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Rewards for referrals

The Department of Commerce (the Department) would like to remind settlement agents about the legislative requirements in relation to rewards for referrals.

Section 44(8) of the *Settlement Agents Act 1981* (the Act) prohibits a licensed settlement agent from paying or giving any rewards, whether directly or indirectly, to a person in return for referrals of business involving the performance of the functions of a settlement agent.

A reward is not limited to a monetary payment. It can include any other benefit, examples include:

- distribution of income via company and unit trust structures, etc.;
- free titles searches;
- gifts (wine, football tickets, holidays etc);
- free secretarial services;
- free office space and equipment; or
- higher than market value paid to real estate agents for rental of office space

Breaches of this section of the Act can attract maximum fines of \$20,000.

In addition, settlement agents who are found guilty of a criminal offence under the provision may also face the possibility of the cancellation, disqualification or suspension of their licence.

A settlement agent who breaches this provision of the Act may find that they are also in breach of the Settlement Agents' Code of Conduct in relation to a conflict of interest, putting their interest ahead of their client and deceptive and misleading representation.

In addition section 44(7) of the Act prohibits any person, including a real estate agent or sales representative, from directly or indirectly demanding, receiving or holding any reward for referring business involving the performance of the functions of a settlement agent.

The real estate industry has been reminded of their obligations in regard to this section of the Act.

Any allegations of agents engaging in the practice of rewards for referrals will be investigated by the Department and may result in enforcement action being taken.

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