



## Are Real Estate Agents Representations Binding?

In a recent Supreme Court decision, the Court considered whether certain representations made by a Seller's real estate agent constituted misleading and deceptive conduct.

The representations made included:

- a. That the development site being offered for sale was within the number one district among three areas which were going to double in value in five years; and
- b. The property would be a good investment and its value would be higher than the purchase price at the date of settlement

The Purchaser in reliance on these representations entered into a Contract to purchase a unit which was in the process of being constructed. By the completion date the property market had fallen substantially and the Purchaser was unable to complete the purchase.

The Court held that there was no evidence in this case that there was a reasonable basis for the predictions made by the real estate agent. The Court indicated that by publishing the advertisement, the agent had engaged in trade or commerce and the conduct was misleading and deceptive in breach of the Trade Practices Act.

Further the Seller was bound by the acts of its real estate agent even though the Seller had not authorised or known of the representations made by the agent.

The Court ordered that the Contract be terminated and the deposit be repaid to the Purchaser. Unfortunately the agent had, prior to the proceedings, returned the deposit to the Seller who subsequently was placed into administration. As a result the agent was ordered to pay the deposit to the Purchaser.

Care should be exercised in the use of the representations made in advertisements to ensure that there is a reasonable basis for making them. Disclaimers should also be used.

At Everingham Solomons we have the experience to help you because *"Helping You Is Our Business"*.



EVERINGHAM SOLOMONS  
SOLICITORS

**Consultants:**  
Ted Heazlett

**Directors:**  
John Boag  
Terry Broomfield  
Ken Sorrenson  
Terry Robinson  
Mark Grady  
Jennifer Blissett

**Associates:**  
Natalie Scanlon  
Lesley McDonnell

Level 3, Ray Walsh House,  
437 Peel Street, Tamworth NSW 2340  
**Ph: 6766 1066** Fax: 6766 4803  
Email: [solicitors@eversol.com.au](mailto:solicitors@eversol.com.au)

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