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“Deceptive” promoters of ‘rent to buy’ property deals acted

The Supreme Court has ruled that a ‘rent-to-buy’ property scheme operating in WA was illegal because the promoters are not licensed real estate agents, and had misled consumers.

The landmark ruling by the Supreme Court declared that unlicensed promoters of a rent-to-buy scheme, **No Loan Home Pty Ltd**, its sole director **Filip (Fil) Butkovic** and employee **Nikola (Nik) Butkovic**, of Nedlands, had engaged in misleading and deceptive conduct.

No Loan Home Pty Ltd, the proprietor of the business **Perth’s Easyhomes WA**, has been restrained from advertising and promoting the scheme or entering into any further rent-to-buy transactions without first obtaining a real estate agent’s licence under *the Real Estate and Business Agents Act 1978*. The Supreme Court ruled that the ‘rent-to-buy’ transactions are real estate transactions for the purposes of the Act.

The judgment, handed down by Master Sanderson on 30 May 2012, supported the Commissioner’s allegation that the promoters had also breached the Australian Consumer Law (ACL) by misleading potential purchasers regarding the future value of the property, the potential equity that they are able to build up over a four to five year period and their ability to obtain finance at the end of this period. The company’s website and advertising material makes misleading representations as to future property values without setting out the basis for these estimates.

Under the scheme being promoted by No Loan Home Pty Ltd, the buyer pays an ‘Upfront Option Fee’ to the business of about \$15,000, as well as an ‘Ongoing Option Fee’, a proportion of which is to be credited towards the final purchase of the property. The buyer is required to sign a tenancy agreement with the seller in which rent is payable until the end of the contract period, usually four years, when the option to purchase is to be exercised.

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Acting Commissioner for Consumer Protection, Gary Newcombe, said the landmark ruling in this case now has implications for all promoters of rent to buy schemes, and Consumer Protection are looking into other similar schemes.

“The Supreme Court supported Consumer Protection’s belief that the promoters of these schemes were engaging in real estate transactions so were required to be licensed and were therefore operating outside the law,” Mr Newcombe said.

“Our major concern was that the consumers who took part in these schemes didn’t have the protection that the licensing system and laws offer and now we have legal clarity over these issues following the Supreme Court ruling.

“Consumers have recourse to a fund for reimbursement where serious misconduct of a licensed real estate agent causes loss, and licensed agents are accountable to the Commissioner under a Code of Conduct and the Act. Those operating without a licence provide no such protections.

“These schemes prey on vulnerable people who are finding it difficult to either sell or buy a home. We urge consumers who have had dealings with No Loan Home or any other rent to buy scheme to contact us.”

Consumers who are involved in a rent to buy scheme, either as a seller or buyer, should contact Consumer Protection on **1300 30 40 54** or consumer@commerce.wa.gov.au