

Those looking to get a piece of the Australian dream of buying a home are still falling victim to the shadow property market of rent-to-buy deals, [a new report shows](#) .

In a typical rent-to-buy deal, the buyer agrees to an inflated property price, then pays market rent (or above), an “option fee” to buy the property in several years’ time, and in some cases a deposit and outgoings. The option fees are at least partly credited to the purchase price. The catch is that the buyer has to refinance with a mainstream lender to buy the home by the time the rent-to-buy deal expires.

People who have signed up to rent-to-buy deals find it virtually impossible to refinance. The Consumer Action Law Centre has seen no examples of successful rent-to-buy deals. They are extremely risky financially and the legal protections for buyers are grossly inadequate.

In vendor finance schemes, the buyer agrees to an inflated property price, then pays a deposit, instalments, outgoings and, in some cases, their First Home Owner Grant. Vendor finance agreements are typically for between two and 30 years. However, the buyer will often need to refinance within several years and will face the same obstacles as in rent-to-buy deals.

The Consumer Action Law Centre report, [Fringe Dwellings: The vendor finance and rent-to-buy housing black market](#) , collected and published 10 case studies from Victoria and beyond. The studies detail the experiences of people across Australia who have bought into these schemes. There are some striking similarities between these cases.

The sales pitch is the same – “Own a home quickly and easily”, “Buy without a bank!”, “Tell the landlord to shove it!” and so on. The dream of home ownership is a very easy sell, especially to someone who thought it was out of their reach.

There are many examples of failed vendor finance deals. Many buyers have paid significant amounts towards what they hope will be their home, only to find they cannot complete the purchase and will lose everything.

The people who fall victim to these schemes don't have the income, savings or credit history to get a mortgage. Often the banks have said no and people are drawn in by someone who seems to understand their predicament and finally says yes.

In most cases the deals were unaffordable from the beginning. The purchase price is well in excess of market value and the repayments are much higher than you'd see in a mainstream mortgage.

How people fall into the trap

Owning your own home is at the centre of the modern Australian dream. Yet this dream is increasingly out of reach of many as housing affordability worsens with rocketing property prices in our major cities. [A report published earlier this year by the Australian Population Research Institute](#) cited international research data ranking Sydney and Melbourne as second and fourth respectively among the most unaffordable locations in the world across the 86 major markets surveyed.

So it's no wonder that people will go to extreme lengths, and are susceptible to the seductions of smooth-talking property spruikers, as they chase the dream of home ownership.

The legal framework is almost impossible for an individual to navigate without expert advice. In Victoria alone, there are nine pieces of state and federal legislation that can apply to rent-to-buy and/or vendor finance arrangements.

Although the various deals are sold to buyers in much the same way, it's when they unravel that the complicated nature of the deals comes to light. This is essentially a black market, because it does not sit within established property markets or laws.

How common is this in Australia?

Such schemes have a [long history in Australia](#) and [elsewhere](#) but have achieved somewhat of a renaissance with the [rise of the people who promote these schemes](#).

Unfortunately, it is difficult to identify how many people have entered into these sorts of schemes due to a lack of available data. Answers to questions in the census also do not provide this information. For the most part, therefore, these transactions are invisible.

As the property has not changed hands, there is no record on the title to the land and consumers rarely register caveats. However, the Consumer Action Law Centre and other legal services around Australia have assisted clients regarding these schemes in recent years.

In addition to this, there is an unhealthy level of interest in getting involved in these schemes. Thousands of potential brokers have attended vendor finance and rent-to-buy promotions in Australia. We Buy Houses Pty Ltd, the biggest of the operators, had a [turnover of \\$20 million between January 2011 and June 2014](#)

. The role that some lawyers play in [the establishment of the schemes](#) is another concern.

What can be done?

These schemes operate in a legal twilight zone. The patchwork of state and federal laws does not adequately regulate these transactions.

Depending on the structure of the particular transaction and the jurisdiction in which it occurs, some consumers may qualify for some legal protection while others simply fall through the cracks. Given the already onerous financial and emotional burdens incurred, consumers may recoil at the prospect of further expense and stress through [engagement with the legal system](#) .

Obviously the best course is to discourage consumers from entering into these transactions in the first place, so more public awareness of the pitfalls is desirable. The reality is, however, that the tantalising prospect of home ownership will mean that many hopeful but vulnerable homebuyers will still enter into these transactions. Proactive legal intervention is necessary and urgent.

As suggested by the Consumer Action Law Centre, the most effective solution would be to

prohibit such schemes. Their track record in Australia and elsewhere is poor. The only benefit flows to the broker.

Failing this, property investment advice should be more tightly regulated.

The [Corporations Act](#) and the Australian Securities and Investments Commission Act impose tight regulations upon other forms of financial advice and [all of these](#)

[transactions should be no exception](#)

. Also purveyors should be licensed under the

[national credit laws](#)

to ensure compliance with national standards and make sanctions available for non-compliance.

These measures are essential to ensure that advice provided complies with existing regulation, that consumers are aware of the pitfalls of the schemes and that an especially vulnerable cohort of consumers is protected.

Another concern is the coverage of existing national and state laws. It is ironic that, in many cases, these transactions do not fall under the national credit law, the cornerstone of responsible lending and protection from unjust contracts.

State legislatures, which have carriage of real property laws, also have a role to play. Again, depending on the the structure of the transaction, laws could potentially overlap and yet other scenarios are not addressed at all.

Finally, regulators should [use consumer protection laws](#) to pursue these schemes. These laws prohibit misleading or deceptive and unconscionable conduct – although proving these legal standards before a court [can be](#) [onerous](#) .

The Consumer Action Law Centre's suggestion of an extension of the provisions to include unfair trading – especially within the context of the [ongoing review of the Australian Consumer](#)

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– is timely.

These types of shonky schemes are not new and their shortcomings cannot be denied. The desire for a home means that many consumers will be vulnerable, especially in a time of declining home affordability and tighter credit. It seems we have reached a point where a national approach to the regulation of these transactions is not just desirable, but essential.

Gerard Brody, CEO, Consumer Action Law Centre, also made some contribution to this piece.

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