

Losses in Mortgage and Investment Scandals escalate in seven states. Where are the missing statistics?

Missing Stats

For over a decade Australian retirees have been lured into "safe and secure" first mortgage investments only to lose within 12 months, their nest egg and income. Many of those consumers now find themselves pensioners instead of self-funded. The major players are linked in cartel like businesses to shonky lawyers and members of the accounting and banking sector who are behaving in gangster like fashion.

Today, young people are the nouveau target, coerced shamelessly by Bandits with Badges and being plunged headlong into debt from which they may never fully recover.

Official figures losses released by the Federal Government in 2001 stands at \$350 million from one type of scam activity. Over the next twelve months, we hope that by gathering statistics we can reveal why billions of dollars have been lost from the economy and the potential for further plunder has already developed into full blown chaos.

We are creating our own LOSS REGISTER and ask that all consumers who have lost funds during the past decade, to register their losses on our website - with anonymity assured.

TO REGISTER YOUR LOSS please email: karen@reca.com.au and ask for the appropriate form to fill in.

TO DISCUSS THE ISSUE please email denise@reca.com.au

This week we examine the historical background to the fraudulent activities raging across our nation and why we all need to understand the predictable corruption of a system initially designed to protect consumers.

COMMENT

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Why is it that we Aussies appear to be accepting de-regulation of the superannuation industry in a climate of grand larceny?

After the UK and US experiences of lost superannuation funds in deregulated markets, one would think we could learn from those mistakes.

Planners and Brokers alike flocked to the market place to be the first to "churn" thousands of innocent consumers from employer controlled funds into non-banking products promoted by the non-banking sector.

Predictably innocent consumers found their nest-egg stolen and their retirement plans left in tatters. Often it would take one to two years to discover the fraud, followed by years of further non compliance before regulators took the matter seriously.

How safe is our Super going to be during the next five years in Australia, and what lessons have we learned from the murky waters of our own investment past history?

During the eighties, defaulting mortgage loans were heavily being promoted by solicitor firms who overnight, transformed themselves into financial advisers,

The world of fast money was generating activity more powerful than rocket fuel.

Australians generally trusted "qualified" advice from those who claimed to be professionals.

What has never been properly dealt with is the release of statistics as to the overall losses experienced by ordinary Mums and Dads.

During the excesses of the eighties, the obvious losses were manifest in some of the greatest known collapses of property trusts, such as Estate Mortgages.

We would love to hear from retired journalists, editors, producers who have more of the "inside story" of the time.

So devastating were those 1980's losses suffered by Mum and Dad lenders that bureaucrats complained of solicitor mortgage lending by dodgy practitioners running a "pool" of investor funds.

In 1989, talks commenced on a federal level the outcome of which created new provisions under Corp Law known as "prescribed interests."

Carefully worded federal legislation would give a powerful tool to the newly formed Australian Securities Commission.

In 1991 those mechanisms became law under the Corporations Act. Supposedly, the federal agencies could now whack dodgy solicitors, planners, advisers in the future and thereby protect consumer interests. Consumer Protection was back on the agenda.

During 1991 - 1994, Law Societies in all states lobbied Federal politicians and bureaucrats to have the States look after solicitor's recalcitrant ways regarding "pooled mortgages", the main area of consumer losses of superannuation funds.

The Federal Government initially said NO.

The lawyers regrouped and argued for another three years for exemptions claiming:-

1. They could set up Fidelity Funds to protect consumers if defaulting loans occurred via "bad borrowers," and fraudulent use of Solicitor Trust accounts.
2. That solicitors would accompany ASC on a taxpayer funded junket tour of Australia, to canvass for public opinion as to the agreement of the proposed exemptions from Corp Law.
3. The ASC knew that only 20 people turn up to these public forums to represent consumer interests. In particular, those who had not lost funds and did not understand the long term ramifications for consumers.
4. That the State Governments would embody protective mechanisms in the Law Society Acts and create provisions for the control of the funds etc.
5. That consumer protection was paramount importance for the overall economy of the nation and that whilst ASC ought to handle all other members of society who ran monstrous scams, the Law Societies could be trusted and were powerful enough as a peak lobby group to "look after their own" by looking after consumer interests.'
6. The Law Societies would set up and pay for their own ADR - dispute resolutions doomed to failure due to the inherent conflict of interests.
7. That all of the above would be a cost saving from taxpayers point of view.

The Federal Government thought it a wise move ONLY and IF the above mechanisms of protection were provided for.

Over \$200 million in losses were paid out by Law Societies between 1994 (when the exemptions were granted) and 1996.

The funds started to dry up soon after. It appears that the Fidelity Funds mostly came from the pockets of decent lawyers not involved in the scams. These lawyers were left blissfully

unaware of the milking of funds by their colleagues to protect the overall legal fraternity "image."

Two lawyers questioned the payouts two years later and uncovered the "awful truth" that those on the committees and boards of certain societies were indeed making monies from these scams and using the Fidelity Funds to prop up the obvious and predictable losses.

Everyone ducked for cover.

The rest as they say is history - a history of theft by members of the legal fraternity and why in 1999, RECA members, hammered the "prescribed interests" scenario of 1991, even if no-one else understood or bothered to listen, at the time.

The victims of these scams eventually received compensation for a portion of their lost funds many years later, but rarely recovered from the stress and trauma of not knowing the ending of such a devastating experience. Planned retirements were left in tatters.

The Law Societies covered up once again. No statistics were released as the data became the private business of the Law Societies and their real estate and valuer mates.

The irony has always been that these Fidelity Funds were only to be used in cases of fraud. Each law firm pays for cover under statute requirements for Professional Indemnity insurance in the case of loss of funds through negligence. PII does not cover fraud.

Yet the Law Societies steadfastly refuted suggestions of fraud amongst their members. Very few lawyers were ever prosecuted and the magnitude of the scandal has never been properly canvassed or indeed, investigated. No statistics were forthcoming.

Furthermore, there seemed to be no general enforcement of Corporation Law.

In 1995 a Report was prepared for the Senate on the looming solicitor mortgage scandal. At least two major banks had been riding high on the new business created by first mortgage investment as a growth industry. Retiree funds were shoved onto second mortgages and eventually churned onto debentures, non-secured loans and promissory notes.

Most of these products were blatantly marketed as "safe and secure, low risk, ASIC approved." By the late nineties, finance cartels were bouncing customers from one project to the next. Consumers had no idea that their monthly income cheques were in fact stolen funds. The business operators constantly depended upon new stolen monies.

Bureaucrats working as investigative officers for the ASC believed that all would eventually unravel the investment scandals would now be exposed.

In 1996 the Government changed hands and immediately Treasurer Peter Costello demonstrated enthusiasm for cleaning up these practices and boasted his officers would preside over the "best consumer protection mechanisms in the world." The Senate report became buried in a sea of new reforms, all of which looked amazingly promising.

The Law Societies then complained their funds had run dry, consumer protection Fidelity Funds being the lynchpin of the argument for class exemption.

The irony is that the Coalition led States argued for class exemptions to the very class that created the need for the "prescribed interest" provisions in 1991. Lawyers were stealing the funds and then applied for exemptions because they were lawyers, worthy of trust!!!

The moment the new FSR provisions were installed in late 1999, the legal fraternity once again sought exemptions from law. This time they were accompanied by similar noises from

members of the accounting profession who wished to benefit from exemptions in the same way as their professional mates.

Understandably from both professions' point of view, why should Lawyers be above the Law? Why not accountants also be given the luxury of class exemption?

As a consumer advocate, I would ask: "why give exemptions to those whose past performance demonstrates a complete lack of honesty and ethics?" In the interests of consumers why give exemptions at all?

Only those bent on setting up more dastardly loans would want to make use of exemptions, so why lobby for more of the same? Why would the Law Societies and Accounting peak bodies want to tarnish their image any further than it already has been?

Why would these peak bodies want to protect the guilty, when the same names are known to all of us that watch from the sidelines? Why would we do that to innocent consumers?

Once again the answers to the above questions lay embedded in the historical records of the mid nineties.

Unemployment in 1993 created a new wave of "expert" planners and brokers. The next wave of fraud attached to pooled mortgage scams occurred in the Financial Planning and Mortgage Broking sector to accommodate huge redundancies in the area of middle management in the banking sector.

In 1996, two major banks who had loaned millions of dollars to worthless borrowers, propping up over-valued projects, via lawyer generated funding, moved into two tiered-marketing which was effectively the next level of the Ponzi.

Retiree funds were the usual target and once again self-funded retirees were being approached to place their superannuation funds into the dodgy projects from which the Banks were trying to escape.

Dodgy Valuers assisted with the process and became "one removed" from each and every transaction.

The Mortgage scandals of the eighties were in rebirth mode, using brokers and planners under the jurisdiction of ASC in the mid 90's.

To their credit, in 1997 the Treasurer and the then newly appointed Minister of FSR Joe Hockey, assisted in the drafting of the existing FSR legislative reforms in an attempt to stop these practices from blowing out of control.

Under new management of ASIC, with its sister APRA supposedly watching the banking sector, the new FSR provisions, would force lawyers who wished to continue their grubby little ways to "apply for a licence" and become fund managers etc with a mechanism for consumer protection known as an "AFS licence." The idea being, that if the applicant was deemed to be an "unfit" person, a licence must then be denied in the interests of consumer protection.

The licences had been in play for some time, but lawyers had the benefit of exemption. All that was about to change in 1998.

Lawyers had to form companies if they were to continue "in business."

Amazingly ASIC then handed AFS badges out to the same lawyers whom we are aware of as running defaulting loans, but at the risk of being threatened with writs, we are unable to name them. The Federal Agencies have laid very few criminal charges and most of the lawyers involved escaped any pain, despite thousands of files of evidence as to their dastardly deeds.

Business as usual. ASIC's response was to place all offending law firms on the infamous "Run Out program." Supposedly this was to run down the loans and prevent any new ones being set up or, old projects being re-jigged.

RECA criticised this move in 1999. We called it the "Run Out of the country with the money" programme. It effectively gave the crooks a moratorium and an amnesty from past discretions.

Over 123 law firms were involved in mortgage lending and were the subject of consumer complaints to the federal regulator. Each firm had loan books ranging from \$20 million to \$200 million and each was servicing an average of 600 clients.

Consumers lost an average 80% of capital and almost all those placed in 2nd mortgages, lost 100 cents in the dollar.

Tax effective scams ran side by side with cross pollination of the accounting profession. The tax office identified over 250 schemes the agency deemed as fraudulent scams. Lists of investors usually showed an average of 9000 investor clients per scheme.

Two-tiered marketing scams also generated from the same group of players, where common clients could possibly be milked three times, unaware they were dealing with the same cartel. Tens of thousands of victims lost an average \$20,000 - \$200,000 in these activities.

Promissory Note and debenture scams netted another \$2 billion from one company of players. Several more players jumped on the gravy train of stolen funds, each one armed with an AFS licence, plus a couple of spares.

ASIC continued to hand out the licences like smarties to whoever applied, despite enough consumer complaint files to fill the empire state building.

Spruikers moved into the arena with initial funding from the very players we have endeavoured to describe. Some licensed, others not. It did not seem to matter. In a free market environment, there was room for everyone to make money. If the regulator was used as a credibility tool, then there was an endless stream of victims to attend consumer training courses "ASIC Approved," or so the material stated.

Despite the heavy losses to consumers in all states, the names of the most Frequent Flyers (known to victims, bureaucrats and pollies) were permitted to "qualify" for new licences under the new provisions of FSR. One brochure for "superannuation investment approved" scams blatantly used the Qantas Frequent Flyer logo.

ASIC treated these fund raising dinosaurs of the non-banking sector as "professional money managers." Property trusts began springing up in every state.

Instead of an exemption, these law firms could now continue to raise funds using spruikers as the shop front, with ASIC, ACCC and APRA bureaucrats blaming Government Policy for the mess.

Meanwhile, billions more dollars have been stolen from innocent consumers, leaving a trail of debt and perhaps the greatest property bubble this country has experienced.

The Senate agreed to hold a token inquiry in 1998 into the Tasmanian Law Society, but avoided looking too closely at all other states. The victims in Tassie are still grappling with the aftermath even though Piggott Wood and Baker have at last been dragged through the courts through the combined efforts of dedicated grass-roots Consumer Groups and the State Government.

Victims are still (as of today) waiting for the payout ordered by the courts.

Meanwhile the entire junket has swept out of control. There are 1000 times more projects with easy entry into the "get rich quick" game by promoters without badges who are acting as a cartel, swapping deals between one another and stealing more funds.

The honest members of the legal fraternity urgently need to take a closer look at the profession's own badge of integrity. Our members' files clearly identify the shonky operators with a legal degree, grovelling for funds at the bottom these Ponzi scams.

Each lawyer is co-joined with a friendly accountant, banker, valuer, financial planner/adviser, mortgage broker and real estate agent all out to steal more funds in "the normal course of business."

Corporate greed and non-compliance of law starts out as a minority thing, but if left unchecked without the benefit of enforcement of law against those responsible, it becomes 90% the "norm."

The Ponzi scams raging Australia right now are becoming the norm rather than the exception and have already enjoyed an eight-year head start into the superannuation sector.

Stealing life savings and people's homes has become a free-for-all in the western world. It is a known global issue. Australia has become a play ground for the rest of the world to come on down and join in the fun.

I use the word "stealing" in the context of knowingly extracting monies by the use of deceptive practices, from vulnerable people who trusted that integrity mattered to professional advisers. Consumers believed the "capital guaranteed" approach and depended upon "low risk investment."

However, the most prevalent and valid complaint from consumers is the utter betrayal of the tax-payer funded system, supposedly in place to protect their interests, in case there was one crook lurking in the shadows..

Over \$400 million per annum is poured into regulatory agencies devoted to consumer protection. Why is it that such huge amounts of money, cannot stop the endemic corruption that we, as a society, are faced with today?

It was known by all of the above that people risked losing their capital and the resulting income. Even more devious was the practice of using new stolen funds to get the charities and church funds out of the game prior to a predictable bubble collapse.

Property was being used as the vehicle in many variations of Managed Investment Scams.

Even more malicious is the practice of using Financial Planners to convince vulnerable consumers to mortgage their homes and become "first time investors," on the basis that their interests were protected. Consumers were blissfully unaware of the corruption of the corporate system.

The flash of the badge - the AFS licence, blinded consumers. No warnings were issued by the Federal Government of the new system of "Bandits with Badges."

To consumers who have experienced these losses and traumas, all of the above can only be described as grand larceny.

We hope consumer victims in each State, will give us a hand with this task.

In the interest of current and future generations we need to work towards exposing these practices and demanding that words like "safe and secure investment" can be relied upon.

What is needed is a standard of rating as to what constitutes “low, medium and high risk investment” and heavy penalties and enforcement of law if such provisions are breached. Justice also needs to be seen in action, in order to clamp down on the new order of crooks.

Consumer confidence in the financial advisory, legal and banking sectors are paramount to a healthy economy.

We hope to hear from each and every one of those who have suffered loss and also from the families of those who have passed away.

Our community contribution is to create a NATIONAL LOSS REGISTER and expose the truth on the magnitude of the losses.

We have created the vehicle. We ask all consumers to jump on board.

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Real Estate Consumer Association November 04