

Conveyancer calls out real estate referral payments, claiming they're 'unethical' and could hurt homebuyers

By national consumer affairs reporter [Michael Atkin](#) and the Specialist Reporting Team's [Loretta Florance](#)

Posted Wed 9 Aug 2023 at 1:42pm, updated Wed 9 Aug 2023 at 7:24pm



Ownit Conveyancing advertises its referral program on its website. *(Supplied)*

A woman is relaxing in a hammock on a beautiful beach, enjoying a holiday many Australians dream of.

The enticing image is a sales pitch from Queensland's largest property conveyancing firm.

"We have given out over \$1 million in cash to our referral partners," Ownit Conveyancing's website says.

Ownit provides legal advice to people buying and selling property in Queensland and Victoria — but this opportunity to make easy money isn't being offered to its customers.

The company runs a referral program, paying real estate agents and other businesses to recommend

Key points:

- Three states have banned legal firms from paying real estate agents for referrals
- Law experts and real estate insiders say referral payments are widespread in other parts of Australia
- While some experts believe it's unethical, businesses say it's an important marketing tool

Ownit's services to their clients.

The practice is illegal in Western Australia, South Australia and Tasmania.

However industry insiders have told the ABC that referrals are rife in other parts of the country, where it's permitted as long as it's declared.

Some real estate agents have started "demanding" fees in exchange for recommending conveyancers, one legal expert told the ABC.

And experts warn people buying and selling their homes could end up paying the price, if the business puts the interests of the real estate agent ahead of theirs.

Homebuyers should be 'outraged', conveyancer says

Victorian conveyancer Paul Garson is blowing the whistle on conduct in the real estate sector, which he believes is widespread and unethical despite being legal.

"Buying a property is most people's biggest decision, financially, in their whole life," he said.

"I think they should be outraged."



And he said others in the real estate industry had raised concerns about the practice with him too.

"[They] think that it's so grossly unethical and creating a conflict of interest that they're just concerned about it reputationally for the whole profession," he said.

Mr Garson said in parts of Victoria, a "bidding war" had emerged, with conveyancing firms increasing the amount they were offering to real estate agents, as they vied for more business.

"Kickbacks ... is an appropriate term," he said.

"Ten years ago, it was \$200 [for a referral].

"I recently got sent an email from another conveyancer saying that there was a conveyancer offering \$400 per file."

Emails forwarded to Mr Garson and seen by the ABC show three different firms — Provey Conveyancing, Advanced Conveyancing and Easy Link Conveyancing — writing to real estate agents offering money in return for client referrals.

Easy Link Conveyancing said real estate agents could earn up to \$1,200 from referring just a single listing:

"We offer a \$400 referral fee upon loan approval and payment of deposit. We can also represent both the Vendor and the Purchaser. If both parties are referred and represented by us you will receive an \$800 referral fee ... you can earn \$1,200 with only one listing if we act for the Vendor, Purchaser, and the Purchase transaction of the Vendor."

When contacted by the ABC, Easy Link Conveyancing's director Andy Nguyen said the company's clients are informed of the practice in a questionnaire they're given to sign, which includes the following statement:

"We may share part of our fees to online marketing companies, real estate agents, accountants, brokers, bankers etc. for introducing you to us. This is an integral part of many businesses' marketing and lead-generation activities and NOT payable by you."

He said if the company represented both sides of a sale, it appointed lawyers from different locations to each side to avoid a conflict of interest.

Mr Nguyen told the ABC referral programs were common and he provided a list of more than 20 other companies in Victoria that he said were also offering fees for recommendations.

The ABC made extensive efforts to contact Provey Conveyancing and Advanced Conveyancing.

Provey Conveyancing declined to provide a response and Advanced Conveyancing said it would not respond due to time constraints.

Warnings practice could create 'conflicts of interest'

Real estate agents receiving fees for referring conveyancers could create conflicts of interest, one legal expert said.

The Queensland Law Society's senior counsel on ethics Shane Budden believes the issue has grown to the point where many real estate agents won't recommend a solicitor for conveyancing work without getting paid.

"The feedback from [QLS] members is that a lot of real estate agents are now basically demanding a referral fee," he said.

"I think there's some risk involved [for] the real estate agents ... because, really, they should only be referring a matter because they feel that the lawyer is great."



Mr Garson warned that if something went wrong during a property sale, a financial relationship between the agent and conveyancer could become a problem.

"You've got to cast doubt on whether that lawyer or conveyancer is going to look after the client — particularly if the agent has done something wrong," he said.

The peak body for the real estate industry in Victoria has warned agents against accepting referrals.

"The Estate Agents Act is quite clear that rebates should not be accepted by an agent in respect to services provided to a client," a Real Estate Institute of Victoria spokesperson said in a statement.

"Rebates can also create a potential conflict of interest in some cases unless they are factored into the proposed fees."

Do you know more about referrals in the real estate industry? Contact Atkin.Michael@abc.net.au.

However, the industry takes an entirely different position in Queensland.

Antonia Mercorella from the Real Estate Institute of Queensland says she has no problem with it, if it's declared.

"I think there's no need to ban them, provided that there are very clear rules around the way that the benefits are derived," she said.

"The law is very clear about this — it is acceptable provided that the client is aware of it and provided that there is no conflict of interest."

The national peak body, the Real Estate Institute of Australia, also said the practice was acceptable when done ethically.

'You either go broke or you put up your fees'

Some conveyancers or legal practitioners who don't want to pay referral fees can find themselves in a difficult position because the practice is so widespread, insiders say.

Mr Garson said paying money for recommendations meant the most qualified conveyancers were not necessarily the ones thriving.

"[There are] businesses that have been going for 10 or 15 years [and are now] winding down because they're losing too much business to newer conveyancers that are paying," he said.

Mr Garson said giving "a fair chunk" of a conveyancing fee to a real estate agent would lead to pressure on the company to charge clients more to cover the kickbacks.

"It's not profitable. You either go broke or you put your fees up in that scenario, or you cut corners," he said.

What are the rules on real estate referrals where you live?

- **NSW:** Legal, but the real estate agent must make the disclosure on a form approved by NSW Fair Trading and the client must acknowledge this disclosure in writing
- **Vic:** Legal, but must be disclosed to the client

- **Tas:** Banned
- **Qld:** Legal, but must be disclosed to the client
- **SA:** Banned
- **NT:** Legal, but the arrangement must be transparent and fully disclosed to all parties
- **WA:** Banned
- **ACT:** Legal, but both the legal practitioner and real estate must disclose it

Source: Statements from state and territory governments

But Mr Nguyen from Easy Link Conveyancing said while his business might not profit from a client who came from a paid recommendation, the practice generated business through word of mouth.

"They will come back and let their friends or relatives know, [and] at that time you do not have to pay [a referral fee] to anyone and you will make more profit from there," he said.

Mr Budden said he believed solicitors in Queensland tried to avoid the practice but he said it was becoming more difficult "because of the widespread nature of this demand".

"It's deeply concerning," he said.

Mr Garson, who is a council member of the Australian Institute of Conveyancers Victorian Division, is calling on the state's consumer affairs watchdog to investigate the firms offering referrals, and for Victoria to ban the practice to protect consumers.

Client relies on real estate recommendation to navigate 'bewildering choice'

When Napoleon Burnell moved interstate after buying a house on the Gold Coast four years ago, he found it difficult to work out who should handle the legal side of the purchase.

"Bewildering choice — very, very difficult to differentiate between [firms which] all charge about the same ballpark figure," he said.

"My real estate agents actually recommended two to actually select from. So I looked into those two."

One of those two firms was Ownit.



He went with Ownit, but as time went on he said he struggled to get a hold of them as he and his wife were trying to get the deal done before Christmas.

"Ultimately, I actually had to terminate them ... I had to appoint a solicitor to finish the conveyancing," he said.

In the end, the company gave him a full refund.

The ABC has not seen evidence to show that Ownit paid the agent for the recommendation, and the company would not comment on Mr Burnell's experience for confidentiality reasons.

Conveyancing firms point to satisfied customers

Conveyancing firms the ABC sought comment from said they followed ethical guidelines and disclosed any referral arrangements to their customers.

In a statement, Ownit's chief executive Melissa Warbrick said: "At Ownit, we highly value ethical practices and fully comply with all Queensland Law Society ethical standards.

"We understand the importance of transparency and maintaining legal compliance in our industry."

Ms Warbrick did not address how the company declares its referral program to clients, but said Ownit's online reviews showed it was providing a service many were happy with.

Mr Nguyen also pointed to Easy Link Conveyancing's five-star online ratings as a marker of the company's service.

He also said: "As long as conveyancers act honestly, fairly and professionally and act in a client's best interests, referral programs can be one of the useful marketing tools for the business."

Michelle Hendry, from the South Australian division of the Australian Institute of Conveyancers, said the issue rarely came up in her state.

"[Real estate agents] are referring to you based on your knowledge and skills and your quality of service, rather than the fee that you're going to pay them," she said.



The number of consumer complaints about conveyancers is difficult to establish as states and territories record the information in different ways.

However, what is clear is that conveyancing is regularly being raised as a problem.

Consumer Affairs Victoria has been contacted more than 1,000 times by people with enquiries or complaints about conveyancers since mid-2019.

In Queensland, the Legal Services Commission, which regulates the area, has received 293 complaints about conveyancing in the past three years.

South Australia does not keep a record of complaints.