

Summary: An incentive is anything that is advertised, communicated or offered by a brokerage to the public or a person for the purpose of attracting business to the brokerage and includes a promise, good, service, game of chance, contest, or anything else of value. Only a brokerage can offer an incentive to the public. [Real Estate Act Rules, s. 1(1)(o), s.54 (1)(d), s.70(1)(d)]

For the purposes of the *Real Estate Act Rules*, an “incentive” is anything that is advertised, communicated or offered by a brokerage to the public or a person for the purpose of attracting business to the brokerage and includes a promise, good, service, game of chance, contest, or anything else of value [Real Estate Act Rules, s.1(1)(o)].

Some industry members confuse “incentives” and “inducements.” As stated in the definition, an incentive is something that a brokerage offers to the public at large to attract business. It is not directed specifically at any one individual and is not related to an actual or potential particular real estate transaction or mortgage deal. An inducement is anything offered by a brokerage to a specific person who is a party (or potential party) to a real estate transaction, or mortgage deal, and is intended to assist, persuade or cause that person to enter into a such a transaction or deal. An example of an inducement is when a real estate brokerage offers to provide new appliances to a buyer if they proceed with the purchase of a particular property.

Only a brokerage can publicly advertise incentives to the public such as travel miles, gifts, contests, gift certificates, games of chance or anything else of value to attract clients to that brokerage. Incentives can be advertised or communicated in any way, including word of mouth, television, Internet advertising, websites, newspapers, flyers, brochures, radio and mail outs. There are no restrictions on how incentives can be communicated to the public.

A broker, associate broker or associate, as the case may be, must not directly or indirectly, advertise, communicate or offer to any person an incentive except an incentive that is provided by and on behalf of the brokerage with which he or she is registered [Real Estate Act Rules, s.54(1)(d), s.70(1)(d)]. In other words, individuals who are brokers, associate brokers and associates are prohibited from offering their own incentives; that is, incentives whose sole purpose is to attract business to them personally.

In determining if the incentive is provided by the brokerage, the Real Estate Council of Alberta will consider the following:

- Is the incentive advertised by the brokerage as a brokerage incentive?
- Does the brokerage have a marketing plan to communicate the incentive to all its clients?
- Do all associate brokers and associates of the brokerage offer the incentive?
- Is it mandatory for all associate brokers and associates to participate in the incentive or can they opt out from participating?
- Who purchases, lends, gives or provides the incentive?

- If there are problems or concerns associated with the incentive, who is responsible for dealing with those issues?
- Who pays for the incentive?
- Do all of the brokerage's clients receive the incentive regardless of which associate broker or associate represents the brokerage when dealing with the client?

Examples

1. ABC Realty has a large newspaper advertisement stating that any seller who lists his property with the brokerage within the next 60 days could be eligible for a trip for two to Hawaii. This is an incentive.
2. Kick Real Estate sends out a flyer to a community stating that for every home bought or sold in that community in the next four months, the brokerage will purchase specific equipment for a children's playground at the community center. This is an incentive.
3. Alberta's Best Realty, specializing in rural real estate, mailed out a letter to a number of industry members advertising an incentive of a game of chance for industry members to win a trip to Las Vegas for the greatest number of referrals to be sent to that brokerage over the next six months. This is an incentive.
4. The following advertisements would suggest the incentive being offered to the public is not a brokerage incentive but is solely an incentive for the benefit of the individual broker, associate or associate:
 - "Let me sell your house and I will give you free use of my moving van"
 - "If you hire me to find your next home, you'll receive a \$500 gift certificate for ABC Depot"
 - "If you hire me to find you a new mortgage, I will donate \$200 to XYZ Charity"
5. A real estate brokerage authorizes its registrants to decide on whether they want to advertise or communicate a guaranteed sale program. Only the brokerage advertisements generated by the participating registrants communicate the guaranteed sales program. Although the guaranteed sale will be done by the brokerage and administered by the brokerage, the industry members advertising or communicating the guaranteed sale program are responsible for reimbursing the brokerage for all costs associated with the guaranteed sales program. This is not a brokerage incentive as the associates have the option of deciding whether they want to communicate the incentive and the brokerage advertisements do not reflect a consistent brokerage advertising strategy. As such, the brokerage may not have such a guaranteed sales program in place and associates may not communicate or offer such a program to consumers. NOTE: Only a brokerage may offer an incentive. An individual industry member may not offer an incentive that is not brokerage-based. This example is not a brokerage-based program.

Practice Tip

Whenever a brokerage offers an incentive, the brokerage should have written policies and procedures regarding the incentive offering. The policies and procedures should be communicated to all brokerage industry members and applicable brokerage staff. The broker should also have a system in place to ensure to adherence to the incentive policies and procedures.

The policies and procedures should include:

- A clear description of the incentive being offered. This includes the geographical offering area, timelines of the incentive offering, and all conditions or exclusions associated with the incentive;
- The target audience of the incentive. For example, for real estate brokerages the incentive may target buyers or sellers, or persons dealing with a new branch office. In a mortgage brokerage, the incentive may target only a certain class of borrowers i.e. new home sales;
- How the incentive will be communicated. For example, the brokerage may require the incentive to be communicated in all advertisements of a certain size, flyers, website information and in person;
- The wording, logos or graphics to be used in advertising or communication materials;
- Documentation to be provided to the clients or potential clients that describes the incentive;
- The brokerage contact person for client complaints or concerns associated with the incentive;
- Any checklists or documents that need to be completed by the brokerage staff to ensure the incentive is offered to all clients; and,
- Financial or cost procedures associated with the incentive.