed as a financial product under the FSRs of 2001, however, this may change. The implications of the Financial Services Reforms in relation to the property activities of agents are generally provided for under section 46 of the Property Stock & Business Agents Act NSW, as discussed earlier in this chapter.

What is the nexus between property and the FSR agenda in Australia? In summary, the issues raised by Robinson (2002), as referred to in the previous section, define the grey area of where two different advisers may give advice in relation to property, of which the advice itself may be considered financial in nature and may be deemed to constitute Financial Product Advice.

Financial Product Advice is defined by Hutley *et al* (2003:13) as "a recommendation, a statement of opinion, or a report of either of those things, which is intended to influence, or which could reasonably be regarded as being intended to influence, a person in making a decision in relation to a particular financial product" The broad definition of what a financial product includes:

- making a financial investment
- managing a financial risk
- making non-cash payments.

This raises the following questions to be asked that may implicate FSR in property related services:

1) Is advice provided by a buyer's agent or seller's agent to a property purchaser relating to the negative gearing of that property considered to be investment advice?
2) Is a valuation report provided by a property valuer in the form of a property recommendation that meets the needs and objectives of an investor as defined by that investor considered to be investment advice?
3) Is the provision of property returns researched by a valuer and the projection of returns provided in a cash flow analysis by the valuer considered to be investment advice?

Whilst negative gearing constitutes financial engineering and is relevant to each specific person's circumstances, it may well be argued that this is the domain of the financial planner who is specifically trained to determine a person's financial situation and risk tolerance levels. In contrast to negative gearing, the expertise of providing returns from property, both rental and capital, relates to the specific asset itself and is best determined by those trained to extract and analyse this information. This task may be best determined by trained property professionals, namely valuers, who are able to establish this information on a property by property basis.

If property is not listed as a specific financial product and an existing licensing regime and regulatory framework exists for agents and valuers at state government level to undertake a specific task, are the FSRs relevant to the property profession?

4.4.4 Financial service reforms and property 2006 and beyond

Notwithstanding discussion in the previous section, the move to bring property under the umbrella on the Corporations Act 2001 has commenced in earnest. Following on from government inquires and debates over the status of property as an investment vehicle, investment advice has now been specifically targeted by the Commonwealth and in conjunction with State Consumer Affairs Agencies. A discussion paper, 'Property Investment Advice Discussion Paper' and a 'PJCCFS' and its paper Property Investment Advice – Safe as Houses?, has been introduced.

The Property Investment Advice Discussion Paper asks eighteen questions surrounding the provision of property investment advice. The key question, No 7, asks "Leaving aside the unlicensed property investment promoters, are you aware of consumer problems associated with the property advisory activities of professional or trade groups?". This question was premised on the following register of complaints compiled by the Working Committee:

Table 4.4 Summary of complaints

Govt organisation	Number of Complaints	Complaint Type
QLD	13	5 Marketeering 8 Seminars
NSW	14	All property investments seminars
VIC	70	64 investment seminars with one company
SA	4	All investment seminars same operators as in Vic
WA	1	Property investment seminar
ACT	2	Property investment advice
NT	0	No complaints received
ACCC	308	140 seminars 31 developers and in-house marketers 48 property marketing & 89 other
ASIC	350	Property investment advice, 20% same operator mentioned in Victoria and SA
Total	**762**	

Source: MCCA Working Party (2004)

The main complaint noted in Table 4.4 involves seminars, which total 231, or 30 percent of all complaints lodged. This figure increases to over half if we exclude ASIC, who have not categorised their complaints. Seminars and related complaints will be covered in chapter 5.

Details of the submissions made to the discussion paper have not and will not be made public. In relation to the above table, information was sought as to the qualifications of the parties to which complaints were lodged. This information was not provided by the Working Party.

In relation to PJCCFS, a number of recommendations have been made by the committee. These recommendations were made after responses to the Committee's draft were considered by the Joint Committee, which have been made publicly available. The key recommendations of the Joint Committee are relevant to this work and are as follows:

Recommendation 1

The regulation of property investment advice, but not of real property or real estate transactions generally, should be a Commonwealth responsibility.

Recommendation 2

Chapter 7 of the Corporations Act 2001 be amended to include real property as a separate asset class

Recommendation 3

A definition of property investment advice be inserted into the Corporations Act 2001. This definition should make it clear that property investment advice encompasses representations about the future value of, or income from a property. It does not include statements about past or present income from the property.

Recommendation 4

The Committee recommends that anyone providing property investment advice should have an Australian Financial Services Licence unless:

- They give advice during a university course or similar approved training course; or
- They are an accountant, solicitor or valuer giving information in the course of their professional activities; or
- They are making fair comment in the mass media, where the comment is not made in the course of soliciting customers for any good or service.

Recommendation 9

The Committee recommends that the disclosure of valuations by lending institutions to prospective borrowers be made mandatory.

(PJCCFS 2005)

A further important and relevant comment of the Joint Committee was raised which recommends that investors obtain their own independent valuation advice:

> "Don't believe what the promoter tells you about the real price – and don't believe the bottom line number on a valuation provided to them. If you choose and hire a valuer yourself, and they answer to you only, then you have the security of knowing whether you are paying a fair price". (p47)

In effect, the Commonwealth through the Joint Committee's conclusion are endorsing the use of valuations by investors prior to purchase.

4.4.5 Is change to existing property services necessary?

The on-going review of any operation is a means of monitoring and updating its relevance to deal with issues that have evolved and are continuing to evolve at the time of review. Whilst significant overhauling of the Property Stock & Business Agents Act 2002 in NSW in relation to agency practise has been undertaken, a key area that has evolved in property is the provision of information and advice in relation to property investment. This has been overlooked at the state government level of regulation, which is more focused on the regulation of processes, rather than information and advice that underpins the decisions that eventually utilise these processes to achieve a desired financial outcome.

In the regulation of advice relating to property, states have stagnated, which has allowed the Commonwealth over an eight-year period to study, define and regulate the general provision of investment advice, which is now beginning to encroach on property-related services. An apt analogy of this is, “A tortoise on the move can overtake even the fastest hare if that hare stands still” (Nickols 2004:5).

The assessment and review of the property service industry is not immune to change, this is particularly so with the increased incorporation of residential property in many investors portfolios and retirement plans. With the continual steady rise in property values over the past decade in numerous sub markets of Sydney, Melbourne, Brisbane and Perth, as noted by the Productivity Commission (2003), the increase in property investment has lured many new novice property investors into the residential property market. Amongst these investors are self-funded retirees.

Notwithstanding the investment in property being one of the largest investments to be made, emphasis may be placed on the importance and quality of investments made by those nearing retirement with a limited capacity to replace capital to be taken into retirement. The introduction of FSRs by the Commonwealth represents an attempt to regulate consistently the provision of financial services and investment advice in relation to financial products across Australia. The potential for overlap of State and Commonwealth legislation shows consistency in some objectives of each level of government in relation property services.

The focus of change and review of financial services provided in relation to property has not been just for change's sake. The evolution of a number of underlying issues have opened debate about the practices of some property practitioners and the extent of tasks they undertake and their skill base in providing advice to purchasers. Of particular interest among issues identified for mention include Two-tier Marketing and the overpricing of property, the over estimating of selling prices to vendors in securing listings, the underestimating of selling prices to purchasers of property submitted to auction and the use of *dummy bidding* (false bidding) at auction. Of greater imperative is the disparity of issues that exist between Commonwealth and State levels of Government. To a greater degree of importance is the distinction and opposing provisions between some State-based consumer protection provisions, when compared with Commonwealth provisions.

It may be viewed that the state legislation in relation to the regulation of property professionals should be subsumed under the Commonwealth's FSR provisions. The merits of this proposition are plausible when there are differences in regulation of property professionals from state to state in Australia. This proposition, however, loses plausibility when there are fundamental inconsistencies between state and commonwealth legislation and a reluctance by the Commonwealth to legislate the prohibition of a dual commission or fee structure by investment advisers.

The focus of the State Government regime is the relationship between consumer of property services, namely the principal or seller, with consumer protection safeguards in place for the purchaser. The focus of the Commonwealth's regime is also for the protection of the purchaser. The state government regime deals with relationship between the parties paying the fee, namely the vendor or purchaser and their agent. The commonwealth regime provides a framework of protection for the purchaser of property and the relationship that exists between them and their adviser. However, the Commonwealth framework does not preclude the adviser from being remunerated by both the purchaser, their client and vendor or developer whose product is being recommended or provided to the purchaser. This relationship is permitted, provided a disclosure of fees, benefits or remuneration paid by the owner of the product being recommended is made to the purchaser, who is also being retained by the adviser. Is this a legitimised conflict of interest? Should the client be made aware that they are entitled to ask the adviser for a rebate of their commission, or should the Commonwealth framework be amended to prohibit this duality of interest? In New South Wales, Section 48 of the Property Stock & Business Agents Act 2002 states:

> (1) A licensee must not act in his or her capacity as licensee on behalf of both the buyer and seller of land at the same time.

A similar provision must be drafted into the Commonwealths legislation to prevent non-property professionals who provide investment advice, including property investment advice from obtaining dual fees, commissions or remuneration in relation to the same transaction. This provision must be enforced on property professionals, financial planners, financiers, conveyancers and accountants.

4.5 Summary

The evolution of property as a stand-alone investment vehicle has highlighted issues in the overlap in the role of selling and pricing property as separate tasks. The role of real estate agents, financial planners and in-house marketers has been blurred by incorporating the value of property in the selling process. As discussed, this may include rental return, capital gains and present value. This evolving trend has led to the need for the role of the property valuer to broaden the scope of their valuation advice in addressing these points. This chapter highlights the important role the valuer plays in providing an independent assessment of value and the merits of the advice being sought by prospective purchasers prior to purchase.

Chapter 5 – Valuations and the needs of property investors

5.1 Overview

This chapter follows on from the evolutionary purposes of valuations in the sale and purchase of property covered in the previous chapter. The purpose of valuations for sale and purchase of property, whilst identified, provides a different risk exposure for the valuer and more importantly for the consumer of valuation services. In attempting to quantify the benefits of obtaining valuation advice prior to purchase, consideration is given to what a valuation is to achieve, how valuations are to be measured and how their benefit and usefulness to the consumer is determined.

Drawn into question in this chapter are the marketing methods used to sell property to investors, time on the market, they way investors may be determining the purchase price of investment property and sales evidence. Discussion will focus on the sale of the subject property that forms part of the evidence in determining the value of the property itself. In essence, is the Spencer test being met by purchasers in the formulation of the purchase price of property; and, more importantly, are valuers ensuring the test has been checked in relation to the sale of the subject and comparable sales evidence that might also underpin the purchase of the subject property?

A number of cases have been examined to establish the level of risk associated with valuations where there is an absence of a sale over the property being valued. This is important when valuations for purchase and investment purposes are undertaken and the valuer does not have a purchase price as a guide. A further consideration is where there is a lack of or limited sales evidence to assist the valuer in determining the value of a property to be purchased. In question is whether the present level of valuation practise is sufficient to assist the investor in formulating the purchase price of property in addressing the thesis question, ***does an independent valuation assist the residential property investor prior to purchase?***

The latter part of the chapter considers the needs and financial objectives of the investor and the ability of the property professional and investment adviser to provide advice in relation to these objectives.

5.2 Is the purchase price of property the best evidence of value?

In answering this question, consideration must first be given to the purpose of the valuation. The initial proposition that a valuation might assist an investor to purchase property was founded on the basis that, in many cases, the purchase of investment property was predicated on the provision of finance. In the context of this purpose, the initial answer that addresses the purpose of valuations undertaken by lenders is for the protection of the lender and deposit monies held by the lender. “All assets taken as security by ADIs should be valued, wherever possible, at their net current market value.” (APRA 2000:1). Going beyond the guidance recommendation provided by the regulator authority, the evolution of mortgage lending and valuation practises over the past decade provides a further basis for this recommendation.

It is suggested that Inez v Dodd (1979) established the principle that the best evidence of value available to a valuer is the sale of the subject property itself. This proposition may be refuted on two counts, the first being the challenge as to whether this was what the court actually stated in this case. The second count being the implications of ACCC v Oceana Commercial Pty Ltd (2003) FCA, in which the role of the valuer was further defined 25 years after the Inez v Dodd decision. In this later case, the valuer advised the lender, that the purchase price of the property was well in excess (46 percent) of its market value. In contrast to this result, in the former case of Inez v Dodd (1979), the valuer valued the subject property at $144,000 when the purchase price of the property was $100,000. The purchase price was a fact that the valuer chose not to investigate at the time of undertaking the valuation.

It is arguable that the role of the valuer in the lending process is not to confirm the purchase price of a property as its value, but in fact to determine if the body of sales evidence confirms the purchase price is in line with market value based on sales evidence, with appropriate adjustment of those sales if required in determining the fact of value. The lack of sales evidence, or comparable sales evidence itself, does not necessarily allow the valuer to rely on the sale price of the subject property as the best or only source of evidence. The task of the valuer is to determine if the price at which a property is being purchased constitutes market value, or is out of line. Again, this exercise cannot be dismissed due to a lack of comparable sales evidence. The valuer cannot simply add the sale of the subject property to the sample of evidence (particularly when it is the only sale being relied upon) in determining its value, without applying the appropriate test defined in the Spencer Case.

By virtue of the fact that a lender has requested a valuation of a property, the subject of finance is an indication that the certainty of its value has been brought into question by the lender. It is not the role of the valuer to confirm the purchase price of a property as value by virtue of its existence, without first applying the criteria of Spencer test. This is clearly spelt out in both in Spencer v the Commonwealth (1907) and again in Inez v Dodd (1979) in which Carmichael J. refers specifically to the Spencer Case. What appears to have happened over time is that a select interpretation from Inez v Dodd (1979) has become the view of some mortgage lenders to assert that the sale of the subject property is the best evidence of its value. This is incorrect and an important point for valuers to understand is what in fact was stated by the court in this case, in which Carmichael (1979:11) states:

> "I conclude therefore that a prime matter for investigation when a valuation is sought is to ascertain whether there is current a contract for sale of the property and, if so, to make an analysis of that sale to see how it complies with the test of value as laid down in Spencer's case. Failure to carryout these functions is to risk ignoring the best evidence of value".

This statement sets out a clear directive for the valuer to follow in determining whether the sale price of the subject property is its market value. This is so when the sale of the subject property may become a more important component of the evidence to be considered when valuing property for mortgage purposes, particularly in the absence of comparable sales evidence. The clear directive covered in this paragraph being ***"make an analysis of that sale to see how it complies with the test of value as laid down in Spencer's case"***.

Before discussing this point, we will briefly look at the extract from the paragraph in Spencer's case, which Carmichael J quotes in his judgement relating to the business considerations of the bargaining parties in arriving at market value.

> We must further suppose both to be ***perfectly acquainted with the land***, and ***cognizant of all the circumstances*** which might affect its ***value***, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its ***surrounding features***, the then ***present demand for land***, and the likelihood, as then appearing to persons

> best capable of forming an opinion, of ***a rise or fall for what reason*** so ever in the amount in which one could otherwise be willing to fix at the value of the property (Isaacs J. 1907:441).

When applying the Spencer test to the sale of the subject property in establishing that it constitutes the best evidence of value, it is the role of the valuer to ensure that the purchaser did meet the criteria set out by Isaac J. above. When the valuer is to rely on the sale of the subject property as evidence, particularly in the absence of adequate comparable sales evidence, the valuer must confirm that the purchaser has passed the Spencer Test. Failure to do so does not mean the valuer has ignored the best evidence of value, but means that the valuer ***risks ignoring*** the best evidence of value. The sale of the subject does not become the best evidence of value until the transaction has been tested by the valuer.

In undertaking this test, the valuer cannot rely on interviewing the selling agent, as the purchaser forms the opinion of the price paid for property. The selling agent is appointed and remunerated by the seller and their obligation and duty is primarily to his or her instructing party. The valuer has no option but to obtain the necessary information from the purchaser. This proposition is further confirmed by Rost & Collins (1984:86) as follows:

> “The circumstances under which sales take place should be investigated by interviewing the parties concerned in each transaction. Such circumstances could affect the comparability between the sale properties and the subject property being valued.”

At this point, most valuers may consider this to be an unrealistic process, not due to the information such investigations would reveal, but to the time-consuming impracticality of the task. When an abundance of sales evidence leads the valuer to determine a value without concern, the task of vetting sales evidence seems even more impractical. It is where the availability of sales evidence is scarce that a detailed analysis of the subject sale is far more crucial and would lead the valuer to greater scrutiny of this transaction.

Where the sale of the subject property has been affected by circumstances not known to the valuer, which in itself leads to a price that may not be market value, the role of the valuer is to determine that fact. This was demonstrated in Australian Competition & Consumer Commission v Oceana Commercial Pty Ltd [2003] FCA 1516, in which the valuer appointed by the lender valued the property being purchased at $100,000 as opposed to the purchase price of $164,900. The lender successfully defended their decision not to disclose this valuation to the borrower, but instead asked the borrower to provide additional collateral to secure the loan.

Further analysis of Inez v Dodd (1979) reveals an additional crucial investigation that tests the proposition that the sale price of a property is the best evidence of its value. Of particular note in this case, was the evidence of the plaintiff’s second expert valuer who advised the court that they had determined the value of the subject property at $115,000, 15 per cent above the purchase price of the property in full knowledge of the facts and the $100,000 purchase price.

5.3 Sales evidence and analysis in the valuation process

The formulation of ‘market value theory’ and deriving of market value of property is largely predicated on evidence that supports the market value assigned by the valuer. Without evidence, the valuer’s opinion is no better informed than the lay person.

As highlighted in Reading v. The Valuer General (1923), valuer's must base their determination of value on sales evidence, or potentially be challenged by the following:

1. The opinions of other people.
2. Values based on sales; and
3. Any previous opinion that he himself might have expressed as regard to values.

According to Rooke (2002) in mortgage lending valuations, valuers are provided with the property purchase details and asked to confirm the purchase price as value, "Recent experience has shown that current major mortgage lending institutions are applying great pressure for valuers to place greater emphasis on the subject sale" (p42). For some valuers this process has a profound impact on the result, as Gallimore (cited in Black et al 2003) found that valuers may inappropriately give greatest weight to the most recently considered information and that valuers indicated that they make early, preliminary judgements and then seek evidence in support of these opinions.

In contrast to this phenomenon, in some circumstances it is difficult for the valuer to determine the value of the subject property due to a lack of sales evidence. This is further compounded when the valuation being sought is for refinancing purposes and there is no sale over the subject property being valued. In these cases, the duty on the valuer is not lessened. It is the role of the valuer to look geographically further, or outside the radius of sales that a valuer would ordinarily look at, as well as further back in time for sales within the locality of the property being valued as highlighted in *Griffith Producers Co-Operative Society Ltd. v The Water Conversations and Irrigation Commission (1926) 5 L.V.R. 190*.

In some cases, sales are scarce and in other cases there are issues of access to sales information and the speed in which sales information becomes available from the date of exchange of contracts to settlement and the eventual recording of the transaction in land information systems. This in part has led to criticisms of the valuation profession.

The issue of outdated sales information and the timeliness of valuers obtaining sales data, is said to attribute to valuers determining "where the market was rather than where the market is. This leads to criticism of 'over-valuation' in falling markets and 'conservatism' in rising markets" (Hunt 1998:106). This issue has been further considered by the RBA (2004), which considered the alternatives of agents reporting the sale price of property once a contract price is agreed, or lenders providing information once they have agreed to provide funds for purchase.

Addressing cases where sales evidence is scarce and difficult for valuers to establish the value of property based on sales, particularly in cases where the property being valued is unique due to its location or style of improvements, it is here that the valuation profession is truly tested. It is interesting to note that the cases involving litigation against the property valuer are more prevalent in these circumstances where property is being refinanced, in contrast to valuers assessing the purchase price of property.

In cases where action against the valuer has been taken, three cases are cited:

- Trade Credits Limited v. Ballieu Knight Frank (NSW) Pty Ltd (1985) Supreme Court NSW
- Ta Ho Ma Pty Ltd v Allen [1999] NSWCA 202 (28 June 1999)
- MGICA Ltd v Kenny & Good Pty Ltd & Anor [1996] 766 FCA

These three cases as highlighted earlier are important in analysing and assessing the use of residential property valuations and sales evidence. Each case has four common themes, these being:

1) The property valued is a stand-alone residential house.
2) The properties were being valued for financing purposes.
3) There were no sales over any of the properties being valued as at or close to the date of the valuation to guide the valuer.
4) Sales evidence used to value the subject property was not comparable and in each case there was a lack of like sales.

In considering the above cases and circumstances, the following quadrant of risk has been identified with discussion following:

Figure 5.1 Quadrants of risk

Quadrants of Risk

1. Purchase of property with abundance of sales evidence	2. Purchase of property with limited or no sales evidence
3 Refinance of property with abundance of sales evidence	4. Refinance of property with no sales evidence

(Mangioni 2006)

In the first quadrant, the valuer has the purchase price of the property and an abundance of sales evidence comparable to the subject property. The task of confirming value is relatively straightforward. In the second case, the valuer has access to the purchase price of the property, but no comparable sales evidence to confirm the purchase price. In this case, as in the first, the valuer must fulfil the Spencer Test and ensure that the purchase price of the subject property was established under the six principles established in this test.

In contrast to the above two cases, quadrants 3 and 4 have similarities to the role of the valuer in assisting the investor purchase property. This is due to fact that, as in the case of re-finance valuations, whilst the property is already owned, a purchase price over the property being valued does not exist, hence there is no sale of the subject property to guide the valuer. Conversely, it may be said that the valuer is meaningfully able to contribute in the refinancing role. In undertaking the task of assisting the purchaser, what the valuer does is to assist the prospective purchaser to meet the criteria of becoming a willing, but not over-anxious purchaser, cognisant of all relevant details of the property and factors that may impact on its value. In these cases, the valuer’s role is to ensure the prospective purchaser makes an informed decision about the purchase price of the property. This may lead to the property being purchased within a market value range, or alternatively, may result in the property not being purchased. The test or benchmark upon which the valuer’s advice is judged would be the subsequent sale of the property or an alternate valuer’s opinion of value.

Of particular issue for the valuer in undertaking valuations to assist the purchaser is the cycle and movement in values between the date of valuation or purchase and the subsequent sale of the subject property and the price achieved for the property. It is not uncommon for the quality of valuations to be judged against the purchase price and subsequent sale price of the same property, hence the movement in value. This is not a sound method of assessing the value of the property in isolation. Reference to sales evidence and the analysis of that sales evidence at the time of valuation is the basis for assessing the accuracy of the valuation. The issue of marketing and its impact in attaining market value will be discussed later in this chapter.

In contrast to the total number of properties valued, the number of cases that lead to litigation against the valuer is nominal. In saying that, what has not been taken into account are those cases where property has been purchased or re-financed, supported by a mortgage valuation, which have not been tested by the sale or subsequent resale of the subject property. An analysis of claims against valuers may fall into two broad categories: those brought about by economic circumstances, particularly where the market has fallen subsequent to the date of valuation which was at the height of an economic period, these are referred to as 'waves' of claims (Connell 1990); the second being those described as routine or 'static element' cases, (Lavers and Spurges 2002). In each of these circumstances, the basis of proof lay in the sales evidence that either supports or refutes the valuation.

The importance of sales evidence and analysis in undertaking valuations and the subsequent proving or disproving of values cannot be understated. The process of sales analysis involves questioning buyer behaviour and the valuer’s ability to interpret this when valuing property using comparable sales. This is the step that follows on from the selection of the sales sample to be analysed (Daly et al 2003). Part of the sales analysis process is the adjustment of sales by valuers through interpreting buyer behaviour (Daly et al 2003). In saying this, a preliminary requisite in the sales analysis process is the selection of the most suitable sales. This may be difficult, as determining the most suitable sales may require an element of buyer behaviour analysis. In contrast to the comparability of the property in the sale analysis process, Hunt (1998) looks at the comparability of the sale which encompasses additional information, including: the special conditions of the sale, vendor/purchaser/agent motive, method of sale, marketing period, and market dynamics.

Regardless of the valuation approach adopted by the valuer, the input data to undertake a valuation is derived from the market place through the analysis of sales evidence. As highlighted in Reading v The Valuer General [1927], sales evidence is the reference point upon which further investigation may be made and opinions of value expressed.

5.4 Does a range of value best serve the investor?

In contrast to a specific valuation figure for a property, a range of value may also be considered as an option for an investor seeking a valuation for property purchase purposes. In assessing the usefulness of a range of value, it would be important for the investor using this range to understand what in fact the parameters of that range represented and how they would apply to the property being purchased. The two opposing ends of the range may represent the conservative end and the upper end of the market value range. This proposition may be seen as an expansion of Market Value, to Market Value Range. In contrast to the principles of market value, market value range would provide the levels of tolerance to which market value could be extended at each end of the range. This in itself would create a different perspective on the analysis of sales evidence, in addition to provision of a valuation figure. As opposed to a valuation figure which represented market value, a range of value, whilst appearing to provide a greater degree of flexibility to the definition of value, may also provide definite boundaries as to the range of a property's value. This type of valuation would particularly be of interest to the owner occupier, as buying a home to live in attracts a level of subjectiveness in a buyer's decision-making process. This in itself may negate any further tolerance for variations, as the range is a representation of the upper and lower tolerances. The variations in market value and market value range are demonstrated in the following two examples:

Figure 5.2 Market value and market value range

Market value

Market Value

$900,000 ← $1,000,000 → $1,100,000

-10% +10%

Market value range

Lower End of Range Upper End of Range

$900,000 ↔ $1,100,000

20% Range

Market value and the investor

Market value is based on the premise that the market value determined for a property is precise. The plus / minus factor is used as a tolerance to measure how far out the valuation amount differs from either the subsequent sale of the property or the opinion of other valuers if the valuation is called into account. Does the provision of a single valuation figure serve the investor, where the investor may be left to guess the tolerances if these are not expressed in the advice to them? The precision or accuracy of valuation is not determined by a single figure, as was highlighted in *Singer & Friedlander Ltd v John D Wood & Co* [1977] 2 EGLR 84, in which Watkins J stated;

> "…two able and experienced men, each confronted with the same task, might come to different conclusions without anyone being justified in saying that either of them lacked competence and reasonable care, still less integrity, in doing his work … Valuation is an art, not a science. Pinpoint accuracy is not, therefore, to be expected by he who requests the valuation".

In contrast to a single value, a market value range does not commence with a specific value in mind, but the tolerances as to the value range. In essence, the valuation advice which is expressed as a range could be presented as follows:

- The lower end of the range, being the figure at which the investor would have purchased the property at a conservative amount.
- At the upper end of the range, being the amount at which the valuer is suggesting they would pay no more for the property.

The question to be asked is whether the valuer provides a single value figure to the client, or a value range with discussion as to what each of these options means to the investor. Valuations have traditionally been predicated on a single figure which represents value and valuers are judged on this figure and their assessment of this figure by clients' perceptions of a *perfect fit of value* who are relying on it. In cases where this fit is not apparent, this may lead to litigation in which the tolerances to the value may be considered by the court in assessing the liability of the valuer. This process has in part been an issue for the valuation profession in allowing the definition of value continually to be assessed on the basis of a single valuation figure. In reality, the valuer must tailor the meaning and context of his/her definition of value, or what his/her valuation advice actually represents. This is not strictly for the benefit of his/her own protection, but also to assist the investor as to what the valuation advice means and how they may use it.

A valuation to a novice investor cannot simply be provided as a figure or range without context or basis upon which it may be used. In the mind of the investor, they may seek to know what the valuer is suggesting in determining either a single value or value range. Alternatively, an imperative for a novice investor may be seeking to know from the valuer, *what is the maximum amount you would pay for a property?* Traditionally, it has not been the realm of the valuer to answer such questions, but instead to comment on the relationship between a purchase price of property and the body of sales evidence relevant to it.

The mortgage valuation market is post-purchase, as opposed to the potential property investor market, which is pre-purchase valuation advice.

5.5 Methods of sale in project marketing and the role of the investment adviser.

The traditional method of sale of new property is by private treaty sales through the use of intermediaries. As highlighted in the conceptual framework, these intermediaries include the real estate agents, investment advisers and developer’s in-house marketers. These intermediaries play an important role in the viability, and frequently, financing of the development. In many cases the developers financing of the development is contingent upon the presale of a percentage of the units, townhouses or houses before completion. It is at this point that consideration must be given to the ability for an investor to make an informed decision as to the appropriateness of the property being purchased and particularly the price to be paid for it. One specific issue that must plague the investor at the time of commitment is what the value of the property is now, versus its value on completion in say 18-24 months time. This vexed question must be interspersed with concerns of how much pre-commitment there is in the market, at what prices other investors are pre-committing and the supply position at the time the property is on the market, completed and ready to be rented. The investor should not be any more relaxed by virtue of a rental guarantee, as this is more than likely factored into the purchase price of the property. The question to be asked is how the investor was able to meet the Spencer Test when the property purchased or committed to has not been built or completed. This precludes the purchaser from meeting the Spencer Test, as they are not cognisant of the physical attributes of the property which is yet to be built or completed. This question is further complicated by the ability of the purchaser to be cognisant of all other factors that may impact on value. This is particularly the case when they are unaware of the amount of existing development that is approved and waiting to be built, the amount of development waiting to be approved and the amount of development waiting to be lodged to be considered for approval. Second, in the absence of any sales evidence how has the investor formulated the purchase price? In the case where sales evidence on pre-commitment is available, does that evidence also meet the Spencer Test, where the investors have premised their purchase price on the same assumptions or lack of market cognisance as many other investors?

In relation to the marketing of new property in two-tier market locations, the question to be asked is whether the marketing actually occurs between the developer and their sales intermediary or the sales intermediary and the investor, or a combination of the two. What is not clear is the actual role the investment advisor or marketer assumes in the sale process on a case-by-case basis. This is particularly important when the intermediary is remunerated by the developer, but even more crucial where the intermediary is remunerated by both the developer and the client they advise and to whom they make recommendations, as is the case with some financial and investment advisers. This matter will become more evident once the *Westpoint Development* case has either been tested in the courts, or settled prior to it. In this case, mezzanine finance was sold by financial planners to their clients, to lend to Westpoint Development without any security being held for their investor clients. The two issues of note in this case being the use of promissory notes, which are defined as “a promise in writing made by one person to another, engaging to pay on demand or at a fixed or determinable future time a certain sum to the order of a specified person” (CCH Macquarie Dictionary 1996:138). As highlighted in this definition, promissory notes are not secured against any tangible asset. The second and more important issue was the omission of valuation advice to ensure that the sum of the promissory notes issued did not exceed the value of the property they were issued against, this is despite the promissory notes issued not being secured against the assets for which the money raised was used. The relevance of the second point is that ASIC through the courts have frozen the assets of Westpoint and will seek to have the proceeds of the sale of assets used to compensate investors, after creditors. ASIC (2006) appointed receivers to Westpoint when it became aware that liabilities against the company far exceeded the value of its assets. Despite the Westpoint case involving the sale of mezzanine finance, the similarities of the adviser-client relationship is demonstrated where the adviser is dually remunerated by the client and the developer. The adviser is the de facto adviser and also the marketer in this case.

It may be argued that in order for the Spencer Test to be satisfied, the investment adviser must put themselves in the shoes of the client, the investor in the determination of the price at which the property should be purchased. This is especially the case where the adviser has not commissioned a valuation of the property or made a recommendation to the client that they seek valuation advice independently. Where the adviser makes a property investment recommendation to a client, and the client has solely relied on the advice of their advisor as to the suitability of the investment and the price at which it is being recommended to them, **the client would be correct in assuming that part of what they are paying their advisor for, is to carry out the Spencer Test on their behalf and ensuring that the property is being purchased at market value, as well as meeting their investment objectives.**

It may not be possible to separate the advice regarding a property being purchased at market value from the recommendation that it constitutes an investment in line with the expectations and risk profile of the investor. These two considerations are implicitly linked and are difficult to separate. An alternate possibility is that the advisor cannot seek to capture a portion of the potential gain of the property by allowing the investor to purchase or recommend that the investor purchase the property at higher price than market value as at the date of purchase. To allow an investor to purchase a property at a price higher than market value, or outside the market value range, when a commission is also being obtained by an advisor from the developer is a conflict of interest. This is regardless of the fact that the adviser has advised the investor that they are also being remunerated by the developer. Where the advisor has obtained any commission, fee or remuneration from the developer, this must be disclosed in full detail, including the amount of commission specifically relating to the property they are recommending to their client. In these circumstances, what coexists is the marketing of property by referral. This issue will be discussed later in this chapter.

5.6 Valuers, investment advisers and property professionals 'Know-your-client' rule, who best serves the property investor?

The previous section discussed the implications of the value of property for the investment adviser when making recommendations to their client. Discussion centred on the emerging Financial Services Reforms and its impact on property professionals. The determination as to who is best suited to provide property investment advice to property investors, including the selection of a property, is now examined. In discussing this issue, consideration is given to defining roles and expertise.

This section outlines the application of these reforms and defines the strengths and weaknesses of both the property professional (agent and valuer) and the investment adviser in the provision of property investment advice in meeting the objectives of residential property investors. As agents and valuers are regulated at State Government level, New South Wales has been selected to draw a comparison with the Commonwealth legislation that governs investment advisers. In contrast to these definitions, apart from the nondescript definition of 'valuer' there is no definition for 'valuation' under the Valuers Act.

5.6.1 Defined roles

The definition of advice under the Corporations Act is broken up into two parts which are defined as, **personal advice** and **general advice**. Firstly, considering general advice, reference is made to lawyers and tax agents. General advice is referred to as matters of law and the legal interpretation or the application of the law. In addition, any advice that is given in the ordinary course of activities that is reasonably regarded as a necessary part of those activities is also considered to be general advice. With general advice, any professional should distinguish that the advice provided is in fact general advice. In the proposed inclusion of property as a financial product under the Corporations Act, valuers have been identified as being included with lawyers and tax agents in the provision of general advice in providing advice in the ordinary course of their activities.

The Corporations Act (2001) definition of personal advice is tailored and specific to the circumstances of the recipient of that advice. The two specific ingredients of personal advice are defined as:

a) the provider of the advice has considered one or more of the person's objectives, financial situation and needs; or
b) a reasonable person might expect the provider to have considered one or more of those matters.

The role of the real estate agent, valuer and investment adviser has a specific and clearly-defined function and context in the property investment process as shown in Table 5.1:

Table 5.1 Defined roles – Agents Valuers & advisers

	Real Estate Agent	Valuer	Investment adviser
Marketing	√		√
Past & Present Performance	√	√	√
Formal Valuation		√	
Suitability of the investment			√
Future Performance			√

Apparent from Table 5.1 and provisions of the Corporations Act, is that what constitutes investment advice is defined, however, in contrast, what is absent in state-based legislation, is sufficient rigor that prevents an investment adviser from selling property. This is due to the definition of marketing property not being specifically defined to distinguish between the process of introducing an investor to a property and investment advice. This proposition may be challenged on the basis that, where an investment adviser is remunerated by the seller or the developer in these cases, that fee, commission or remuneration constitutes a selling agent's commission and is required under state law (NSW) to hold a real estate licence. To date, this practise has been allowed to proceed on the basis that the fee paid to the adviser by the developer is referred to as 'recommendation advice'.

The investment adviser is able to make a recommendation to an investor to purchase a property in the context of their specific financial circumstances. This in itself may appear to negate the necessity for independent valuation advice to be sought or recommended by the investment adviser. This raises the question that in addition to a specific property, meeting an investor's specific financial objectives based on their specific circumstances, is the price at which the property is being recommended to the investor at market value in the context of the Spencer Test? Further to this, has the investment adviser made the investor aware of all relevant circumstances pertaining to the property for an informed decision to be made by the investor? This question turns on whether the investment adviser is being solely remunerated by the investor, in which case a fee may be charged for recommending against a specific property investment. Is the investment adviser still remunerated by the developer if he or she makes a recommendation not to purchase a specific property, or makes a recommendation not to pay the asking price? In the case of the investment adviser being remunerated by the seller / developer, how does the relativity in fee paid by the seller compare to the fee paid by the investor and how does that relativity impact on the recommendations made by the adviser to the client?

5.6.2 Defining expertise

The above definitions of real estate agent and valuer are focused on the task of the service provided to the client. This is in contrast to the client and the influence the advice provided by a financial adviser has on the decision-making process of the client. In concise terms, the valuer and agent provide a valuation or service to sell, buy or lease property. The financial adviser provides advice sometimes referred to as a ‘statement of advice’, upon which a fee is charged regardless of the client’s decision to act upon it. As highlighted in the previous chapter, an exception for the valuer has been recommended much the same as for solicitors and accountants giving information in the course of their professional activity. This recommendation highlights a grey area that is distinguished between advice being a stand-alone service and information which is incidental to another service being provided.

It may be argued that the valuer who provides a valuation to a potential investor, which has an impact on the decision to purchase or not to purchase based on the valuation, has in fact given advice. This is particularly pertinent where an investment adviser has recommended the purchase of a property at a certain figure and the valuation obtained by the investor is lower than the figure provided by the investment adviser. It may be argued that the professional activity of the valuer in providing valuation advice to an investor is *de facto* investment advice. This is particularly relevant where the investment is property which produces a cash flow and the valuation is the present value of all future income in perpetuity. From this perspective, it is hard to see how valuation advice is not investment advice, given that this is precisely what the investor would pay the valuer to advise them of. The primary difference between investment advice and valuation advice may be viewed as being the discretion the adviser has to make a recommendation to an investor to pay above a valuation figure or range, based on the specific circumstances of that investor. This is the issue that is to be discussed in the next section. The focus of the expertise of the financial adviser may be to fine-tune and apply the advice provided by the valuer in tailoring investment advice to the needs of a particular investor. As discussed earlier, this is defined as specific or personal advice.

The service of the real estate agent marketing property to an investor is the process of marketing the attributes or inherent and external features of the property to potential investors. The marketing focuses on the property itself. The marketing of property using the merits of negative gearing and prospective capital gains is to draw reference to the perceived attributes of property to an investor. At best, it may be argued that where negative gearing models are applied to a specific property with no relationship to any prospective purchaser, that this advice or information is general advice only. In relation to the aspect of capital gains projections, this advice relates to the property, which is reasonable to expect that the same capital gains projection would apply in any case, this is regardless of who purchases it. It may be considered that the projection of capital gains of a property is within the expertise of the valuer and property economic forecaster, as it is asset-specific. The selling agent acting for the developer engaged and remunerated by the developer of property, should be apparent to an investor and allow the investor to determine the level or weight of reliance to be placed on the advice provided to them by that person. In practise, the investor should be able to distinguish that the selling agent is remunerated by the seller and in essence is on the opposite side of the divide of independence to themselves, as highlighted in Model 1 of the Conceptual Framework.

In contrast to the selling agent, the valuer's expertise is to determine the value of the property, or as discussed earlier, provide a range of value upon which a purchaser or his/her adviser may negotiate to purchase a property. The valuer's expertise is in assessing a point-in-time value for a particular property. The specifics and focus of the valuer and the valuation is on the property itself, not the client purchasing it. The vagaries of the valuation are confined to the asset, with the market value being what price a property would transact between a willing but not over-anxious seller and willing but not over-anxious buyer. The missing link of the valuer providing any more than a value or range of value is a framework for or context for their advice of value to be applied to an investor's specific circumstances. A vital gap exists between the property-specific information that a valuer provides and the investment value of the property to the specific investor. Appendix 'A' provides the headings of a speaking valuation report. It should be noted that none of the headings include or make reference to the circumstances or investment objectives of the party that may rely upon it. The valuer's expertise is confined to determining value, with little or no reference to the circumstances of the parties that contribute to the sales evidence, upon which they have based their value. What the valuation profession to date has relied upon is correlation of sales evidence to form a value, with little or no regard to the circumstances of those sales. As highlighted earlier, the attributes of the property used as sales evidence forms part of the information required to analyse the sale. If the valuation profession were to consider gaining the necessary skills to provide property investment advice, with emphasis on assisting investors to purchase property, valuers would need to know much more information about the client's needs and circumstances.

In contrast to the valuer and agent, consideration is now given to the expertise and advice of the investment adviser. The investment adviser, in addition to the definition of their role provided under the Corporations Act 2001, is also governed by an additional provision. This is known as the 'Know-your-client' rule, which is defined under sections 851 and 945A of the Corporations Act.

The valuer and the Pro Forma of their valuation report as shown in Appendix 'A', compared with the Pro Forma of the investment adviser in Appendix 'B' shows the focus of the information-gathering detail and process of the client around which the investment plan will revolve. A summary of the key requirements of the investment adviser is covered under s945A of the Corporations Act:

i) determine relevant circumstances of the client
ii) make reasonable inquiries as to those circumstances
iii) consideration of the subject matter of the advice is reasonable in the circumstances of the client
iv) the advice is appropriate to the client having regard to that investigation and consideration.

In contrast to the requirements of the investment adviser to have a reasonable basis for the advice provided in relation to a financial product, there is no coupling requirement for the investment adviser to have any specific qualifications in relation to the specific product that he/she is recommending. The specific focus of the 'Know-your-client' Rule is on the client, which is evident from the information obtained from the Client Data Profile Pro Forma (Appendix B). Setting aside the qualifications and experience of the investment adviser in providing property investment advice, the nature of the Client Data Profile Pro Forma clearly prioritises the needs, objectives and risk profile of the client. The investment adviser is clearly client-focused, as opposed to the property professional (agent and valuer) who is asset-focused.

5.7 Valuations and property investment advice - can they co-exist?

A valuer determines value based on market transactions, having regard to the market at the date of valuation. The Investment adviser determines the value of an asset to the investor, based on their specific circumstances. This may be analysed as shown in Table 5.2:

Table 5.2 Comparative analysis of professions

Professional	**Valuer**	**Investment Adviser**
Focus	The subject property	The client
Data	Sales evidence & return	Needs & objectives
Output	Market at date of valuation	Investment options and decisions

Table 5.2 provides a clear distinction between the bases upon which respective advice is provided to the client. In view of the investment adviser providing property investment advice, the formulation of the purchase price of the property may be determined by a combination of two reference points. The first being the value or market value range provided by the valuer, based on market transactions and the state of the market at the date of valuation or investment. The valuation would also need to provide a statement of the likely performance of the investment property over the anticipated investment horizon of the property. The Second is the value of the property based on the financial circumstances of the investor. This could be referred to as Financial Investment Value. The valuation of the property by the valuer provides an anchor or safety

net for the investor and his/her advisor to formulate an opinion as to how much the investor would be prepared to purchase the property, rather than fail to obtain it. A combination of these two approaches would provide a basis for an informed decision to be made, based on market value by reference to sales evidence, the anticipated performance of the property in terms of annual return and capital growth and the financial circumstances of the investor.

In considering the above process, a certain amount of resistance and criticism may be met on the basis that the valuer would be setting the market. This is refutable when the role of the valuer in the provision of a valuation by reference to other sales and investigation of the market and property was simply to use his/her expertise in assisting the purchaser to meet the Spencer Test in making an informed assessment of value based on two criteria. This is in contrast to determining the value of the property based on affordability or asking price.

5.8 Agents, valuers and investment advisers – six degrees of separation

In the previous section, the benefits of the valuation prior to purchase were discussed. Where this process might meet resistance is when the investment adviser is dually remunerated from the investor and through the developer or his/her agent. Table 5.3 shows the complexity of deciphering the moral hazards of the advice that may be sought or presented to the investor. Moral hazard is defined as the issue confronting an adviser who is dually remunerated, or stands to gain some form of benefit from both investor and developer or their intermediary in either their role or dual role of advising the investor on the merits of a specific property, in which they are remunerated by the selling party for undertaking that role. Concisely, it is risk of compromising the integrity of advice for the purposes of attaining a transaction and is relevant to the Divide of Independence highlighted in Model 1, in the Conceptual Framework of this thesis.

Table 5.3 shows the moral hazard ratings. The weightings of risk are not empirically based. The risk ratings are determined as follows; low risk implies the adviser is on the same side of the Divide of Independence (refer to Model 1) as the investor. Moderate risk is where the adviser is on the opposite side of the Divide of Independence to the investor is able to determine that fact. High risk is where the adviser is on both sides of the Divide of Independence (receives remuneration from investor and also developer or their agent) and the investor is unable to clearly establish whether the adviser may have a greater loyalty to the parties on the opposite side of the Divide of Independence to them.

Table 5.3 - Moral hazard advice rating

	1	**2**	**3**
	Engaged by Investor only	Engaged by Developer only	Engaged by Developer & Investor
Selling Agent	1	1	1
Valuer	1	2	3
Investment Adviser	1	2	3
Score	**3**	**5**	**7**

1 = Low risk 2 = Moderate risk 3 = High risk

These weightings and scores in the table reflect the possible risks of biased advice being provided to the investor by each of the professionals in the table. In column 1 the investor does not engage a selling agent, as he/she is purchasing property and the selling agent is only remunerated by the developer. In each column they receive a low risk rating as the investor can recognise his/her relationship with the developer. In the case of the valuer and investment adviser, the risk rating increases from column 1 to 3. What largely dictates the graduation of the risk rating from column 1 to 3 is highlighted in the Divide of Independence discussed in the conceptual framework in chapter 3.

In the case of column 2, a higher risk weighting exists on the basis of moral hazard and that the adviser or valuer acting for the developer will act in the best interest of the developer. In column 3, the highest risk rating for bias exists on the premise that the valuer and investment adviser are dually remunerated by the developer and investor. The investor is not able readily to distinguish if a bias exists and what the bias might be if it did exist.

The following issues articulate the two main areas of risk associated with an investment adviser obtaining dual fees from developer and investor (see Table 5.3 above):

1) **Relativity of the investors fee to the developers fee**

   The respective fee paid to the adviser by the developer and its relativity to the fee paid by the investor to the adviser cannot be overlooked. Where one side's fee outweighs the other, the impact that that would have on the recommendation as to the purchase price recommended to the investor must be considered. This may be taken a step further by inquiring as to whether a double fee or commission is being paid by the investor through the fee they agreed to pay his/her adviser and secondly the fee being paid by the developer to the adviser, which comprises a premium to cover the adviser's commission paid by the developer. This is particularly significant where the adviser is being paid by the developer's marketing agent who is also claiming a fee or commission.

2) **Establishment of on-going transactions**

   The second issue for consideration in the assessment of the quality of investor advice and dual fee is significant. The potential for bias in advice may be fundamentally entrenched in the fact that the adviser selects the property from a pool of developers he/she has dealt with and has obtained repeat fees or commissions from. This creates a double jeopardy for the investor, as one fee is obtained from the investor, in contrast to multiple fees being obtained from the same developer for each investor.

In relation to the above issues, there may be three remedies or ways to address the issue in which a fee is obtained from both investor and seller by the investment adviser. The first is through an industry code of practise, the second, through the use of legislation and lastly extinction by attrition. In the case of an industry best-practise model, there is no obligation for that practise to be used. The use of legislation would statutorily remove the practise. The latter, and perhaps most controversial, is the attrition of dual fee-based advisers through escalation of professional indemnity insurance premiums. The issue for investment advisers in the later alternative is the eventual impact premium increases will have across all investment advisers.

In the case of investment advisers not obtaining dual fees or commissions, one range of premiums may exist. In the case of the higher risk advice which encompasses advice to both investor and seller, an alternate structure may be adopted. The use of overall annual fees to determine professional indemnity insurance could be segregated into the two components. Investment advisers that accept one fee or commission only from one side, as opposed to dual fee advisers who are exposed to 'moral hazard'.

5.9 Property investment seminars –the gold rush of property

Property investment seminars are similar to the gold rush of the 1850s experienced around Australia, with particular fervour in New South Wales and Victoria. The value of gold as a precious metal and datum of value drew the attention of the masses who migrated from the coastal cities and overseas to established country towns where gold was mined and panned, Australian Government (2006). The Gold Rush saw many support industries blossom as mining and digging was undertaken on a wide scale. Among the activities of extracting gold were many individuals and lay persons who had sought wealth creation through this new-found fad. Many inexperienced self-styled wealth-seeking prospectors were disappointed at the dividends from their prospecting activity. Having travelled, obtained licenses to pan and dig for gold and purchased the requisite equipment to do so, many despondent prospectors found themselves turning to employment in the support industries as the new wave of well-intending or hopeful prospectors arrived to make their fortunes.

Among the beneficiaries of the gold rush were governments who granted licenses to dig and pan for gold at 30 shillings per month, property owners who made their property available for a fee to gold prospectors and the support industries that resourced the provision of digging, panning and extraction equipment (Wikipedia 2006). A resemblance exists between the wealth-creation fervour of the Gold Rush period and the present day Property Rush wealth-creation strategies of the property investment seminar, investment advising and mortgage lending industries. A juxtaposition of these two periods is demonstrated in Table 5.4:

Table 5.4: Juxtaposition - Servicing Wealth Creation Fervour

1850s Gold Rush	1998 – 2004 Property Rush
Government licenses to prospect for gold, at 30 shillings per claim.	Government collecting stamp duty
Property owners collect occupation and extraction fees	Investment seminar at $5,000 to $15,000 how to create wealth with property leading with referrals to property being marketed
Extractive industry suppliers servicing prosectors with digging equipment.	Investment advisers collecting commissions from investors and developers via property marketed at seminars.

Despite the future provision of consumer protection measures for property investors by regulators there will always be an element of ‘caveat emptor’. Like the Gold Rush, the prospect of wealth creation through property investment will ultimately rely on investor discretion and business prudence. The regulation of the property investment seminar industry is a step in assisting novice property investors with property-investment decisions. Investor discretion and business prudence means separating the information required to make an informed decision about property investment and the actual investment process itself. It is not feasible, if not impossible, for a novice investor to acquire these skills whilst making a property investment decision. This in part may be addressed through strict regulation of what constitutes a property investment seminar, course or information session.

5.10 Summary

This chapter has reviewed some of the key limitations of property valuations and the advice they provide to property investors. A distinction between the role and advice provided by the valuer and investment adviser has been drawn. Notwithstanding issues identified with the qualifications of investment advisers to provide property investment advice where they are not qualified to practise in this field, their focus of understanding the objectives of the investor has been identified. This has distinguished a gap between the property valuer who is asset focused and the investment adviser who is investor focused.

In conclusion, the ultimate responsibility for prudent property investment rests with the investor. Regulators cannot be charged with the responsibility of protecting investors against themselves. It is important for investors to understand that independent advice does not come free and where it does, caveat emptor should also apply. This comment has drawn attention to a practise which has been identified as being fatally flawed in this chapter: that of dual fees or commissions paid to advisers. An argument has been developed to support the use of valuations prior to purchase in the property investment process and the context of value or range of value has been identified for use by the investor or their adviser.

Chapter 6 - Research Method

6.1 Overview and objective

This chapter reviews the research method, survey approach and sample, the professions that participated in the survey and the composition and relevance of the survey itself. Discussion on the objectives of the survey questions, their relevance, benefits and limitations in addressing the hypothesis has also been covered.

The method used to test the hypothesis of whether a valuation would assist a residential investor prior to purchase was carried out by survey. The purpose of the survey was to determine whether several different professions each with an association to property, endorsed the use of valuation advice prior to purchase and whether valuation advice would in fact assist an investor to make a more informed decision as to the purchase price of property.

6.2 Survey participants

Seven distinct professions were identified as participating in the property purchase and investment process. These professions were each surveyed and included in this work. A brief summary of the relevance of each profession follows:

Valuers were selected in their present capacity of undertaking mortgage valuation work and for other traditional valuation purposes. In their role as mortgage valuers, their inclusion in the survey also provides an interesting addition as to whether valuers would support valuations prior to purchase, which might assist the purchaser and also serve the needs of the lender. In essence, the question considered is: what impact could the change of property purchasers engaging valuers prior to purchase have on the concentration of mortgage valuation to panel work?

Selling agents have been selected for their traditional role in the marketing and sale of residential property to investors. The impact of the information and advice they provide to prospective purchasers and investors is now under the scrutiny of Government. The effect of the selling agent on a more informed and experienced investor in the property purchase process is relevant to this study.

Buyer agents play a pivotal role in the process of purchase for both owner occupation; and even more so in investment. The advent of the buyer agent was ratified with their recognition in the Property Stock and Business Agents Act 2002. Are they valuers, are they financial planners, or indeed a combination of the two? What advice do they actually provide and how are they perceived by other professionals in the process of purchasing property?

Financial planners are a growing profession who are recognised through licensing to provide investment advice. This advice may relate to property, or any other form of investment. They represent the sovereignty of advice giving as being a stand-alone profession. Their role in providing property investment advice will continue to emerge and grow as finance and access to funds from equity in property and other assets afford diversification of investment. In the sale of new residential property they are assuming an increasing role in the advice and recommendations they provide to investors.

Conveyancers act for the investor by effecting the purchase of the property for the investor. The advice provided is predominantly restricted to advice on the contract of sale and annexed documentation and mortgage lending document. In addition, building inspection and strata inspection reports may be recommended and obtained. No advice has traditionally been provided into the suitability of the property as an investment or reference to the price to be paid for the property.

Accountants in the property purchase process have become redundant due to the requirements of the Financial Services Reforms, which requires that with any advice relating to negative gearing or tax benefits the provider must hold an investment adviser's license. Accountants that provide any form of tax advice must be related to or be incidental to the advice they would provide in the ordinary course of preparing a tax return. It may be the case that to some degree accountants have not given up their traditional role of providing tax advice in the course of their activities and services to clients.

Lenders, excluding mortgage brokers, have been included as the requirement for finance is integral to the property investment process. The provision of finance and the cost and structure of that finance is an important component to the success of the purchase and on-going performance and return from a property. The perspective of the lender is an important consideration in determining whether the client, as well as the lender, may be better served by valuation advice being sought prior to purchase rather than after.

6.3 Survey response

Response rates to surveys varied between the professions as shown in Table 6.1. Access to valuers, selling agents and lenders though professional bodies produced a higher return rate compared with other professionals. Surveys sent to Buyer's Agents were lowest due to their present numbers. A presentation of this research was made to the Buyer's Agent Committee of the REI to increase access to these professionals. It was confirmed by the committee that there is presently a limited number of Buyer Agents in both NSW and Australia. The specific number of buyer's agent in NSW could not be ascertained, since any holder of a real estate agents license qualifies as an agent to act as either a buyer's or a seller's agent, but not dually in the same transaction. The buyer's agents surveyed in this study exclusively acted for buyers only.

Table 6.1 Survey summary

Participants	Surveys Sent	Surveys Returned	Invalid Surveys	Response % Excl Invalids
Valuer	70	58	5	76%
Real Estate Agent (selling)	70	42	3	56%
Buyers Agent	40	13	0	33%
Financial Planner	70	19	0	27%
Accountant	70	20	1	27%
Solicitors / Conveyancer	70	23	3	29%
Lender (Brokers excluded)	70	33	0	47%
Totals	**460**	**208**	**12**	**43%**

N.B. The response rate in the last column is determined as a percentage after deducting the invalid surveys from the surveys returned.

6.4 Survey structure and statements

The survey comprises twelve statements, of which a statistical analysis and output was derived from eleven statements. The primary objective of the survey was to assess whether the seven professions surveyed agreed with valuation being sought prior to investing in property. The following is a brief commentary on the objective of each statement:

1) *Purchasers should obtain their own independent valuations prior to purchase*. This statement seeks to test the perspective of the

professions as to their view, attitude and validity of what a valuation constituted.

2) *A valuation undertaken by purchasers prior to purchase of a property should be acceptable to a lending institution for the purposes of providing finance.* This statement seeks to scrutinise the potential for valuations obtained by the purchaser to be misused or better serve the needs and objectives of the borrower over the lender. Succinctly, it seeks to determine whether one valuation obtained by the lender could serve the dual purpose and needs of the lender and borrower.
3) *Purchasers are generally qualified adequately to determine the value of a property when formulating the price they pay for a property.* This statement tests the response to the first question. In the event that the professionals surveyed were to determine that a valuation was not necessary prior to purchase, it would be assumed that the purchaser would be able adequately to assess the value of property being purchased. Question 12 of the survey seeks to assess sources of information that might assist the purchaser to formulate a purchase price. It ultimately measures whether professionals believe purchasers should determine the purchase price of property either aided or un-aided.
4) *Real estate agents selling property should recommend a purchaser seek independent advice as to the price they pay for property.* This statement is predicated on the basis that the selling agent is engaged and remunerated by the seller or vendor, or in this case the developer. Given the agent's fiduciary relationship with the seller, should they recommend a purchaser seek independent advice as to value?
5) *Real estate agents marketing property should not be permitted to give market opinions or estimates of selling prices to purchasers.* Similar to the previous statement, this statement seeks to obtain an unequivocal answer.

6) *For each of the following, rate whether they would assist an investor when purchasing a property, including strata units*
    a. *Valuation report*
    b. *Strata inspection report*
    c. *Building and pest report*
    d. *Legal opinion on the contract of sale*
    e. *Legal opinion on the loan contract*

    This question seeks to provide a ranking of importance for each of the listed items of information that might assist the investor in the purchase process. It further tests the first statement.
7) *More investors are turning to property as an asset to be included in retirement planning.* This statement seeks to measure a specific perception and determine any biases or differing opinions between the professions as to the status and level of property investment.
8) *Rank the following professions from 1 to 6 in determining who is qualified to assist in selecting the most suitable residential property for an investor:*
    - *Buyer agent*
    - *Selling agent*
    - *Valuer*
    - *Conveyancer*
    - *Financial Planner*
    - *Accountant*

    Despite the requirements of the Corporations Act for the provider of any such information to hold an investment advisers license, the objective is to seek a ranking of the professions as to which profession is the most suitable to assist in matching the investor to a property. In essence it is a professional peer ranking.
9) *Financial planners who make property investment recommendations to clients should recommend their client seek independent advice as to the price they pay for a property.* There are two inseparable parts to this statement and the answer. Firstly, do financial planners feel

they are qualified to provide advice as to the value of property? Secondly, what is not known from the survey is which planners surveyed accept dual fees or commissions from investor and investment funds. The potential for bias to exist in the second issue if the planner does take a dual fee or commission cannot be separated from the first issue as to whether the planner may feel qualified to provide this advice.

10) *Real estate agents and valuers should be regulated at the Federal level of Government by the Australian Securities and Investment Commission and not at the State level of Government under the Department of Fair Trading in each State.* This statement pits agents and valuers views against financial planners who are currently each governed at different levels of Government under different legislative regimes.

11) *National legislation is needed which includes a provision that real estate agents, valuers and financial planners are permitted to act for and receive a fee, commission or reward from one side only (purchaser or developer) in relation to the same property transaction.* The Federal level of governance of financial planners was stricter than the State regulation of agents and valuers. Nevertheless, one fatal flaw of omission exists in the Federal legislation governing financial planners. That omission is the prohibition for a financial planner to accept a fee or commission from both investor and fund or developer in the case of property advice and transactions. This statement could be juxtaposed against the previous statement.

12) *What other methods of deriving the purchase price of investment property do residential investors use?* This question and responses to it have been omitted from this work as additional information is required which will be covered in subsequent research on this topic.

6.5 Statistical analysis and test

A Likert Scale has been used to measure responses for ten of the eleven statements posed in the survey. In the case of question 8, a percentage comparison table has been used to compare the rankings of the respondents. The Likert scale used comprised a scale of 1 to 7 to measure responses on the following gradient:

1 - strongly agree
4 - unsure
7 - strongly disagree

The statistical test used comprises two analyses, the first being the mean distribution for each professional group in which the mean of each professional group has been compared against each of the other professional groups. In addition, an analysis of the range distribution within each group has also been measured and plotted through the use of a mean distribution graph.

The second and most pertinent test is the Significance Factor Test, which measures the P-value of the means of the groups for each statement. Flaharty *et al* (1999:270) noted that, “The P-value is the conditional probability of obtaining a standardised test statistic that is less likely than the observed sample outcome”. An ANOVA One-Way Test, using each survey statement as the Dependent List and the groups of professionals surveyed as the Factor, has produced a significance factor or P-value test result. In addressing the core thesis question, the ANOVA has been used to analyse any disparity between the views of financial planners and selling agents versus valuers. The acceptance of the role of the valuer which may have an impact on whether a property is purchased and at what price is of importance in determining either any bias against the valuer and the usefulness of the valuation by selling agents and financial planners.

In this thesis the determinant of the relevance of the P-value is as follows:

P-value < 0.05 = significant difference and rejects a null hypothesis

P-value >0.05 = significant difference and endorses a null hypothesis

In this thesis the null hypothesis is that the mean scores on the Likert Scale are the same for each professional group, thus the opinions of the different professional groups as to the importance of valuations vary. A P-value < 0.05 would reject this null hypothesis and confirm that a valuation would provide important information and assist an investor prior to purchase.

6.6 Summary

This chapter has provided detail on the basis used to test and measure the hypothesis of the thesis and details of the survey participants, the survey questions and structure. An overview of the rationale for statements and questions put to the professionals surveyed provides a basis of understanding the results of the survey test. Holistically, this chapter provides a basis and underpins the following chapter, which includes the statistical outputs and discussion.

Chapter 7 - Survey Results And Discussion

7.1 Overview and Objective

This chapter provides a statistical analysis including a P-value test and results for each survey statement. The P-value result measures the significance in variation between the groups. Additional discussion on the mean distributions within the relevant groups has also been undertaken where relevant.

The first page of each statement commences with a mean analysis, P-value or significance factor result and a mean distribution graph. This is followed by a result summary and discussion. In some of the discussion, consideration has been given to the material covered in earlier chapters. Where necessary, discussion is based on knowledge and understanding of the subject and in some cases, a position has been taken in interpreting the outcomes and results of some of the professions surveyed. Question 8 has been analysed by ranking the responses of each of the professions.

In conclusion, a summary statement of the thesis question has been addressed at the end of this chapter, which is based on the survey results. The final summary and conclusion which will also include reference to the survey results as well as the discussions of earlier chapters will be covered in the concluding chapter.

Statement 1- Purchasers should obtain their own independent valuation prior to purchasing property

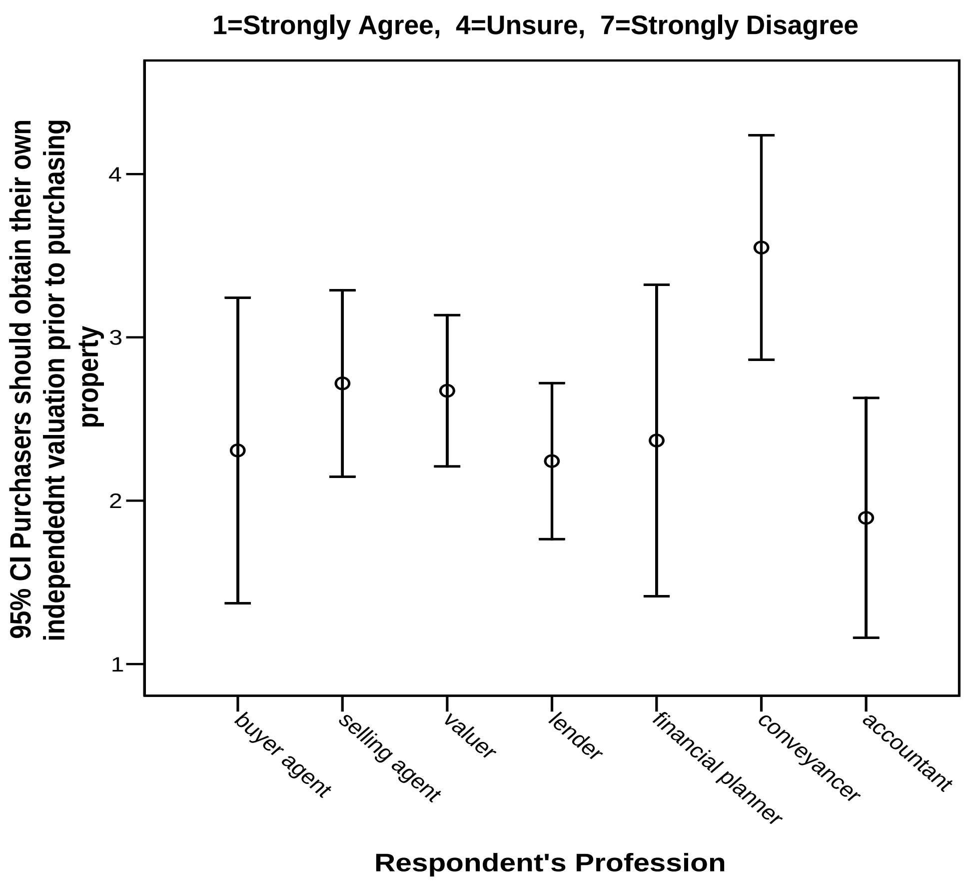
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	2.31	1.548	.429	1.37	3.24	1	6
Selling agent	39	2.72	1.761	.282	2.15	3.29	1	7
Valuer	52	2.67	1.665	.231	2.21	3.14	1	7
Lender	33	2.24	1.347	.234	1.76	2.72	1	6
Financial Planner	19	2.37	1.978	.454	1.42	3.32	1	7
Conveyancer	20	3.55	1.468	.328	2.86	4.24	1	7
Accountant	19	1.89	1.524	.350	1.16	2.63	1	6
Total	195	2.57	1.659	.119	2.33	2.80	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	34.485	6	5.748	2.164	**.048**
Within Groups	499.330	188	2.656		
Total	533.815	194			

Graph – Mean Distribution



Result Summary

Each profession, except for Conveyancers, has a mean distribution range affirming various levels of agreement with the statement. Conveyancers have a 95 percent confidence interval for the mean that spans from unsure to slightly agreeing with the statement. The P-value of the ANOVA is .048 which is marginally below the .05 significance factor benchmark. This is due to there being a difference in the upper bound of the confidence interval of both lenders and accountants, compared with the lower bound of the confidence interval of conveyancers. Accountants' responses are significantly higher than those for lenders and conveyancers. The mean of the accountants' responses provides the highest agreement with the statement.

Discussion

The valuers, whilst gravitating to the affirmative, have an overall ranking as the third lowest profession to support the statement. Further to this, valuers have the tightest mean distribution range, indicating greater level of agreement within the profession.

In contrast to all the professions surveyed, conveyancer's appeared to be only marginally in agreement with the statement. Discussions with conveyancers provided some basis for the result. Overall valuations are seen to be based on another person's view of value, even though a valuer is a recognised professional. The conveyance of property is seen as a process of imparting information on to buyers. It is an integral part of the buying process. The valuation is seen to go beyond the scope of providing information, due to the fact that a valuation is an opinion of value, not a definitive statement of fact. In many ways, whilst it is recognised that a valuation may assist an investor not to pay beyond the value for a property, a trade-off is made between this and the potential for a valuation to provide an additional issue that may thwart or impact on the purchase. Traditionally, the valuation has not been a recommendation made by conveyancers and at present has been met with some resistance by this profession.

Of particular note is the comparison between the selling agent, who acts for the seller, and the valuer, who at present can be identified as acting for the lender as most valuations at present would be commissioned by the lender rather than the investor. In the present case, the mean of the valuer's range is very similar to the mean of the selling agent. In the present valuation process, the valuer will contact the selling agent to discuss the method of sale and bona fides of the transaction and parties to it. This primarily occurs as the valuer is traditionally engaged post purchase to analyse the transaction and confirm value within the context of what the purchaser has paid for the subject property. This is in contrast to the valuer determining the relativity of the value of the property against other property sold prior to purchase.

This statement will be considered again in the analysis of Statement 6(a), with further context as to the possible rationale of the outcome of the valuation profession's view in the use of pre-purchase valuation advice and the impact on their present relationship with lenders.

Statement 2 - A valuation undertaken by purchasers prior to purchase of a property should be acceptable to a lending institution.

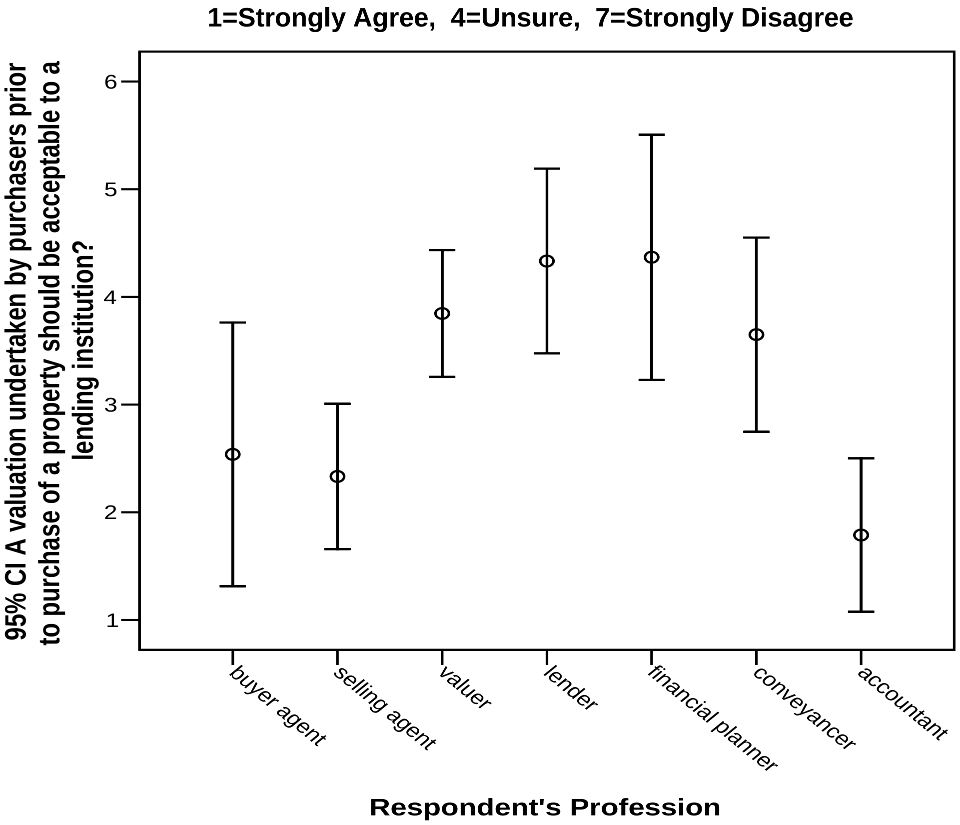
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	2.54	2.025	.562	1.31	3.76	1	7
Selling agent	39	2.33	2.082	.333	1.66	3.01	1	7
Valuer	52	3.85	2.118	.294	3.26	4.44	1	7
Lender	33	4.33	2.420	.421	3.48	5.19	1	7
Financial Planner	19	4.37	2.362	.542	3.23	5.51	1	7
Conveyancer	20	3.65	1.927	.431	2.75	4.55	1	7
Accountant	19	1.79	1.475	.338	1.08	2.50	1	7
Total	195	3.37	2.272	.163	3.05	3.69	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between groups	161.286	6	26.881	6.015	.000
Within groups	840.129	188	4.469		
Total	1001.415	194			

Graph – Mean Distribution



Result Summary

Of the professions, buyer agents, selling agents and accountants have a mean distribution range affirming this statement. Valuers and conveyancers have a 95 percent confidence interval that sits across the unsure response, with lenders and financial planners having a confidence interval from unsure to a negative response to the statement. The P-value of the ANOVA gives a result which is substantially less than the .05 benchmark. This is attributed to both the variation of the means of the professions and the mean distributions of selling agents, compared with valuers, lenders and financial planners in one case and a further disparity between accountants versus valuers, lenders financial planners and conveyancers. Of all the professions, valuers have the smallest mean distribution.

Discussion

The buyer and seller agent both supported the statement in contrast to lenders. Given the present process of the lender commissioning the valuation to check the validity of the price paid for a property and the amount that may be lent against it, it is understandable that the lender would have a greater resistance to a valuation undertaken by the investor for purchase purposes, which was then tendered as evidence of value after purchase. It is not envisaged that a valuer would always predict or determine the value of a property at a purchase price which was subsequent to the valuation. In the case of the valuation being lower than the price paid for the property, it may be to the detriment of the investor to tender it as evidence of value to a lender. Under the present process, where the price paid for a property affords the best evidence of value, subject to the Spencer Test being met, it would be necessary for the investor to obtain his/her own independent valuation prior to purchase as a guide only and then have the lender obtain his/her own valuation for lending purposes. As discussed in chapter 5, where the valuer provides a range of value to the investor, the valuations may not serve the needs of the lender.

The mean of the valuer’s response indicates as in the first statement a level of resistance to the statement, with a mean distribution reflecting a similar result In this statement and response, what cannot be readily reflected in the results is the grasp of the moral hazard issue that the lender would be confronted with by accepting an investor’s pre-purchase valuation. It cannot be determined whether professions other than the lenders would be aware of the ability for the investor to seek finance in excess of the market value of a property due to an inflated purchase price being paid for the property. This is the basis of the potential weaknesses in a pre-purchase valuation being tendered for lending purposes. This then raises the question of the validity, accuracy and indeed purpose of the valuation and the veracity of the valuation profession, where advocacy may become a driving force in the reporting of a property value.

From the mean distribution of the valuation, lending, financial planning and conveyancing professions, it may be argued that there is insufficient professional opinion to support the tendering of a pre-purchase valuation to a lender as evidence of value. Whilst this may be the case, the use of pre-purchase valuations commissioned through the lender from a panel valuer of the lender may provide some form of justification for its acceptance by the lender.

Statement 3 – Purchasers are qualified to determine the value of property when formulating the price they should pay for property

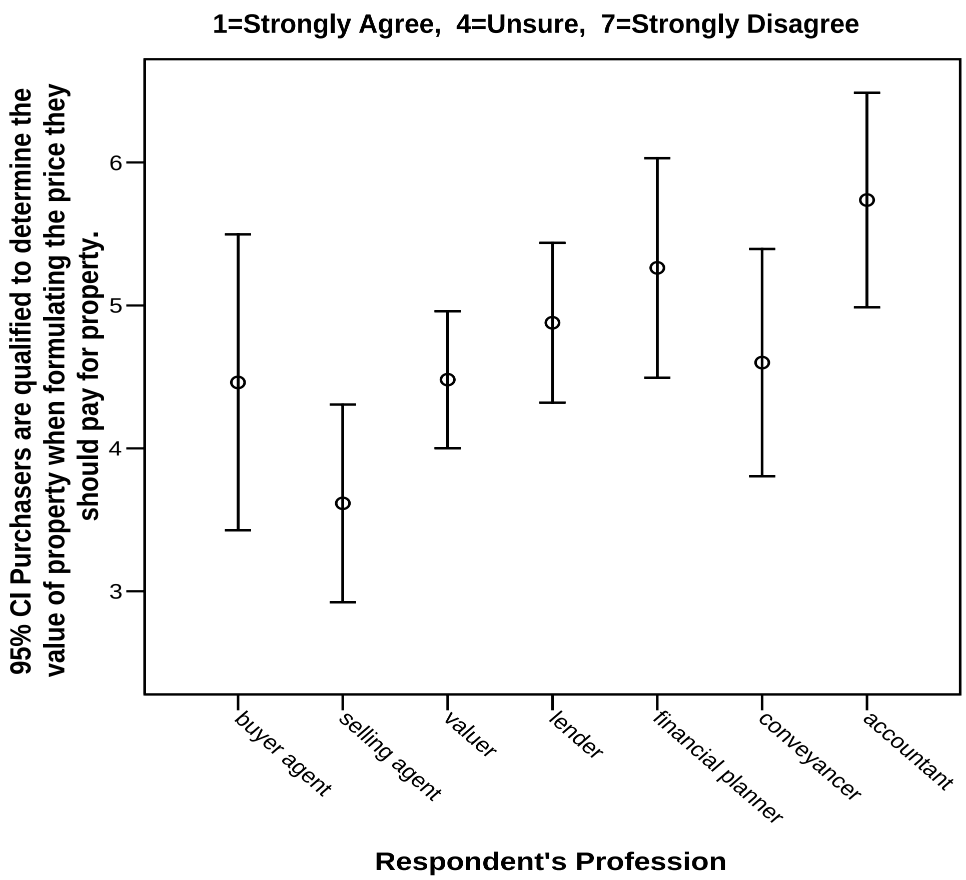
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	4.46	1.713	.475	3.43	5.50	2	7
Selling agent	39	3.62	2.135	.342	2.92	4.31	1	7
Valuer	52	4.48	1.721	.239	4.00	4.96	1	7
Lender	33	4.88	1.576	.274	4.32	5.44	2	7
Financial planner	19	5.26	1.593	.365	4.50	6.03	2	7
Conveyancer	20	4.60	1.698	.380	3.81	5.39	1	7
Accountant	19	5.74	1.558	.357	4.99	6.49	2	7
Total	195	4.58	1.841	.132	4.32	4.84	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	74.228	6	12.371	3.989	.001
Within Groups	583.126	188	3.102		
Total	657.354	194			

Graph – Mean Distribution



Result Summary

All professions, with the exception of selling agents, disagreed with the subject statement that purchasers were generally qualified to determine value when assessing the purchase price of property. The mean of buyer agents, valuers and conveyancers sits between unsure and marginally disagreeing with the statement. Valuers, again, have the smallest 95 percent confidence interval of the professions. The P-value resulting from the ANOVA is well below the 0.05 benchmark, providing a clear distinction of results between the professions. The two sets of professions to note are selling agents against lenders, financial planners and accountants and, secondly, valuers against accountants. As shown, all professions except selling agents had group means showing degrees of disagreement with the statement.

Discussion

It is important to note with this statement that the selling agent is the primary profession that sits on the opposite side of the divide of independence, apart from the financial planner who may act for either or both sides to the transaction. The primary function of the selling agent is to sell the property to the purchaser. Whilst it may be accepted that a purchaser would need to undertake a level of due diligence and investigation into the property being purchased, it is apparent from the selling agent's perspective that purchasers are in the best position to determine the price to be paid for a property, unaided by any specific information relating to price or value. It may be viewed that the role of the selling agent, is to obtain or establish the best price that a particular purchaser might be prepared to pay for a property.

Of note, are accountants who most strongly disagreed with the statement, which is consistent with their response to statement 1, in which they agreed most strongly of all the professions that the purchaser should obtain his/her own independent valuation prior to purchase. Another relationship to note is that of valuers and lenders who of all the professions have the narrowest mean ranges and mean distributions that sit between unsure and slightly disagreeing with the statement. These responses may place some level of confidence in the purchaser in part to determine the price they might pay for a property. As highlighted in chapter 5, the determination of the price to be paid for a property might consist of a mix of references to market transactions and the specific circumstances of the purchaser. What might be argued to be missing from the responses of valuers and lenders is proof that the Spencer Test has been met. To that end, the lender in many cases requires a valuation to confirm that fact.

A further consideration to this statement relates to the financial literacy of property investors. This does not suggest that investors need to be able to value property accurately. What it does highlight, is where a novice investor buys in a location unknown to him/her, that financial literacy would include knowing the steps or process to engage in determining whether the price to be paid for a property was within an appropriate range of value.

Statement 4 - Real estate agents selling property should recommend a purchaser seek independent advice as to the price they pay for a property.

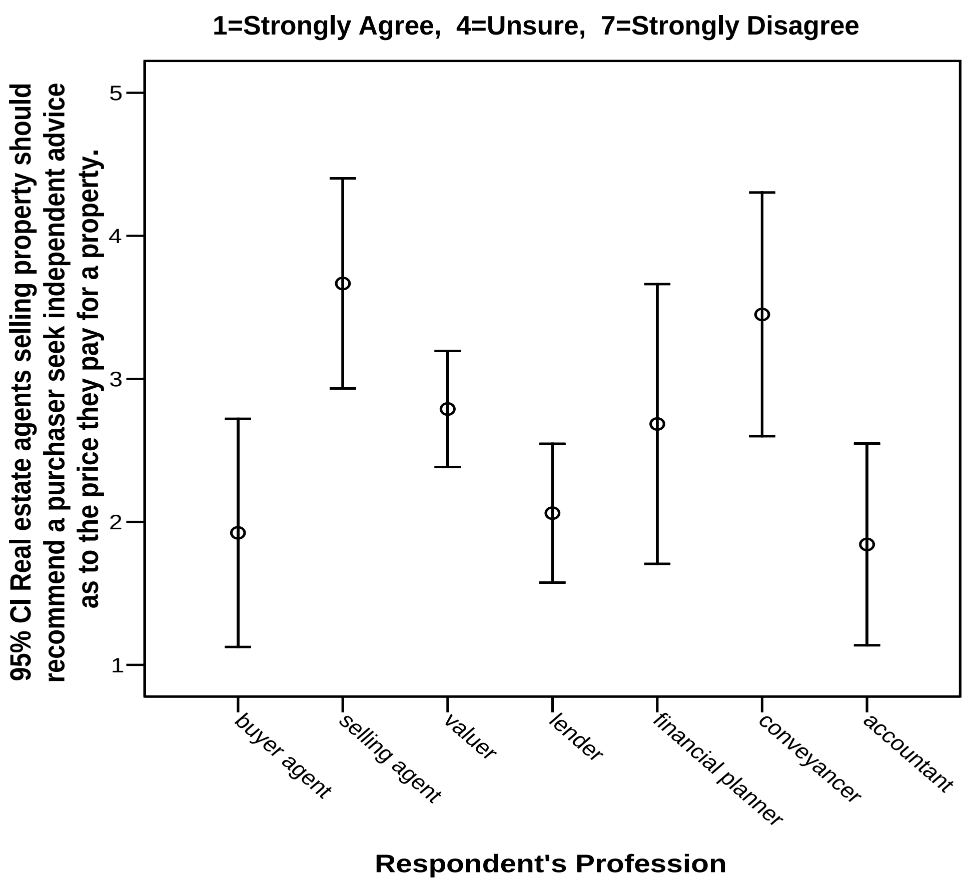
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	1.92	1.320	.366	1.13	2.72	1	5
Selling agent	39	3.67	2.263	.362	2.93	4.40	1	7
Valuer	52	2.79	1.460	.202	2.38	3.19	1	7
Lender	33	2.06	1.368	.238	1.58	2.55	1	6
Financial Planner	19	2.68	2.029	.465	1.71	3.66	1	7
Conveyancer	20	3.45	1.820	.407	2.60	4.30	1	7
Accountant	19	1.84	1.463	.336	1.14	2.55	1	7
Total	195	2.75	1.820	.130	2.49	3.01	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	82.964	6	13.827	4.644	.000
Within Groups	559.723	188	2.977		
Total	642.687	194			

Graph – Mean Distribution



Result Summary

The results show two distinct groups of professionals: buyer agents, accountants and lenders with a high level of agreement to the statement; and leave conveyancers and selling agents with a low to unsure level of agreement. Valuers' level of agreement is such that it places them between the two distinct groups. Overall, the mean of each group is on the affirmative side of the statement, only the selling agent and conveyancers have the upper end of their 95 percent confidence interval on the negative of unsure. The two distinct groupings of professionals have resulted in an ANOVA well below the 0.05 benchmark. An analysis of the 95 percent confidence interval for the professions shows valuers and lenders with the most consistent response within their groups.

Discussion

Of particular interest is the variation in both mean and mean distributions of selling and buyer agents. This is of importance as the buyer agent acts for the purchaser and part of the process of their role is the provision of information to the purchaser for an informed decision to be made about the purchase, which would include the price paid for the property. A further comparison to be made is between the buyer agent and the conveyancer. There is a marginal overlap in the mean distributions of these groups; however, the disparity of the results between the two groups may go beyond the statement they are responding to. The conveyancer and the buyer agent are involved in the buying process, with some buyer agents also involved in exchanging contracts of sale. Regarding the matter of value and the price to be paid for property, a similar result has been noted from conveyancers in this statement when compared with Statement 1.

A further interesting pattern to emerge from this statement is the analysis of valuers and lenders. Whilst having an overlap in their mean distributions, the mean for each of these professions are distinct, with lenders agreeing to a greater degree than valuers on this statement. It was initially envisaged that valuers would have been one of the key supporter of this statement. When considering the financial planners, a much greater distribution within the group is observed; however, the mean of the group affirms the statement marginally more than valuers. A similar mean variation between valuers and financial planners also exists in statement 1.

Statement 5 - Real estate agents marketing property should not be permitted to give market opinions or estimates of selling price to purchasers.

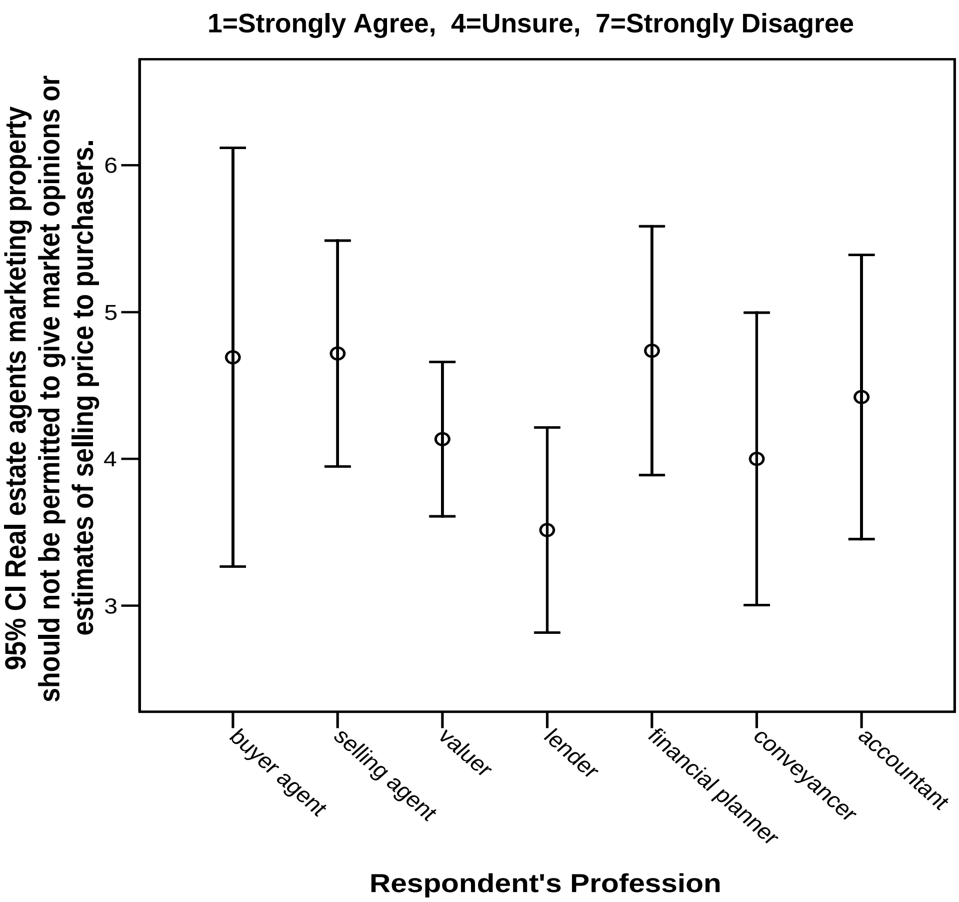
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	4.69	2.359	.654	3.27	6.12	1	7
Selling agent	39	4.72	2.373	.380	3.95	5.49	1	7
Valuer	52	4.13	1.889	.262	3.61	4.66	1	7
Lender	33	3.52	1.970	.343	2.82	4.21	1	7
Financial planner	19	4.74	1.759	.404	3.89	5.58	1	7
Conveyancer	20	4.00	2.128	.476	3.00	5.00	1	7
Accountant	19	4.42	2.009	.461	3.45	5.39	1	7
Total	195	4.26	2.077	.149	3.96	4.55	1	7

ANOVA Result

	Sum of Squares	Df	Mean Square	F	Sig.
Between Groups	35.897	6	5.983	1.404	.215
Within Groups	801.283	188	4.262		
Total	837.179	194			

Graph – Mean Distribution



Result Summary

The P-value of the ANOVA is of 0.215, which shows there not to be a significant difference between the groups, which is evident from the fact that each group's 95% confidence interval has overlap. In part, this result has occurred from the wide variation of distribution within some groups, including buyer agents, financial planners, conveyancers and accountants. The lowest mean is noted in the valuer's group, with lenders having the highest concurrence with the statement of all the groups.

Discussion

It is apparent from the survey results that some level of feedback or information relevant to the selling price or developers anticipated sale price needs to be conveyed by the selling agent to interested parties. In posing this statement, consideration needs to be given to the fact that the selling agent is engaged by the developer to undertake the final stage of the development process, namely the disposal of the property. Without a guide as to the expectations of the developer or seller, a reference point for negotiation is difficult to establish. It is at this point that a line can be drawn as to what might constitute information versus advice, by reference to the party providing it. As highlighted in the Divide of Independence covered in the Conceptual Framework (Chapter 3) of this thesis, it is apparent from the perspective of the professionals surveyed that a distinction is understood of the role and limitation of information provided by the selling agent in the selling process. What is not measured or known is whether the same level of awareness exists in novice property investors who may place a greater reliance on the information provided to them by the selling agent as opposed to other professionals.

The analysis of each profession's response provides a clear indication that the selling agent is also a conduit for information to pass from seller to buyer and back again. The way that information is synthesised and applied by the purchaser is the issue for consideration, as discussed above. In relation to value and price paid for property, no level of consumer protection can save the parting of uninformed purchasers from their money if they are ultimately willing to pay the price suggested by the selling agent. The results from this statement provide a basis that selling agent information in relation to value or sale price should not be regulated, but awareness should be increased for ways in which a purchaser may validate and test the veracity of the information imparted by the selling agent. As highlighted in the result summary, lenders have again provided more concurrence with this statement.

Statement 6a - A valuation would assist an investor when purchasing residential property.

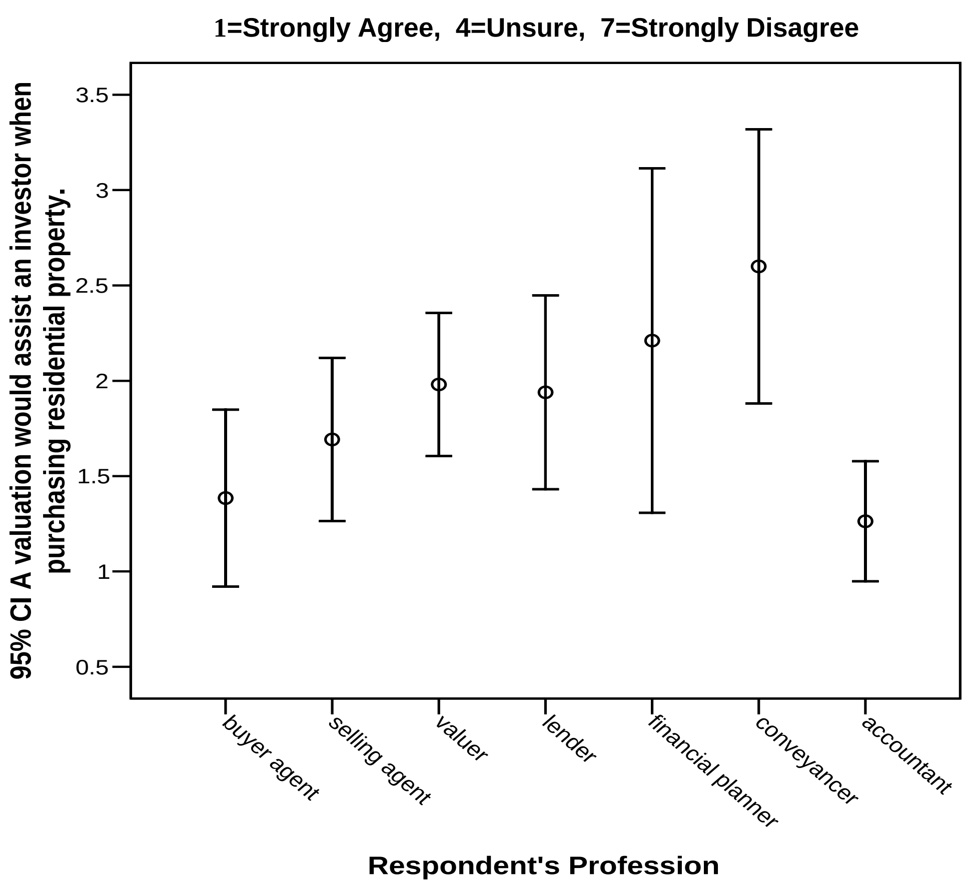
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	1.38	.768	.213	.92	1.85	1	3
Selling agent	39	1.69	1.321	.212	1.26	2.12	1	7
Valuer	52	1.98	1.350	.187	1.60	2.36	1	7
Lender	33	1.94	1.435	.250	1.43	2.45	1	7
Financial planner	19	2.21	1.873	.430	1.31	3.11	1	7
Conveyancer	20	2.60	1.536	.343	1.88	3.32	1	7
Accountant	19	1.26	.653	.150	.95	1.58	1	3
Total	195	1.89	1.386	.099	1.70	2.09	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	24.852	6	4.142	2.238	.041
Within Groups	347.886	188	1.850		
Total	372.738	194			

Graph – Mean Distribution



Result Summary

All professions have a 95 percent confidence interval affirming various levels of agreement with the statement. The P-value of the ANOVA is .041 which is marginally below the .05 significance factor benchmark; thus the opinions of the professions are distinct. This is due to there being a difference in the lower bound of the 95 percent confidence interval of both valuers and conveyancers versus the upper bound of accountants. The mean of the accountant’s response provides the highest agreement with the statement; valuers are ranked fourth out of the seven professions, affirming that a valuation would be of assistance to property investors.

Discussion

This statement initially mirrors the first statement, however a difference exists. In contrast to the first statement, which proposes an investor obtain independent advice prior purchase, the present statement suggests that the valuation would benefit the investor; it does not compel or enforce the use of the valuation. The simple focus of the statement purely seeks to assess whether the valuation is of benefit only.

As highlighted in the result summary, the significance factor between the groups is attributed to valuer and conveyancer versus accountant. In statement 1, it was lender and the accountant versus the conveyancer where the significance has been identified. In support of the use of the valuation by investors, the accountant has consistently ranked first in statement 1 and 6a. A conclusion and overview of the professions and their support of the use of valuations by investors will be covered in the summary of this chapter.

Statement 6b - A strata inspection report would assist an investor when purchasing residential property.

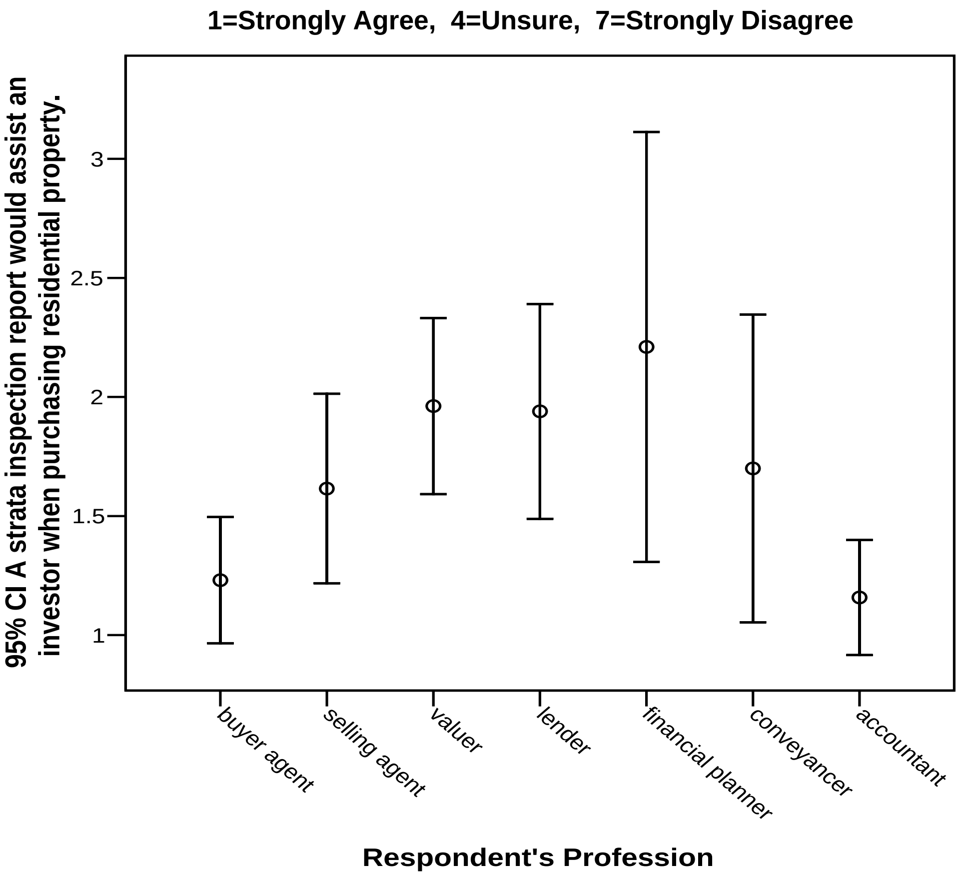
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Maximum
					Lower Bound	Upper Bound		
Buyer agent	13	1.23	.439	.122	.97	1.50	1	2
Selling agent	39	1.62	1.227	.197	1.22	2.01	1	7
Valuer	52	1.96	1.328	.184	1.59	2.33	1	7
Lender	33	1.94	1.273	.222	1.49	2.39	1	7
Financial planner	19	2.21	1.873	.430	1.31	3.11	1	7
Conveyancer	20	1.70	1.380	.309	1.05	2.35	1	7
Accountant	19	1.16	.501	.115	.92	1.40	1	3
Total	195	1.76	1.292	.092	1.58	1.94	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	18.447	6	3.075	1.894	.084
Within Groups	305.225	188	1.624		
Total	323.672	194			

Graph – Mean Distribution



Result Summary

All professions surveyed had a 95 percent confidence interval endorsing the benefits of a strata inspection report for property investors to varying degrees. The P-value of the ANOVA is 0.084, which demonstrates that there are no significant differences between the professions in relation to the benefits of the strata report. Of note are buyer agents who have a confidence interval of 1 to 1.5; this being a very small range within that group. Valuers are also identified for comment as they have the second highest mean, with financial planners being the only group registering a higher mean than valuers.

Discussion

The relevance of the strata inspection report is of lower relevance in the present study, as this work is primarily looking at new residential property, of which there would be little or no information relating to the history in the case of residential strata units and townhouse development. Despite this fact, overall, the strata inspection report provides a wealth of information in relation to the financial, physical and personality of the property, where a history does exist. An additional aspect that is relevant to the new residential development exists where the property is sold off new with a sinking fund included with the scheme. Ultimately, the purchaser would pay for this, but may be comforted in knowing that the provision for capital expenditure has been considered from the outset of the development.

In contrast to valuations, the strata inspection report has been deemed of more benefit to the investor by each profession, with buyer agents and conveyancers showing the biggest difference between these two. The importance of the strata inspection report as rated by the valuer is noted. This is of particular importance, as it is not common for valuers to obtain a strata inspection report on the property being valued for most valuation purposes. It is envisaged that where a valuer was to provide a pre-purchase valuation, a strata inspection report would be of great significance in the case of a non- new residential strata property. In order to conform to the Spencer Test, the valuer would need to be cognisant about all relevant information pertaining to the value of the property. In order accurately to assess the inherent features of the property and any specific issues that might impact on these, reference needs to be made to the strata inspection report. In some cases there may not be any specific adjustment made to the value of a property for a specific matter, however, failure at least to identify and comment on a specific matter may leave the valuer open to criticism. In the case of a pre-purchase valuation, the valuer would need the same level of information that the purchaser or their conveyancer would use for an informed decision to be made. It may not be appropriate for a disclaimer to be used by the valuer when the purpose of the valuation is to determine the value having regard to all relevant details pertaining to the property. In the case of pre-purchase valuations, the use of best-fit value by reference to the sales of similar property would not suffice.

Question 6c - A building and pest report would assist an investor when purchasing residential property.

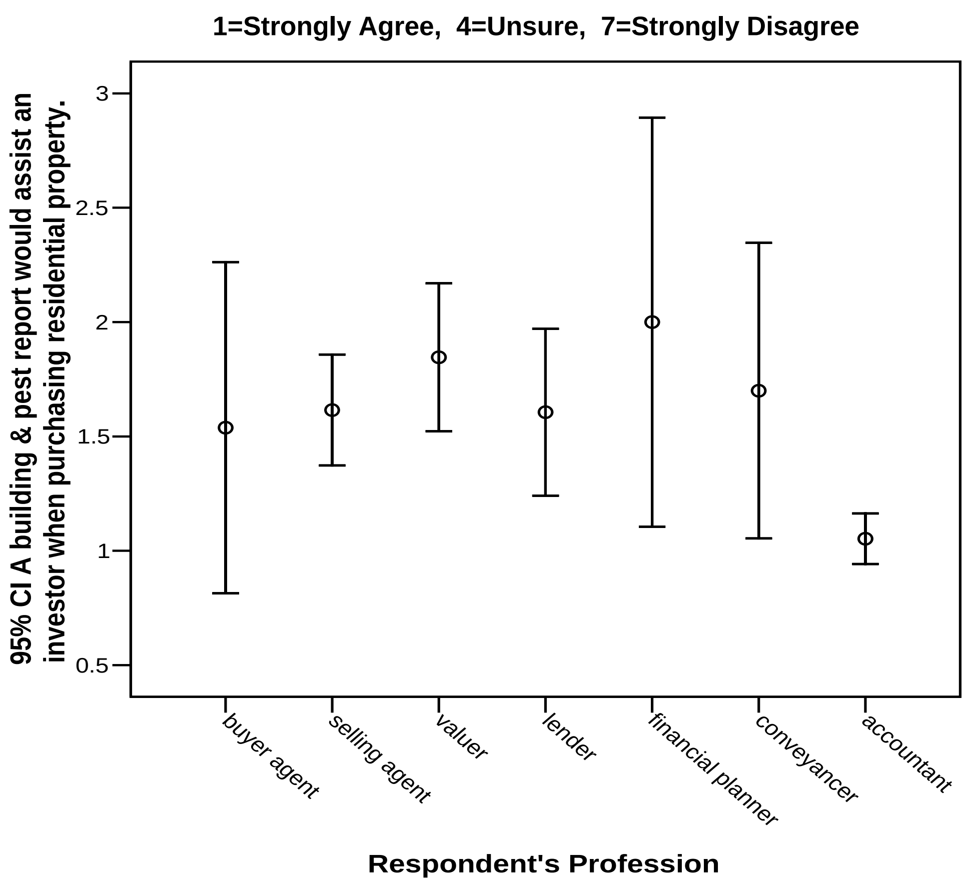
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	1.54	1.198	.332	.81	2.26	1	5
Selling agent	39	1.62	.747	.120	1.37	1.86	1	3
Valuer	52	1.85	1.161	.161	1.52	2.17	1	7
Lender	33	1.61	1.029	.179	1.24	1.97	1	6
Financial Planner	19	2.00	1.856	.426	1.11	2.89	1	7
Conveyancer	20	1.70	1.380	.309	1.05	2.35	1	7
Accountant	19	1.05	.229	.053	.94	1.16	1	2
Total	195	1.66	1.139	.082	1.50	1.82	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	11.405	6	1.901	1.487	.185
Within Groups	240.257	188	1.278		
Total	251.662	194			

Graph – Mean Distribution



Result Summary

All professions surveyed had a 95 percent confidence interval endorsing the benefits of a building and pest inspection report for property investors to varying degrees. The P-value of the ANOVA is 0.185, which demonstrates that there are no significant differences between the professions in relation to the benefits of building and pest reports. Of note are buyer agents and conveyancers who have the largest distribution within their groups compared with the other groups. Valuers are also identified for comment, as they have the second most supported mean, with financial planners being the only group registering a higher mean than valuers.

Discussion

The results of the benefits of the building and pest reports provide an interesting variety of responses, particularly from buyer agents, valuers and conveyancers. The confidence interval of buyer agents and conveyancers, whilst generally affirming the benefits of these reports, have a variety of opinions within the professional group, compared with selling agents who have the equal second lowest confidence interval with lenders. Selling agents are also noted for having the second lowest mean distribution behind accountants.

The last profession for comment are valuers, who registered the second highest mean of all professions. In many valuations undertaken by valuers, the use of disclaimers for structural and building defects is a requirement of professional indemnity insurers. Whilst valuers will note obvious building defects, these are outside their scope of expertise, which in part is reflected in their survey responses when compared with other professionals. As was the case with strata inspection reports, the valuer when assessing the value of a particular property, cannot use the best fit alone method of assessment by reference to comparable sales evidence without fully becoming aware of all aspects of the subject property which may impact on its value. It is becoming clear that the level of detail and attention required by the valuer cannot be accommodated at the fees being charged presently for mortgage valuation work.

Statement 6d - A legal opinion of the contract of sale would assist an investor when purchasing residential property.

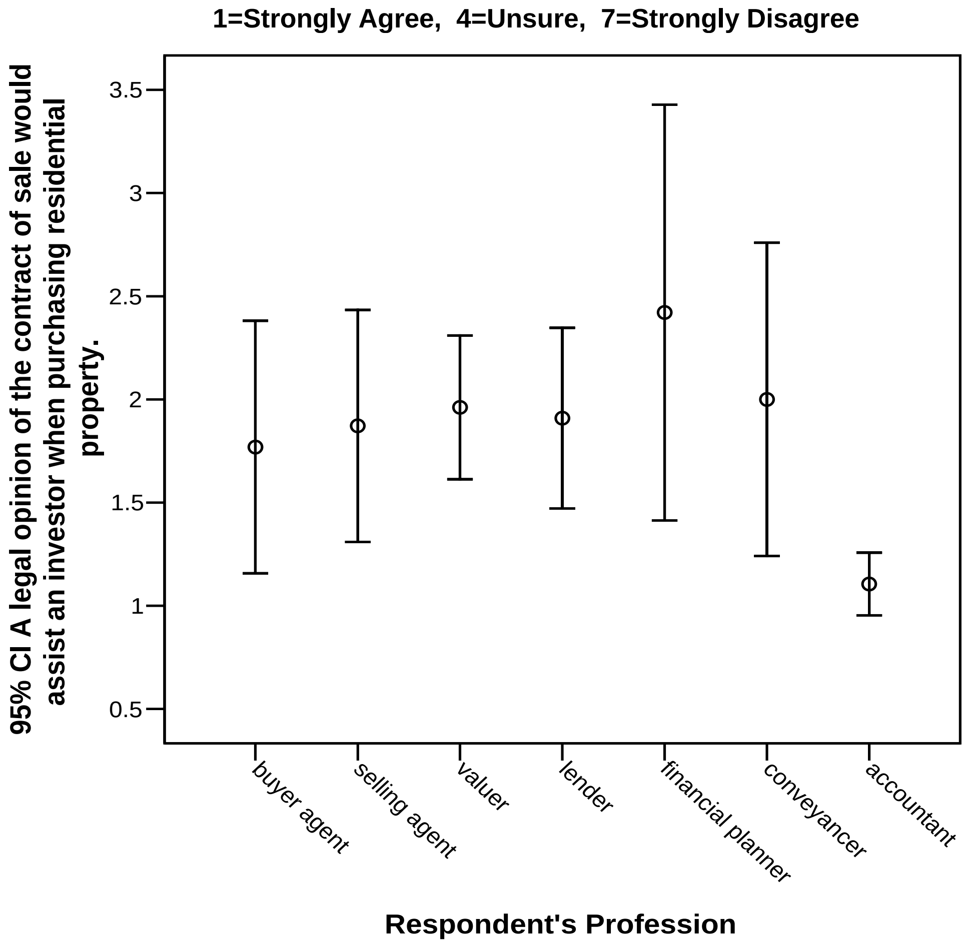
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	1.77	1.013	.281	1.16	2.38	1	4
Selling agent	39	1.87	1.735	.278	1.31	2.43	1	7
Valuer	52	1.96	1.252	.174	1.61	2.31	1	7
Lender	33	1.91	1.234	.215	1.47	2.35	1	7
Financial planner	19	2.42	2.090	.479	1.41	3.43	1	7
Conveyancer	20	2.00	1.622	.363	1.24	2.76	1	7
Accountant	19	1.11	.315	.072	.95	1.26	1	2
Total	195	1.89	1.442	.103	1.68	2.09	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	17.780	6	2.963	1.444	.200
Within Groups	385.738	188	2.052		
Total	403.518	194			

Graph – Mean Distribution



Result Summary

All professions surveyed had a mean distribution endorsing the benefits of a legal opinion on the contract of sale to varying degrees. The P-value of the ANOVA is 0.200, which demonstrates that there is significant agreement between the professions in relation to the benefits of a legal opinion of the contract of sale. It is noted that all professions, with the exception of financial planners and accountants, that the mean of the other professions registered between 1.5 and 2 which shows that a difference is not statistically proven.

Discussion

The contract of sale and terms and conditions of sale, whilst important, impact on the transaction and the implications for the purchaser more specifically. This is due to the contract of sale being prepared by the seller. In the case of new residential property, the contract of sale is crucial in articulating whether the sale price of the property is GST inclusive or exclusive. The contract of sale may also provide penalty provisions for non-performance and late settlement provisions, which may also be prohibitive. Adjustments for land tax and payments of land tax for property purchased off the plan may also be accrued and charged to the purchaser. These matters, among others, need to be considered when assessing the purchase price for a property.

A further matter for consideration is where the developer has a termination or escape provision in the contract that may permit him or her to not complete or sell within a specified time frame. This may tie the purchaser to a commitment and allows the seller the right to withdraw from the sale without penalty. In assessing the equity of such a contract for sale, the purchaser may warrant factoring the terms and conditions of sale into the price they are prepared to pay for the property. This may also be a matter for the valuer to consider among other matters where they are engaged to undertake a pre-purchase valuation. The terms and conditions of sale are the sixth and final point for consideration when applying the Spencer Test.

Statement 6e - A legal opinion of the loan agreement would assist an investor when purchasing residential property.

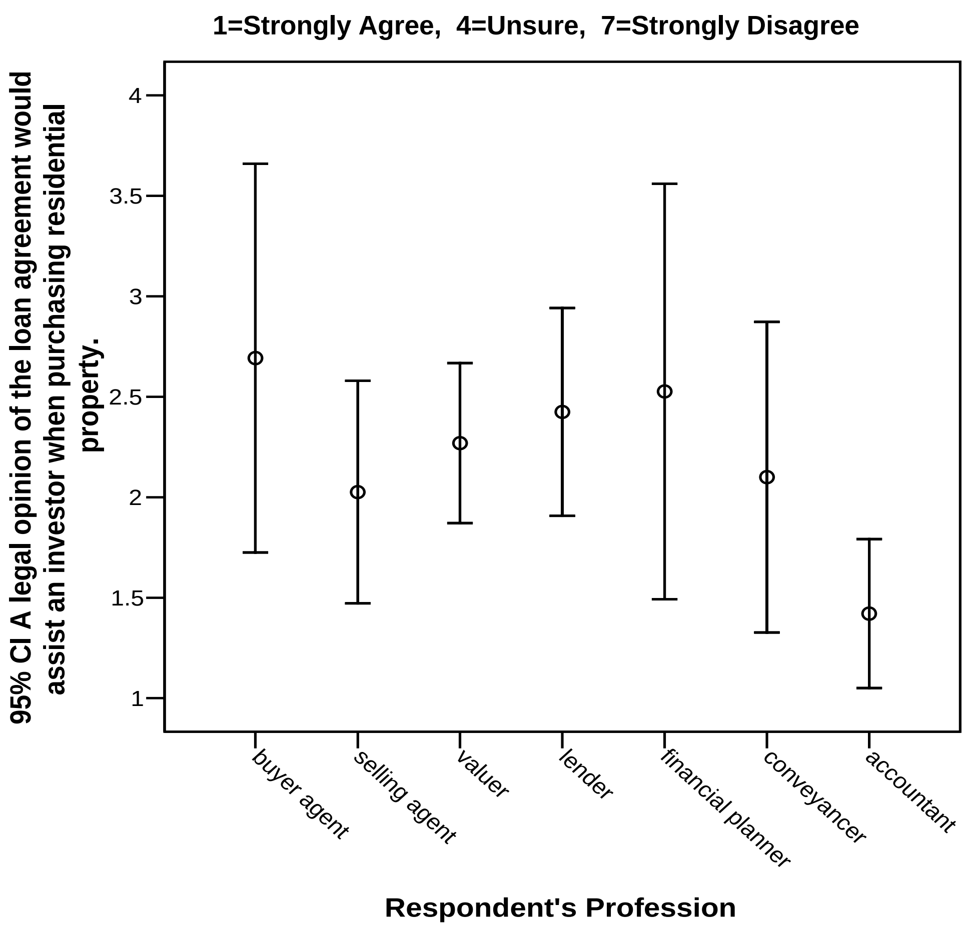
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	2.69	1.601	.444	1.72	3.66	1	6
Selling agent	39	2.03	1.709	.274	1.47	2.58	1	7
Valuer	52	2.27	1.430	.198	1.87	2.67	1	6
Lender	33	2.42	1.458	.254	1.91	2.94	1	6
Financial planner	19	2.53	2.144	.492	1.49	3.56	1	7
Conveyancer	20	2.10	1.651	.369	1.33	2.87	1	7
Accountant	19	1.42	.769	.176	1.05	1.79	1	3
Total	195	2.20	1.572	.113	1.98	2.42	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	19.997	6	3.333	1.364	.231
Within Groups	459.203	188	2.443		
Total	479.200	194			

Graph – Mean Distribution



Result Summary

All professions surveyed had a 95 percent confidence interval endorsing the benefits of a legal opinion of the loan agreement for property investors to varying degrees. The P-value of the ANOVA is 0.231, which demonstrates that there is no significant disagreement between the professions in relation to the benefits of a legal opinion of the loan agreement. Within the professional groups, there are greater confidence intervals for an opinion on the loan agreement when compared with each of the other documents covered in this survey.

Discussion

Prior to considering the results for the groups, it is important to note the recent and still current issues associated with mortgage lenders, brokers and lending agreements. At present, mortgage lending is administered and regulated at the State level by the Offices of Fair Trading or their equivalent in each state of Australia. An inquiry into mortgage lending and issues paper was prepared by Office of Fair Trading in NSW. The implications of the mortgage agreement may impact on the borrower for the term of the loan. One particular issue of note is the proliferation of mortgage brokers over the past 5 – 10 years. With brokers tapping into sources for lending, real estate and real estate practitioners are of interest to mortgage lenders and brokers, particularly professionals involved with investors and purchasers who may require finance to purchase investment property.

In this survey, it is noted that all professionals had mean distributions on the affirmative side and agreed with the statement to varying degrees. Buyer agents and financial planners have broad mean distributions within their groups, with the upper limit of the distribution close to 4 being unsure. The mean of each group is between 2.5 and 3. As highlighted earlier, the provision of finance is a service in which remuneration for referrals are common. In cases where referrals are made and fees are paid for such referrals, regardless of the disclosures to the purchaser of that fee or commission, unless the referring party has access to all lenders and are paid equal fees or commissions from each, it is important that all mortgage lending agreements are commented on by an independent source to the agreement.

The implications of switch and break fees may be prohibitive, which may ensure the potential goodwill of the loan for the full term of the loan. Additionally, the effective rate of interest also needs to be considered and compared with alternatives, especially where the borrower has been diverted by the use of honeymoon rates and periods at the beginning of the loan.

Summary of statements 6a – 6e

In confirming the relevance and benefits of valuations in the property purchase process, the professionals surveyed have ranked the importance of valuations among other documents obtained. Table 7.1 is a summary of Statements 6a-e of the survey which has resulted in the following ranking of documents that would assist investors purchase property. In compiling Table 7.1, the combined median for each document by all professionals was used to determine an industry ranking of the importance of these documents in the purchase process. This table further confirms that valuations do have a place among the information to be considered by purchasers, being ranked equal third with advice on the contract of sale.

Table 7.1 Professionals ranking of property related documents

	Valuer	Selling Agent	Buyer Agent	Financial Planner	Solicitor	Accountant	Lender	**Rank**
Valuation	2	1.7	1.4	2.2	2.6	1.3	1.9	**3e**
Strata report	2	1.6	1.2	2.2	1.7	1.2	1.9	**2**
Building & pest	1.9	1.6	1.5	2	1.7	1.1	1.6	**1**
Sale contract	2	1.9	1.8	2.4	2	1.1	1.9	**3e**
Loan contract	2.3	2	2.7	2.5	2.1	1.4	2.4	**4**

(e = equal)

Statement 7 - More investors are turning to residential property as an asset to be included in retirement planning.

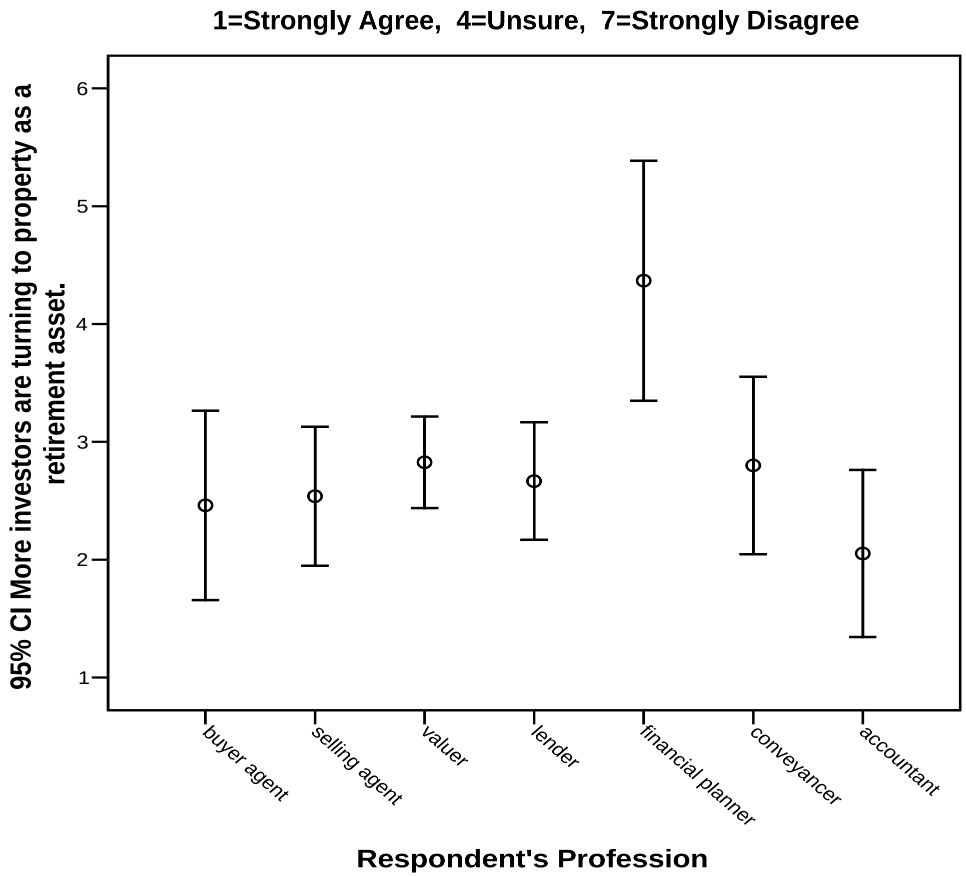
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	2.46	1.330	.369	1.66	3.27	1	5
Selling agent	39	2.54	1.819	.291	1.95	3.13	1	7
Valuer	52	2.83	1.396	.194	2.44	3.22	1	6
Lender	33	2.67	1.407	.245	2.17	3.17	1	6
Financial planner	19	4.37	2.114	.485	3.35	5.39	1	7
Conveyancer	20	2.80	1.609	.360	2.05	3.55	1	7
Accountant	19	2.05	1.471	.337	1.34	2.76	1	5
Total	195	2.79	1.669	.120	2.55	3.03	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	62.112	6	10.352	4.069	.001
Within Groups	478.267	188	2.544		
Total	540.379	194			

Graph – Mean Distribution



Result Summary

An analysis of the confidence intervals for the professions provides consistency across the professions except for financial planners. The confidence interval for financial planners rated between unsure and a marginal disagreement to the survey statement. The confidence interval for financial planners was the greatest of all the professionals, showing the greatest difference within the profession. Further, an ANOVA result of .001 between the groups highlights the disparity which primarily exists between financial planners and the other professionals. Within the professional groups, excluding financial planners, a tight relationship in the confidence interval exists.

Discussion

In the literature on investment advice, it was found that complaints lodged with government agencies were primarily against un-licensed marketers and seminar operators. Whilst financial planners were becoming more involved in property as an investment vehicle, direct residential property investment is not yet viewed as a mainstream investment vehicle. The significant outlay of money into one single investment asset, such as residential property, does not necessarily provide sufficient diversification for such a recommendation to be made. This may be the primary reason for the disparity between financial planners who may not be making property investment recommendations to investors and other professionals who have observed an increase in property investment.

In addition to the above observation, consideration is also given to the amount of equity that is held in residential property, which includes residences and residential investment property. The significance of this is that whilst financial planners may not recognise an increase in residential property investment as a retirement asset, the amount of equity held in residential property, creates a basis for property to be used as collateral for investment recommendations by financial planners in alternate investment vehicles. It maybe argued that residential property investment requires an investment of significant money in one asset. This limitation is offset by the fact that residential property like most property has a high collateral value, which allows diversification into other investment assets secured by property.

Question 8 – Rank the following professionals from 1 to 6 in determining which is most qualified to assist an investor select the most suitable residential investment property?

Table 7.2 – Professional ranking across all professionals

Professional	Highest percentage 1st vote	Highest percentage 2nd vote	Total 1st & 2nd
Buyers Agent	29	26.5	**55.5**
Selling Agent	11.5	14.1	**25.6**
Valuer	39.2	21.3	**60.5**
Financial Planner	7.9	14.7	**22.6**
Conveyancer	4.3	8.5	**12.7**
Accountant	8.4	14.7	**23.1**

N.B. Figures in Table 7.2 do not equate to exactly 100 percent due to rounding.

Table 7.3 – Professional self ranking versus total 1st & 2nd of all professionals

Professional	Self Vote Percentage	Total 1st & 2nd
Buyers Agent	**61.5**	**55.5**
Selling Agent	**30.8**	**25.6**
Valuer	**65.4**	**60.5**
Financial Planner	**15.8**	**22.6**
Conveyancer	**25**	**12.7**
Accountant	**0**	**23.1**

Table 7.4 – Lowest ranking of a profession by another profession in relation to the question

By	On	6th Ranking %
Selling Agent	Conveyancer	**41**
Financial Planner	Accountant	**42.1**
Conveyancer	Buyer Agent	**35**
Conveyancer	Financial Planner	**40**
Accountant	Valuer	**63.2**
Lender	Selling Agent	**60.6**

Result Summary

The survey has determined valuers to be the most qualified profession by all other professions combined in assisting the investor select the most suitable investment property. Buyer's agents were determined the next most qualified profession to perform this task.

In contrast to this, accountants assigned the valuer the lowest ranking on a single profession basis, followed by lenders, voting selling agents the second lowest and third lowest ranking was financial planners, voting accountants as the least qualified.

Discussion

Whilst the above provides an interesting analysis of professions on the perspectives of other professions, this analysis it set aside as the requirement to provide property investment advice, which includes the selection of a specific property investment that is no longer governed by professional perception alone, but also by qualifications. The former process of any self-determined profession giving property investment advice is now under review, as property is currently being considered as an asset class to be included under Chapter 7 of the Corporations Act 2001. If property is included as an asset class, professional perception will no longer be the test, as any professional wishing to provide property investment advice will be required to hold an investment advisers license issued by the Australian Securities Investment Commission (ASIC).

Under the present status, the only profession that operates under this licensing regime are financial planners. As reviewed in the literature, the provision of investment advice, and its application to property, would include advice to buy, sell, hold or switch an investment. Further expounded upon in the literature was discussion that the provision of investment advice, in relation to any specific investment is a stand-alone profession. Advice is no longer dictated by the asset class, or professionals within that class involved in the process of buying and selling the asset itself. Investment advice is a stand-alone profession with separate qualifications in all investment vehicle classes except direct property investment, which is now close to being included. Responses to this survey question are in stark contrast to the perceptions of regulators who seek to provide consumer protection to investors who first search for advice in order to make an informed decision based on that advice.

Question 9 - Financial planners who make property investment recommendations to clients should recommend their client seek independent advice as to the price they pay for property.

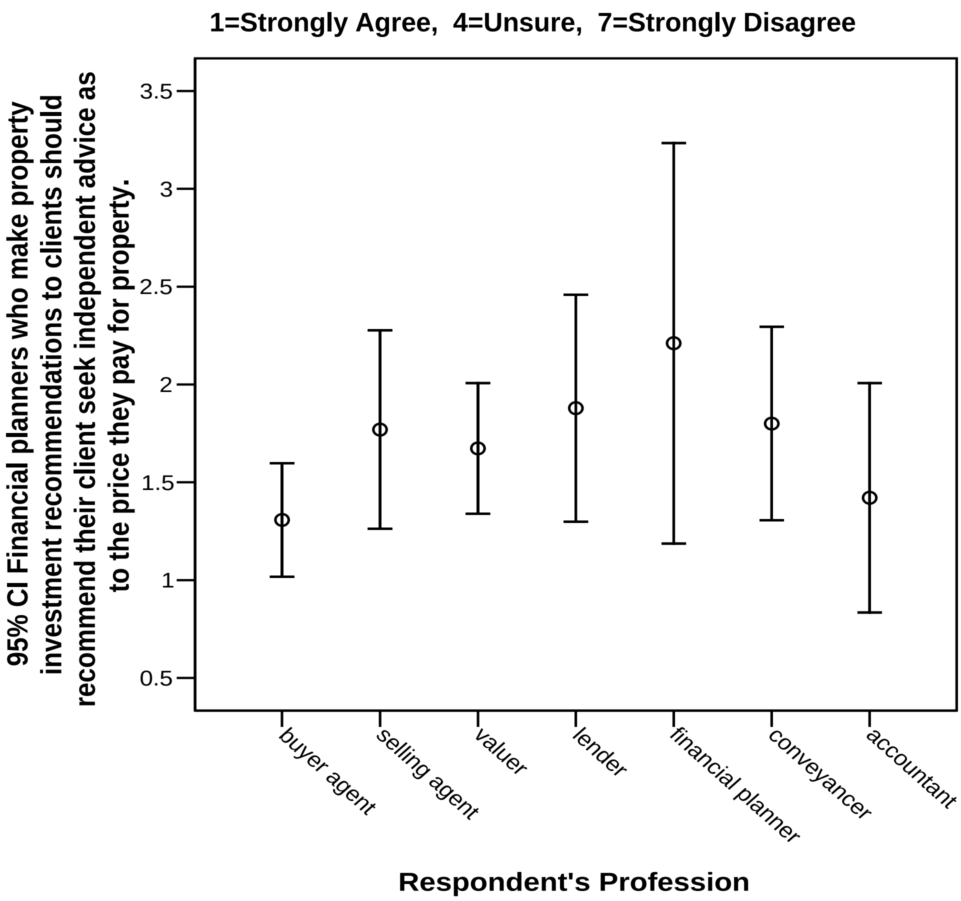
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	1.31	.480	.133	1.02	1.60	1	2
Selling agent	39	1.77	1.564	.250	1.26	2.28	1	7
Valuer	52	1.67	1.200	.166	1.34	2.01	1	7
Lender	33	1.88	1.635	.285	1.30	2.46	1	7
Financial planner	19	2.21	2.123	.487	1.19	3.23	1	7
Conveyancer	20	1.80	1.056	.236	1.31	2.29	1	5
Accountant	19	1.42	1.216	.279	.83	2.01	1	6
Total	195	1.74	1.424	.102	1.54	1.94	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	9.540	6	1.590	.779	.587
Within Groups	383.639	188	2.041		
Total	393.179	194			

Graph – Mean Distribution



Result Summary

All professions surveyed had a confidence interval endorsing the benefits of financial planners recommending property investors seek independent advice as to the price they pay for property. The P-value of the ANOVA is 0.587, which demonstrates that there is no significant disagreement between the professions in relation to the benefits of this recommendation. This statement is specifically targeted at financial planners and the confidence interval within the planners group is wide, ranging between 1.2 and 3.25.

Discussion

An interesting observation is noted between the responses of selling agents when asked to comment on whether they should recommend that purchasers seek independent advice as to the price paid for property in Statement 4 of this survey and when the same statement is made in relation to financial planners in Statement 9. In summary, financial planners were more consistent when comparing their responses in relation to selling agents and themselves, which is highlighted in the following table.

Table 7.5 Mean comparison of financial planner versus selling agent, Statements 4 and 9

	Selling agent (Statement 4)	Financial planner (Statement 9)	Variation %
Selling agent	3.67	1.77	52%
Financial planner	2.68	2.21	18%

Further observations include the responses of buyer agents who assist purchasers locate and negotiate the purchase of property and financial planners who make specific property investment recommendations to purchasers. Buyer agents have the lowest and narrowest confidence interval of all professions. Lenders are also noted for their responses in relation to financial planner and selling agent in statements 4 and 9. In relation to selling agents in statement 4 the lenders mean is 2.06 and for financial planners in statement 9, their mean is 1.88. In the case of the valuers mean in relation to each selling agents and financial planners in these two statements, a wider variation has been noted as follows, selling agents 2.79 and financial planners 1.67 representing a difference of 59 percent between the two professions.

The specifics of why this variation would exist when lenders have registered a lower difference between the two representing 9 percent are not articulated within this survey. It may be argued that selling agents, whilst acting for the seller, are marketing property and are more acquainted with inherent and external features of property when compared with financial planners who may be more focused on tax and financial aspects of the property investment.

Statement 10 - Real estate agents and valuers should be regulated by ASIC at the Commonwealth level, not by Office of Fair Trading at State Government level.

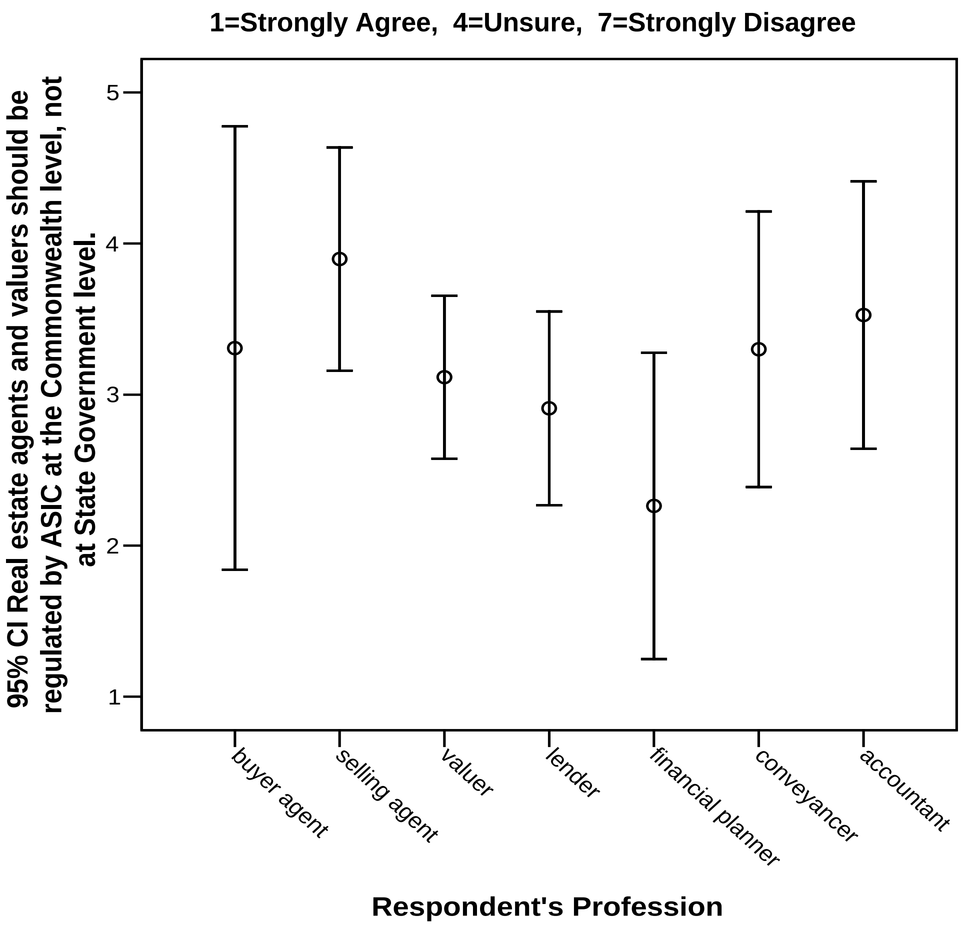
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	3.31	2.428	.674	1.84	4.78	1	7
Selling agent	39	3.90	2.280	.365	3.16	4.64	1	7
Valuer	52	3.12	1.937	.269	2.58	3.65	1	7
Lender	33	2.91	1.809	.315	2.27	3.55	1	7
Financial planner	19	2.26	2.104	.483	1.25	3.28	1	7
Conveyancer	20	3.30	1.949	.436	2.39	4.21	1	7
Accountant	19	3.53	1.837	.421	2.64	4.41	1	7
Total	195	3.23	2.054	.147	2.94	3.52	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	41.057	6	6.843	1.656	.134
Within Groups	777.015	188	4.133		
Total	818.072	194			

Graph – Mean Distribution



Result Summary

The means of the professions vary, with selling agents unsure about the statement and financial planners registering a mean that most supports the statement. The P-value of the ANOVA is 0.134 indicating that there is no significant difference between the professions in relation to this statement. Of note, is the mean distribution of buyer agents, which is widest of all the professions.

Discussion

In part, it has been observed that the response from property professionals, agents and valuers is driven by uncertainty, or lack of understanding of the Commonwealth regulations governing financial planners. The review of State and Commonwealth legislation governing these professions has provided a greater level of accountability and compliance on financial planners compared with property professionals.

The policing of financial planners by ASIC has been far more extensive than the policing of real estate agent by Offices of Fair Trading in various states. This is evident from two silent shopper surveys conducted by ASIC on the quality of investment advice provided by planners. In addition, there has been an increase in the level of complaints lodged with ASIC and ACCC against real estate agents regarding advice given to investors since 2002.

As discussed in chapter 5, a review of property investment advice is being considered, with the regulation of advice to be administrated by ASIC at the Commonwealth level, which would separate the process of selling and valuing from that of advising and influencing the decision to buy, sell, hold, or any other activity independent of the process itself.

Statement 11 - National legislation is needed for real estate agents, valuers and financial planners that only permits them to act for and receive a fee, commission or reward from the purchaser or developer only in the same property transaction.

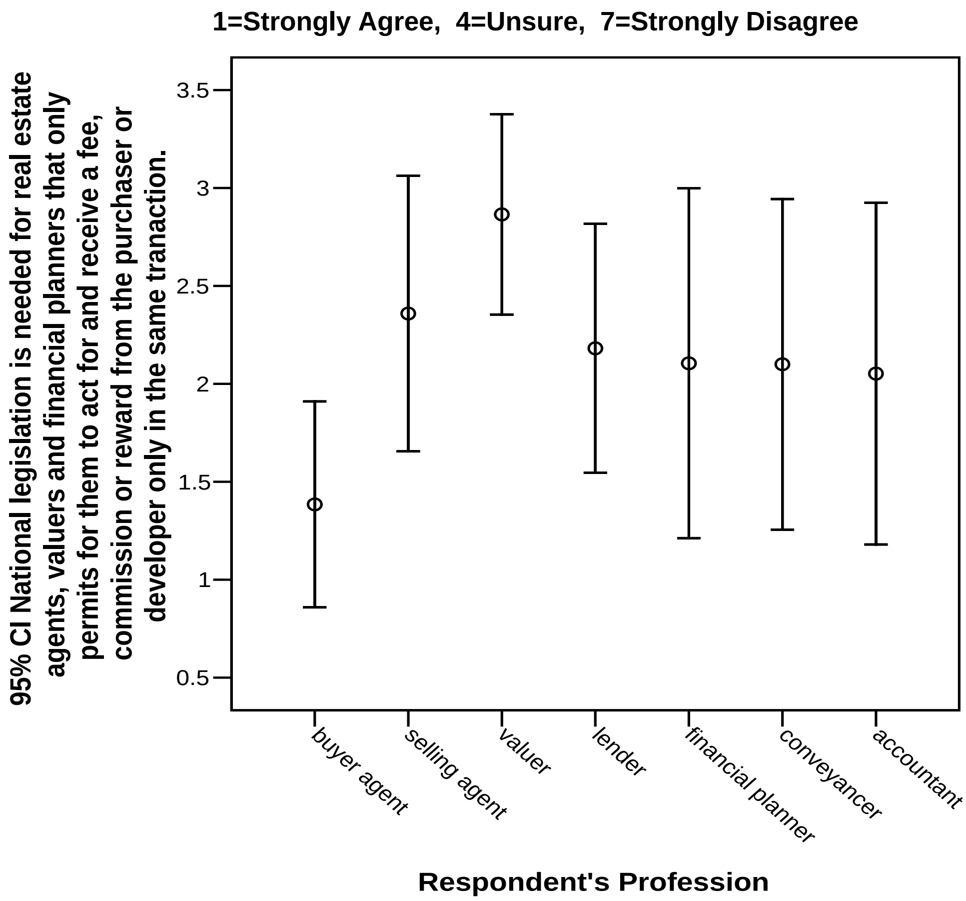
Mean Analysis

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Min	Max
					Lower Bound	Upper Bound		
Buyer agent	13	1.38	.870	.241	.86	1.91	1	4
Selling agent	39	2.36	2.170	.348	1.66	3.06	1	7
Valuer	52	2.87	1.837	.255	2.35	3.38	1	7
Lender	33	2.18	1.793	.312	1.55	2.82	1	7
Financial planner	19	2.11	1.853	.425	1.21	3.00	1	7
Conveyancer	20	2.10	1.804	.403	1.26	2.94	1	7
Accountant	19	2.05	1.810	.415	1.18	2.92	1	7
Total	195	2.32	1.867	.134	2.05	2.58	1	7

ANOVA Result

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	30.732	6	5.122	1.492	.183
Within Groups	645.555	188	3.434		
Total	676.287	194			

Graph – Mean Distribution



Result Summary

The means of all professions endorse the statement to varying degrees, with the valuers mean at the upper end of the range of the professions. Buyer agents are at the opposite end of the professions showing the highest level of agreement with the statement. Buyer agent agreement with the statement is reflected in the mean distribution of the group which is between 1 and 2 with a mean of 1.5. This is in contrast with valuers with a mean of 3. The P-value of the ANOVA is 0.183 indicating that there is no significant difference between the professions in relation to this statement.

Discussion

In contrast to valuers with the highest mean of 2.87, selling agents follow with a mean of 2.36, then financial planners with a mean of 2.11 and buyer agents with the lowest mean of 1.38. Among the other professionals, lenders, accountants and conveyancers all have means between 2.1 and 2.2.

In New South Wales, agents and valuers regulations permit these professions to act for one party in the buying and selling of property. On occasion, valuers may be engaged by a mutual party for the transfer of property. The fact that this level of regulation exists may have prompted valuers to register marginal agreement with the statement. It has been observed, through meetings with agent and valuer study groups, that these professions have not been aware of the gap in the Corporations Act 2001, which allows investment advisers and financial planners to accept a fee, commission or charge from each side of a transaction. Whilst this gap exists, it is not usual that all planners and advisers engage in this practise, which is reflected in the wide mean distribution within this profession.

Overall, the survey shows uniform acceptance of professionals acting for one side only in a property transaction. If property is included as an investment class under the Corporations Act, it may be timely for this matter to be addressed consistently across all professions.

7.2 Summary

The survey results have provided a wide range of responses to the various issues raised. Whilst the central issue revolves around the use of valuations and the benefits they afford the investor, valuers, agents and financial planners, as participating professionals, have also been peer reviewed by each other. The issue of advice in relation to property and which profession is best qualified to provide advice to residential property investors has been determined by the professions surveyed.

In addressing the central issue of whether a valuation would assist residential property investors, consideration must be given to three key statements, these being 1, 3 and 6a of the survey. To a lesser degree statements 4 and 9, which deal specifically with selling agents and financial planners and the prospect of these professionals advising purchasers to seek independent valuation advice as to purchase price, has been sufficiently covered in the discussion of the respective statements.

In drawing a conclusion on the statistical outcomes and results of the professions surveyed, a snapshot of statement's 1, 3 and 6a follows:

Table 7.6 Survey summary of thesis question

Statement	Significance Factor	Mean Summary
1	.048	All professions affirm the statement to varying degrees
3	.001	All professions disagree with the statement with the exception of selling agent's
6a	.041	All professions affirm the statement to varying degrees.

An analysis of the significance factors in the above table confirms a level of variation between the groups. When considering the means of each group and their relationship with each of the above statements, each profession, except selling agents in statement 3, endorse the use of independent valuation advice by investors prior to purchase.

7.2.1 Concluding observations

Whilst the results of the survey provide a statistical support for the use of independent valuation advice prior to purchase, the primary thesis question is yet be fully answered. A further level of discussion is required to articulate the answer to the thesis question. The results of the survey provide a professional perception of the benefits for investors having additional information about the value of property to be purchased.

Chapters 4 and 5 of this work have provided discussion on the purposes uses and limitations of property valuations. It would be remiss to draw a conclusion and attempt to answer the thesis question on the results of the survey in isolation of the issues raised in these earlier chapters. In conclusion to the analysis of the survey, it may be said that there is professional unity in the potential benefits of the use of valuation advice being sought by residential property investors, which has now been confirmed in this survey.

A further interesting analysis has been observed from Statements 1, 3 and 6a in relation to valuers. In each of these statements, valuers ranked 5th out of the seven professions surveyed in each of these three statements. Valuers, when compared with the other professions, were not as strongly in favour of the use of valuations by investors. There is no specific anecdotal evidence as to the reasons for this. It was observed during the survey period, and through discussions with a number of valuers, that consistent flow of work was important to valuers. This was predicated on the fact that many valuers were engaged on contract by valuation firms and a predominance of valuation work was carried out for mortgage valuation purposes. The potential for an increase in pre-purchase valuations is of concern for some valuers. The main concern is the potential increase in liability and claims for over-valuation against valuers by purchasers.

Whilst it has been observed in this survey that a pre-purchase valuation may not necessarily meet the objectives of the lender, where pre-purchase valuations are organised by the lender through lenders introducing their panel valuers to purchasers, an additional level of liability for the profession exists between them and the purchaser who may rely on the valuation. This in part was inevitable, with the Commonwealth Government through its Joint Senate Committee (2005) recommending that all lending valuations be made available to borrowers.

Of further consequence to the valuation profession would be the diluting of lender's valuation panels to allow any valuer who met the criteria of a lender to provide either pre-purchase or post-purchase mortgage valuations. The proliferation of pre-purchase valuations may have an impact on the present concentration of valuation work to existing panel valuers.

The following chapter being the conclusion to this thesis will address the thesis question among other issues raised and discussed. In addressing the use of valuations by investors and the provision of property investment advice, recommendations will be made that will assist the valuation profession in evolving and moving beyond the confines of the profession being engaged by government and financial institutions.

Chapter 8 – Conclusion

8.0 Introduction

As discussed in this thesis, the incorporation of residential investment property into retirement planning and achieving financial independence are identified among key drivers in the increase in residential property investment since 1992. This in part has been facilitated by the increase in the availability of finance and the cost of that finance. Despite these objectives, as highlighted in the literature, not all residential investment property is suited to the objectives of the investors who have purchased and continue to purchase property. This issue is coupled with the price paid for some residential investment property which is in excess of its market and investment value. As the necessity increases for individuals to provide for their retirement, unstructured superannuation assets are being accrued through a variety of means, of which direct residential property investment is one. The price paid for investment property and the assistance and advice that may be provided to investors through valuation reports has been a central focus of this thesis.

A summary of the thesis question has been measured against the test results and findings covered in this thesis. Table 8.1 summarises the objectives and findings of the thesis question. This is then followed by a concluding discussion of each key matter.

Table 8.1 - Thesis reconciliation and conclusion

Objectives	Method	Result
Determine whether property and other professionals surveyed believe that investors should seek independent valuation advice prior to purchase.	Survey	Statement 1: Survey results affirm that professionals surveyed showed that valuations would assist investors prior to purchase.
Determine whether property and other professionals believe that investors are including residential property as a retirement asset.	Survey	Statement 7: Survey results show all professions except financial planners support this statement, with financial planners between unsure and marginally agreeing with the statement.
Determine whether present valuation practices and reports would serve property investors in the property investment process.	1) Case review 2) Comparison of valuation report against financial plan	Valuation reports are asset-focused as opposed to financial plans which are client- and investor- focused. Valuations would need to provide additional performance and investor-related detail in order for them to benefit investors.
To objectively assess the robustness of valuations in meeting the objectives of property investors.	Review court cases where valuers have been sued.	Valuations undertaken where there is no sale over the property being valued and little comparable sales evidence to support the valuation figure, result in greater liability for the valuer.
Compare how valuations rank against other property-related information that a purchaser may obtain in the property purchase process.	Survey	Table 7.1 ranks valuations 3rd and as equally important as strata inspection reports.
Examine the influence and impact property investment seminars have on some property investors.	Ch 2 Literature review, Ch 3 Case study and Ch 5 discussion.	Statutory recognition by government for the need to regulate property investment seminars
To determine whether property investors have sufficient financial literacy in assessing the price they pay for property.	Survey	Statement 3: The survey highlights each profession to varying degrees except for selling agents that investors are not qualified to determine the value of property when formulating the purchase price.
Determine which profession is best qualified to assist residential investors select the most suitable investment property	Survey	Statement 8 highlights a combined 1st and 2nd vote from all professions surveyed that valuers followed by buyer agents are most qualified to assist investors select the most suitable investment property.
Assess whether the present regime of allowing financial planners and investment advisers to be remunerated by both client (investor) and developer (selling agent) in the property purchase process was appropriate.	Survey and moral hazard discussion chapter 5.	Statement 11: The survey highlights each profession to varying degrees, supports the need for all professionals to be remunerated by one side to a property transaction.

8.1 Caveat emptor and financial literacy

Despite the best efforts of regulators and consumer protection agencies, there is no substitute for common sense and business prudence. This has been repeatedly conveyed by those charged with increasing consumer protection and the regulation of the property investment-related services. This is best conveyed in the following commentary by the PJCCFS (2006:1) in response to the Westpoint collapse;

> "If I could legislate commonsense, I would be a happy woman but you cannot do it… As we are getting more and more people on stream with their super funds at their own disposal through super choice, how are we actually educating people not to blow their money in these investments? In this case it sounded reasonable and was sold reasonable, how do we educate the public?"

The imperative of obtaining advice in relation to property investment is weighed against the quality of advice provided by financial and investment advisers as is evident in the above case. It is unreasonable to ask and expect investors to exercise due diligence and common sense, when the advisers they engaged in this case subjected them to the very risk they sought to avoid by consulting them. In addition to consumer education in financial literacy, a major review of the qualifications and basis for granting investment adviser licenses in property-based products needs to be undertaken by regulators.

Whilst the necessity for the consumer to engage common sense and recognise the importance of paying for advice exists, the requirement to engage common sense has extended to question investment advisers and their motives in the advice they provide. Common sense cannot be attained through legislation; however, the creation of a framework for an investor to choose an independent adviser seems not to be beyond the capabilities of regulators, even if it is beyond their will.

A further dimension in addressing the needs of residential investors is achieved through financial literacy. The ability to develop financial literacy skills cannot be achieved within one generation. The task will be inter-generational and will need to commence at high school. The Curriculum Corporation (2004) has established that the introduction of core curricula in financial and investment fundamentals needs to commence in high schools. At present, a financial literacy gap exists for many adult working Australians. This is in part evident from the issues identified in this work specifically relating to property investment. Financial literacy opportunities for the existing Australian adult population are limited. Some financial literacy skills may be sought through university and college education. Other sources of financial literacy skills can be achieved through a variety of other sources including investment seminars. In some circumstances, property investment seminars have been taken over by unscrupulous marketeering companies for the sale of wealth-creation strategies and investment property.

8.2 Regulatory implications

The provision of property investment advice, like investment advice for other financial products, has come under the scrutiny of the Australian Securities Investment Commission. So significant is the impact of the quality and appropriateness of investment advice that a separate regulatory regime has identified its importance as a stand-alone profession. As highlighted in this thesis s851 of the Corporations Act 2001, which encompasses the ‘Know-your-client’ rule, requires investment advisers to have a sound basis for any investment recommendation made. Two flaws have been identified and discussed in this thesis relating to the regulation of investment advisers.

The first is that a holder of an investment adviser's license does not require the adviser to hold a qualification in the investment vehicle which is recommended to the client. This is due to the fact that qualifications in property (valuation and agency), stockbroking and banking are construed as qualifications that dictate the process of the transaction only. The knowledge and experience attained in the course of conducting property-related services are not recognised to include the provision of advice relating to the merits of the investment itself. The missing requisite skill has been identified as the absence of client knowledge and focus by property professionals who are primarily asset focused. This has relegated the property professional to the role of a process service provider.

The second flaw is the ability of an investment adviser to take a commission from both client and the party to which they have recommended their client. For instance, regulators have relented to the pressure of large insurance companies who continue to pay commissions and trailers to financial product sales people that sell their products to clients. This omission of regulation allows investment advisers to obtain double fees and commissions when making property investment recommendations to clients. The opportunity for legitimised corruption has been removed from property services in New South Wales through legislation that limits property professionals to act for one side only in any property transaction. As was highlighted in the Westpoint case, consumers are still exposed to the moral hazard of double fees and commissions, which unduly cloud the judgement and role of the investment adviser.

The final regulatory matter addressed in this thesis is property investment seminars and their use as a conduit for the sale of investment property. It is clearly evident that regulatory distinction must be drawn between what may be marketed as a seminar, its purpose and objectives and its separation from the sale of property itself. Property investment seminars presently remain un-regulated and the way in which seminars and their operators could be regulated is difficult to assess. As discussed above, the issue of financial literacy and caveat emptor provide an ideological means for attendees at seminars simply to say no, or at least be able to articulate and request the level of information for an informed decision to be made. The primary issue facing attendees of investment seminars is that their initial interest in attending the seminar is for information. In some cases this then begins to blur into the sales process and finally the purchasing of property itself. A practical solution for the approval and monitoring of property investment seminars conducted by non educational institutions is for approval to be sought from ASIC for such activities to be conducted. ASIC may then seek the services of an appropriately qualified panel of experts comprising, industry bodies and academics to review the course material, content and the objectives of prospective seminars. This would provide a level of quality control and rigor to the presentation and also allow the veracity of the material covered to be reviewed.

8.3 Property investment and valuation advice

The above points covered in this conclusion relate to a number of issues which have been identified and are associated with the core thesis hypothesis, ***'Do valuations assist residential property investors prior to purchase?'***

Property valuation, particularly in the valuation of residential property, has evolved since early settlement of Australia from the alienation of land, its compulsory acquisition, rating and taxing and for mortgage lending purposes. As highlighted in the literature, the transformation of valuer from employee to contractor by lending institutions over the past two decades has been at the peril of the valuation profession as a whole and greatly assisted by its primary master, mortgage-lending institutions. This has been further compounded by greater pressure being placed on valuers to write the value of property at the purchase price and the progressive erosion of valuation fees for mortgage-lending purposes. In the mortgage-lending domain, the valuation profession must consider the merits and risks associated with acting as a rubber stamp for writing loans for lending institutions.

Setting aside the specific issues of mortgage valuation work, and focusing on the valuation itself and the service, information and usefulness it provides an investor, the key issue and gap confronting the valuer is that valuations are property or asset-focused. Property valuations are asset-focused and, from a consumer perspective, fail in linking the specific attributes of a property to the specific investment objectives of the investor. The provision of a value, rental, rental return expressed as a yield and information pertaining to the growth prospects of a property are property-focused and generic to the performance of the asset itself. This does not suggest that information relating to the property is not important and, in cases where it is provided, does assist the investor in relation to specifics about the property. At present, a residential valuation by reference to past property transactions (direct comparison method) serves the purpose of providing a point-in-time value of a property. This does little to assist a prospective property investor who in many cases requires additional information about the property. This may include information about rental returns and their stability, growth prospects and in the purchase process what that value means and how it may be used, together with its limitations or parameters.

Despite the issues raised surrounding valuations and court cases reviewed in this thesis, trust has been placed in the valuation profession by government and authors who understand and recognise the benefits of obtaining independent valuation advice. This problem is highlighted by Herriott (2001:684),

> "By 1999, nearly 45 per cent of all new home units, strata buildings and house and land packages in Queensland were being sold by the two tier system"…. "The challenge facing responsible valuers is quite evident, we must continue to live up to the trust the government and the people are putting in us. The implications for the valuation profession in Queensland and potentially nationwide, are profound".

This is further endorsed by the Commonwealth Government through the deliberations of the PJCCFS (2005:47)

> "Don't believe what the promoter tells you about the real price – and don't believe the bottom line number on a valuation provided to them. If you choose and hire a valuer yourself, and they answer to you only, then you have the security of knowing whether you are paying a fair price."

The ability for the valuation profession to live up to the expectations placed upon it lies within the means and at the will of the profession itself. The valuation profession will progress further when the valuation of property is tailored to meet the needs and objectives of property investors. It is the consumer who buys, sells, develops, invests, finances and transacts in property; the property itself is the commodity.

In addressing the research question, this thesis has raised a number of questions that may contribute to the enhancement of valuation and investment advising services. Central to the key issue is whether investment advisers on the one hand provide valuation advice, or do valuers on the other hand provide property investment advice? The alternative is whether advisers and valuers can co-exist and consolidate their respective areas of expertise in serving the needs of residential property investors. In the event of valuers and their advice being tailored to assist the property investor, a number of fundamental reforms are needed. These reforms include:

1) Educational standards within property courses to re-focus on the needs of the investor in the valuation of property being sought for investment purposes.
2) Industry practise guidelines that assist the valuer to understand the requirements of the investor who requires the valuation for the purposes of assessing the attributes of the property against their specific investment needs and objectives. Valuers would include an investment valuation, providing details of the return from an investment property as a secondary or check method of valuation.
3) A public awareness campaign highlighting the services and benefits of the property valuer and their present use by lending and other institutions for their protection. The potential benefits available to investors confronted with property investment decisions.

This thesis clearly demonstrates through the survey results that valuations do assist residential property investors prior to purchase and that there is strong professional peer support for valuers and the use of valuations by residential property investors. It is evident that the valuation profession can be integrated within the investment process and the valuation profession has a significant role to contribute to residential property investors and indeed purchasers in formulating the purchase price of property.

Appendix A: Valuation Report Headings

Address

Instruction

Date of Valuation

Date of Valuation

Interest Valued

Location

Title Details

Town Planning

Land Description

Services

Improvements

Accommodation

Market Commentary

Valuation Rationale

Marketing Comment

Valuation Figure

Supporting Evidence

Disclaimers

Appendix B: Client Profile & Investment Plan

Headings

Personal Details

Name:____

Age:____

Place of Birth:__________________________________

Marital Status:_________________________________

Occupation:____________________________________

Employment (current):__________________________

Employment (former):____________________________

Proposed retirement age:_________________________

Dependants: ______

i) Age:__________________
ii) Schooling:_____________
iii) Income:_______________

In-laws supporting:________________________________

ESTATE PLANNING

Do you have a will:____________________________

Where is it located:____________________________

Executors:____________________________________

Powers of Attorney:____________________________

Accountant:___________________________________

Solicitor:_____________________________________

CURRENT SAVINGS PLAN

Account 1:

- **i) Name:________________________**
- **ii) Amount:______________________**

Account 2:

- **i) Name:________________________**
- **ii) Amount:______________________**

Savings Plans:

- **i) Short term:____________________**
- **ii) Long term:____________________**

PROFIT & LOSS CASHFLOW

INCOME:

- i) **Employment:__________________**
- ii) **Rents:________________________**
- iii) **Shares:_______________________**
- iv) **Fixed Int:_____________________**
- v) **Bonds:________________________**
- vi) **Funds:________________________**
- vii) **Benefits:_______________________**
- viii) **Assistance:_____________________**

Sub Total: _______________

EXPENDITURE:

- i) **Rent:_______________________**
- ii) **Mortgage:___________________**
- iii) **Food:_______________________**
- iv) **Vehicle:_____________________**
- v) **School fees:__________________**
- vi) **Groceries:___________________**
- vii) **Health Cover:________________**
- viii) **Clothing:____________________**
- ix) **Entertainment:_______________**
- x) **Elec, Phone etc:_______________**

Sub Total:________________

Living Surplus/Deficit:__________________

RETIREMENT

ASSETS:

- **i) Cash:__________________**
- **ii) Property:______________**
- **iii) Shares:________________**
- **iv) Super:_________________**
- **v) Business:_______________**
- **vi) Fine art:_______________**
- **vii) ETP's:_________________**
- **viii) Pensions:_______________**

Sub Total:_________________

LIABILITIES:

- **i) Mortgage:______________**
- **ii) Personal loan:___________**
- **iii) Credit Card:____________**
- **iv) Shopping cards:_________**

Sub Total:________________

NET ASSETS / LIABILITY VALUE:____________________

RISK INSURANCE:_______________________

INCOME NEEDS ANALYSIS:___________________________
(For retirement)

PSYCHO ANALYSIS

Answer the following questions on a rating between 1 and 10.
1 being the lowest risk rating and 10 the highest.

- **What impact does Inflation have on you:____________________**

- **Fluctuation & Volatility of investment markets:______________**

- **Income performance of investments:________________________**

- **Taxation advantages:____________________________________**

- **Access to your money:____________________________________**

- **Handing assets to beneficiaries:____________________________**

- **Residential property:______________________________________**

- **Large property investment funds:__________________________**

- **Money in the bank:_______________________________________**

- **Fixed interest and bonds:_________________________________**

- **Equities :____**

- **Managed Funds:____**

INVESTMENT OBJECTIVES

- What are your investment objectives:________________________

____

____

____

- What is your investment time horizon:________________________

____

- **Do you have any preferences for investing in a particular investment type:**
    - **i) Investment type:____________________________**
    - **ii) Reasons:___________________________________**

- **Do you have any particular investment type you would not prefer to invest in:**
    - **i) Investment type:___________________________**
    - **ii) Reason:___________________________________**

<u>Client</u>

Signature:____________________

Date:_________________________

APPENDIX C: PROPERTY SURVEY

SURVEY FOR LENDERS, VALUERS, FINANCIAL PLANNERS,
SELLING AGENTS, SOLICITORS, BUYER AGENTS & ACCOUNTANTS

Instructions: According to your response for each question, place an X in one box only.

1 - Strongly Agree
4 - Unsure
7 - Strongly Disagree

	1	2	3	4	5	6	7
1) Purchasers should obtain their own independent valuations prior to purchasing a property.							
2) A valuation undertaken by purchasers prior to the purchase of a property should be acceptable to a lending institution for the purposes of providing finance.							
3) Purchasers are generally qualified to adequately determine the value of a property when formulating the price they should pay for a property.							
4) Real estate agents selling property should recommend a purchaser seek independent advice as to the price they pay for a property.							
5) Real estate agents marketing property should not be permitted to give market opinions or estimates of selling prices to purchasers.							
6) For each of these investigations, rate if they would assist an investor when purchasing a resdential property (including residential strata units):							
a) Valuation report							
b) Strata inspection report							
c) Building & Pest Inspection							
d) Legal opinion of the contract of sale							
e) Legal opinion on the loan contract							
7) More investors are turning to property as an asset to be included in retirement planning.							

8) Rank the following professionals from 1 to 6 in determining who is qualified to assist in selecting the most suitable residential property for an investor?

Selling Agent	
Buyers Agent	
Valuer	
Financial Planner	
Legal Adviser	
Accountant	

	1	2	3	4	5	6	7
9) Financial Planners who make property investment recommendations to clients, should recommend their client seek independent advice as to the price they should pay for a property.							
10) Real estate agents and valuers should be regulated at the Federal level of government by the Australian Securities & Investment Commission, not at the State level of government under the Department of Fair Trading in each state.							
11) National legislation is needed which includes a provision that real estate agents, valuers and financial planners are only permitted to act for and receive a fee, commissions or reward from one side only (purchaser or developer) in relation to the same property transaction.							

12) What other methods of deriving the purchase price of investment property do residential investors use?

____

____

____

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