

REBATES, SIDE DEALS, CASH-BACKS AND DISCOUNTS

We have recently noticed an increase in rebates, side deals, cash-backs and early settlement discounts offered in Contracts of Sale. Some of the rebates were not disclosed by the borrower in the initial credit application. These were discovered when the contract was forwarded to us around the settlement date and resulted in the credit being re-assessed before settlement, causing angst, inconvenience and added expense for the borrowers.

At issue is whether discounts are really a discount for early settlement or a marketing ploy which has the effect of artificially inflating the purchase price captured for property sales statistics or enabling a higher loan to real value ratio. The effect is that if the valuer is unaware discounts are being given, their valuations can be skewed and loan to value ratios adversely affected. Funders:

- may view non-disclosure of rebates in the loan application as misleading, or a breach of the warranties given by the borrower; and
- may refuse to lend for purchases of land in developments which they perceive as being affected by skewed valuation data.

A number of Funders have strict guidelines in relation to rebates or discounts. At least one Funder requires the contract and transfer to be re-written at the lower price as a pre-condition of making the loan.

All Funders we work for require us to peruse a full copy of the contract as part of their settlement controls and most require us to look for side deals and discounts or cash-backs. Many Funders require their panel lawyer to take a "policing" or "gatekeeper" role in this regard.

Often problems occur when the rebate is picked up close to settlement so the earlier any issue in this regard is identified and addressed the better it is for all parties involved. That the borrower's solicitor forwarded us a full copy of the contract or settlement statement showing a discount close to settlement is cold comfort when settlements are delayed or the borrower complains about the additional requirements.

How can you help?

You can help minimise the impact of discounts by obtaining a full copy of the contract (including all special conditions) at application stage and:

- if the Funder requires a copy of the contract, provide it to the Funder;
- check the contract for discounts and follow these up with borrowers or brokers before submitting or approving the credit application;
- include the full contract with your initial (following approval) instructions to us.

Disclosure of a discount in the initial application should allow all parties ample time to deal with the relevant issues, before any party is locked in to an adverse position.

We are happy to provide training to your staff on techniques for reading contracts. To

deal with the relevant issues, before any party is locked in to an adverse position.

We are happy to provide training to your staff on techniques for reading contracts. To arrange training, please contact **Kellie Towerton** (ph 3228 5290) or **Gordon Perkins** (ph 3228 5267).



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