

What you need to know about buying a property in Western Australia

Buyer's Guide
January 2010

A Guide to your Real Estate Purchase

The following information is provided to help your purchase of the property to proceed with maximum efficiency and to settle by the due date.

Please read it carefully, it may answer many questions you might have concerning your purchase.

While every effort has been made for the guide to be as comprehensive as possible, we strongly recommend that you contact us with any specific queries concerning matters not covered below.

Axiom Conveyancing is a division of GLWB Pty Ltd an incorporated legal practice. We are able to provide legal advice.

Your Right to Choose

Did you know that you have the right when you buy a property, despite what anyone tells you, to nominate on the Contract of sale, a conveyancer of your choice to represent you?

You also have the right at any time to change your nomination even after you have signed the Contract of sale to buy a property.

What you must do

You must tell us of anything that may affect your interests in connection with the property you want to buy.

This is especially important where we prepare financial information on your behalf, which you think, is incorrect or where you want to vary the agreement to buy the property that you have signed with the Seller. This agreement for the purposes of this document we will call the *Contract*.

General

- It is important that you carefully read before you sign any document that we send to you or which is sent to you by anyone else and that you return any such document promptly.

- Take prompt action concerning any Special Condition, which you have either stipulated or need to satisfy, in the Contract by the due date.
- Make sure that the payment of any money such as the deposit or balance of deposit, is made by the due date.
- If you plan to be away during the period leading up to the settlement date you must let us know and provide us with alternate contact details.
- Always remember the date of settlement stipulated on the Contract.
- Stay in contact with us and tell us if anything changes such as any variation you may agree with the Seller to the Contract including but not limited to the settlement date or if you want early possession.

Real Estate Selling Agent

In most cases there will be a real estate agent involved in the marketing and sale of the property you want to buy. The selling agent is engaged by the Seller and must act in the best interests of the Seller, not you as the buyer although, the agent does have a duty to provide to you relevant information about the property.

If the real estate agent cannot answer your questions about the property request the real estate agent to provide answers to you within a specific time period.

You can also contact the relevant local council and other government organisations and ask them for the information. If you are not able to make all the appropriate enquiries yourself, or want another person to represent you, you may consider appointing another agent as your agent who will act in your best interests. Your agent will negotiate the Contract on your behalf with the Seller's agent. If you decide to do this, you will need to enter into a contract (including the payment of fees) with the agent who will represent you in the same way that a Seller contracts with the Seller's agent.

Contract to Buy the Property

The standard Contract for the sale of property in Western Australia consists of two parts. The standard document is called *Contract for the Sale of Land or Strata Title by Offer and Acceptance* (commonly called an Offer and Acceptance) and it incorporates by reference the *Joint Form of General Conditions for the Sale of Land* (also commonly referred to as the *General Conditions*). These forms are widely used in Western Australia. The General Conditions were last revised in 2011 and differ in some areas to earlier versions. It would be wise to ensure that your real estate agent is using the latest version of the General Conditions when a Contract is drawn up.



The General Conditions cover important contractual obligations for both Buyer and Seller. It includes such matters as the paying and holding of the deposit in respect of the Contract, the settlement of the purchase of the property, the adjustment of outgoings such as rates and taxes, and other payment responsibilities such as underground power and sewerage connections.

It is possible to vary the contractual obligations. You can for instance, delete or amend existing contractual obligations that form the General Conditions should you so choose. The Seller would have to agree with the changes if the Contract is to be binding. Please note that special conditions can be added to the Contract to meet the particular needs of both Buyer and Seller.

If you need to obtain finance to buy the property do not under any circumstances make a cash offer. A cash offer means that you are representing to the Seller that you have sufficient funds to buy the property. If for some reason you are not approved for finance or your Lender withdraws its finance approval, you could lose your deposit and the Seller might exercise the Seller's rights detailed in the Contract.

Contract Special Conditions

Contract special conditions may cover issues about:

- building inspection report to be completed by licensed builder or person of your choice
- termite Inspection Certificate to be completed by registered termite inspection company
- good working order clauses, this could be things such as electrical, plumbing and gas
- who pays for necessary repairs such as windows plumbing or electrical
- pool inspection
- bore or reticulation inspection

Any special conditions in the Contract should be as precisely worded as possible.

You may wish to seek legal advice to ensure this.

If the Seller agrees to all conditions and the offer is accepted, there is a legal obligation to satisfy every condition or the sale may not be completed. However, before signing the Contract you should carefully consider your financial situation and thoroughly inspect the property. These two issues are addressed below.

Axiom Conveyancing can help you with matters raised under this heading.

Buying the Right Property

Buying a property is generally a long-term proposition. Make sure the property you buy is one you can afford. It is common practice to require a deposit. Ensure that you have the money for this.

There is no rule that states how much the deposit must be. It can range up to 10% of the purchase price in the Contract. You decide how much of a deposit you can afford.

You should also be aware that property owners are required to make annual payments such as property and contents insurance, local council rates on the property and service charges for water and sewerage.

Generally, real estate agents provide written information on property costs. In addition to ensuring you have money for moving, there are also costs associated with connecting to and using utilities such as electricity, gas and water. Water, power and gas consumption, general house maintenance, as well as the upkeep of any lawns and gardens are other costs that should also be considered.

Finance

If you require finance make sure your income is sufficient to enable you to meet the repayments and if one is required that you can afford the establishment fee for the loan.

Interest rates can vary up and down. You should determine your borrowing capacity before looking at any properties. Lenders or mortgage brokers will help you consider various financing options.

Obtaining Finance

One of the most important conditions of the Contract is finance approval. If you are borrowing money to buy your new property your Lender will need at least 14 to 21 days from the date of the Contract to approve your new loan and 28 days from the date of finance approval to prepare its documents have them signed by you and attend the settlement.

Please ensure that you take immediate steps to obtain the loan. Make sure any request by the Lender to which you have made an application is actioned promptly.

Once you have accepted a loan offer from a Lender please tell us.

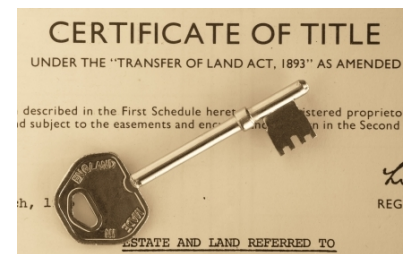
You will need to make an appointment to sign your mortgage documents with your Lender or Finance Broker at the earliest opportunity.

The Lender's fees and disbursements are not included in the Settlement Statement you receive from us. Such may be deducted from your loan funds by your Lender or its representative at settlement. This will increase the amount you may need to contribute by decreasing the amount your

Lender has available for the settlement of your real estate purchase. As a consequence you may need to provide to us further funds.

Certificate of Title

In Western Australia, there is a Certificate of Title for each separately owned portion of land. Generally, the title includes a land description, a diagram of the land (unless it is a strata title), the name and address of the owner and details of encumbrances, such as restrictions on the use of the property. For instance, an *easement* might be shown on the title. An easement gives permission for part of the property to be used in a particular way by another party such as Main



Roads WA, electricity or water utilities, or a neighbour. Examples of easements are giving neighbours the right to use part of a property to gain access to a road, or allowing a utility body access to pipelines passing through the property.

A *restrictive covenant* may also be listed on the title. This imposes an obligation on the owner not to use the land in a particular way. An example of a restrictive covenant is an obligation not to use the land for the purposes of any business, or not to build above a certain number of storeys.

A *caveat*, indicating that a person other than the current owner may have a right or interest in the land, may also appear on the title. When inspecting a property, ask the agent about the title. The agent should have copies of the title and any other relevant documents. We counsel you to check these documents prior to signing the Contract.

Ensure that the copy of the title has been obtained recently, as circumstances can change. If you have any doubts about anything shown on the title documents, you should seek legal advice prior to signing the Contract. If you have queries about any pertinent information on the title that the agent cannot answer then direct the agent to follow this up by obtaining copies of relevant documents. If the agent cannot help you, you should seek legal advice

or contact Landgate. Fees will apply if you need to search for some records and obtain copies of documents. Searches cannot be done by phone.

Forms of Ownership

Where more than one person buys a property, they must elect whether to hold the land as *joint tenants* or *tenants in common*.

As a *joint tenant* each owner owns all of the property jointly with any other owner and there is one title containing the names of all owners. If one of them dies, the interest of the deceased joint tenant in the property passes automatically to the other joint tenants. Married couples often adopt this form of ownership.

It is not possible for a joint tenant interest in a property to be left to somebody in a Will.

As a *tenant in common*, an owner holds a set share of the whole of the property, (sometimes called *undivided interest*) with the remaining owners holding the rest of the share. Tenants in common can sell their share or leave it to someone else in their will.

If you are considering these forms of ownership but are not sure about the differences, seek professional advice about which is better for you.

Strata Title lots

Special rules apply to strata title lots such as units and duplexes. These rules can affect your rights on the property and may lead to extra costs. Strata title properties may have common areas shared by the residents. A *strata company* is made up of the owners of the individual properties. As a strata title owner, you may need to pay a fee which is commonly called a strata management fees. These fees are usually paid quarterly. Such fees are used to cover the costs of repair, maintenance and management associated with the common areas of the property controlled and managed by the *strata company*.

Before making an offer on a strata title property, the Seller, through the Seller's agent, must disclose to you all the strata title information outlined in Forms

28 and 29 as required under the *Strata Titles Act*. This information will form part of the standard Contract. If these forms are not included, the Contract can be terminated even if you have already signed the Contract.

If you are buying an *off-the-plan* unit then any deposit you pay must not be held by the owner. It must be held by the Seller's agent, solicitor or settlement agent. You will be able to avoid the Contract if there is a breach of this requirement of the *Strata Titles Act*.

Strata title properties also have by-laws that owners (or tenants) must abide by. For instance, pets may not be permitted. Additional by-laws for a particular strata title property may amend standard by-laws or add new requirements. These must be registered on the *Strata Plan* to be legally enforceable. It is advisable to obtain and read the minutes of previous strata company meetings.

Documentation and Preliminary Settlement Statement

We will send to you a Transfer of Land for your signature together with a Preliminary Settlement Statement that will show amounts payable by you.

Please promptly sign and return all relevant documents, together with a cheque for any funds requested.

The Preliminary Settlement Statement will include an amount to be held in our trust account for the adjustment of rates and taxes pending receipt of relevant details from entities such as Water Corporation, the Local Council, Strata Body and Office of State Revenue.

Transfer Duty (formerly known as Stamp Duty) Rebates

You may qualify for a concession, rebate or exemption from transfer duty where you reside in the property that is to be purchased even if you are not a first homebuyer.

First homebuyers must be approved to receive the First Home Owners Grant to be eligible for the First Home Owners rate of transfer duty on the Contract. On purchase of an established home the threshold is a purchase price of \$500,000.00 with concessions up to \$600,000.00 and on vacant land it is \$300,000.00 with concessions up to \$400,000.00.

Fact Sheets are available on the Office of State Revenue website at www.osr.wa.gov.au, or call our office to discuss your circumstances.

Rates & Service Enquiries

We will make enquiries on your behalf with:

- Water Corporation for current or outstanding rates and the availability of services
- Local Council for rates, orders and requisitions and housing indemnity insurance details
- Office of State Revenue for current or outstanding land tax information
- Western Australian Planning Commission for zoning information
- Department of Environment and Conservation to check for possible contamination
- Strata Company (if the property is a lot on a strata plan)

There may be other enquiries we will make depending on the type and location of the property you are buying.

Please note that we will be required to pay enquiry fees on your behalf to the entities mentioned above.

We will tell you of the fees paid on your behalf to the relevant entity on the Preliminary Settlement Statement which we will prepare and send to you.

Please be aware that we may not receive responses to our enquiries prior to settlement where there is insufficient time such as where there is a short settlement time or the property is the subject of a new subdivision.

If you receive any accounts for rates from either the Water Corporation or the Local Council soon after the settlement date, please contact us before making payment. The account may already have been paid by us following settlement.

Building Licenses

Unless specifically requested, we will not make enquiries with the Local Council in relation to buildings on the property. Records are not easily obtained for many dwellings and structures built before 1990.

If you believe that a patio, shed, games room or extension of a building was erected after the main dwelling was built, please speak with the Seller's real estate agent. The agent will make enquiries with the Seller. Where the Seller owned the property at the time these structures were built, the Seller may have retained the relevant approvals and provide you with copies.

Underground Power

A project to put electricity lines underground is underway in some suburbs. The State Government, Western Power and local councils are sharing the cost of moving power lines underground. The decision as to how the councils will raise their part of the funds is left up to each council. Some councils will pass the cost on to property owners. The General Conditions contain a clause which sets out who pays the costs for connecting to underground power if a property is sold.

The decision is based on what stage of the project Western Power has reached by the date of the Contract.

The Buyer pays if Western Power decides the property should be connected to underground power any time after the date of the contract. The Buyer also pays if, by the date of the contract, Western Power has decided that the property is to be connected to underground power and that a payment is required, but the details of cost, time and manner of payment have not been prescribed. However, the Seller is required to pay the costs of installing underground power if before settlement

Western Power has formally set out the costs and manner of payment before the contract date.

Alternatively, the Seller can pay these costs to the Buyer on settlement on the understanding that the payment will be made to Western Power. The Seller's real estate agent should be able to tell you the status of the property regarding underground power. Keep in mind the potential future expenses for the property when negotiating the Contract price. You can contact the local council for more information.

Sewer Lines

If the property is not connected to sewerage then, in certain circumstances, it may be your responsibility to connect the sewer line either within 1 year of the date of settlement or within 5 years of the Water Corporation issuing a notice to you to connect it.

Depending on the property connection to the sewerage mains could cost between \$600 to \$2,500 and more.

If at the date of the Contract the property is connected to the sewer and there is money owing for that connection then the Seller must pay that amount prior to settlement. The amount outstanding can either be paid to the Water Corporation or credited to the Buyer who must pay the money to the Water Corporation immediately following settlement.

If at the date of the contract the property is not connected to the sewer and the sewer is available the Buyer is solely responsible for connection to the sewer system. The cost to decommission any septic tanks is also the responsibility of the buyer.

Ask the real estate agent for a *Sales Disclosure Statement*. The *Sales Disclosure Statement* is completed by the Seller and specifically outlines the sewer line connection and septic tank status of the property. It can also include other special conditions of sale. If a *Sales Disclosure Statement* is attached to the Contract then it will be part of the Contract. Given the importance of sewerage connections and septic tank decommissioning, it is advisable to request a *Sales Disclosure Statement* before negotiating the Contract price.

Septic Tanks

Under the Health Act, if the property you are purchasing is connected to a sewer and septic tanks are still on the property that have not been decommissioned, then within 60 days of settlement, you must decommission them.

Decommissioning is done by:

- emptying the tank by person licensed to do so
- either removing the tank, or if that is not practical, breaking up the base of the tank
- backfilling the tank with clean fill and compacting.

Since the costs of decommissioning septic tanks could be in the order of \$1,000 or more it is advisable to check that the septic tanks or other sewerage apparatus have been decommissioned.

This can be done through the Seller's *Sales Disclosure Statement*. The General Conditions state that the Buyer is liable for the cost of decommissioning septic tanks. Local councils are responsible for enforcing the decommissioning legislation, so council requirements can vary throughout Western Australia.

Home Indemnity Insurance

If a building license was issued after 1 February 1997 for a dwelling or for substantial improvements of a value of \$12,000.00 or more, the builder (including an owner builder) must have home indemnity insurance for the work. From 1 July 2007 the \$12,000 value limit was raised to \$20,000.

You will need details of the insurance in the event you need to make a claim for structural defects within the period of the insurance. If you believe this applies in your situation, please contact us so that we can obtain the necessary details.

Owner builders are not required to take out home indemnity insurance before they can build, but must do so if they sell the property within 7 years of obtaining an owner builder license from the Local Council.

An owner builder is not permitted to sell the property within 3 years of obtaining an owner builder license without receiving permission from the Minister of Fair Trading. The contact point for this is the Department of Consumer and Employment Protection.

Residual Current Devices (RCD's)

Legislation effective from 9 August 2009 in Western Australia has altered the responsibilities of owners of residential property.

Owners of residential property are required by the 2007 Wiring Rules made under the Electricity Amendment Regulations 2009 to ensure that at least two RCD's are installed at the premises to be *sold, leased or hired*, prior to the settlement of such sale lease or hire of the premises.

An RCD is a device which is intended to trip out an electricity supply in the event of a current flow to earth. As such, it can provide protection from harmful electric shocks.

When completing your final inspection of the property prior to settlement, we recommend that the property you are purchasing has at least two RCD's installed.

Please note that failure to comply may incur a fine of up to \$15,000 for individuals and \$100,000 for a body corporate.

Smoke Alarms

From 1 October 2009 mains powered smoke alarms must be fitted to all existing residential buildings prior to sale and when a new tenancy agreement is signed for rental properties. If there are no tenancy changes in rental properties, then mains powered smoke alarms must be fitted by 1 October 2011.

These requirements are mandatory under the Local Government (Miscellaneous provisions) Act 1960 section 248 and the Local Government Act 1995 section 9.60, and the Building Amendments Regulations 2009.

While mains powered smoke alarms are the preferred alternative, smoke alarms with a 10 year battery life are permitted in dwellings where the construction of the building does not permit a space to conceal the wiring and there is no other suitable alternative location or where mains power supply is not available.

All elements of the smoke alarm program are consistent with the Australasian Fire and Emergency Service Authorities Council (AFAC) guidelines and *installation will be required to meet Building Code of Australia (BCA) requirements*.

While it is anticipated the regulations will be self policing, Local Government are a key element of the compliance regime and will have the capacity to issue infringement notices or fines up to \$5,000 for non compliance. Further information is available from the Community Engagement Branch of FESA on Telephone: 9323 9816 or www.fesa.wa.gov.au

Swimming Pools

All swimming pools installed before July 1992 must have either:

- all doors and windows to the pool area complying with AS 1926.1; or
- isolation fencing that complies with AS 1926.1.

If the Property has had a swimming pool installed before July 1992 which does not comply with either of the above, you will



have 3 months from the date settlement to comply with the requirements.

Please contact us or the relevant local authority for more information about the fencing requirements in your area.

Unless we hear from you we will assume everything to be in order and that we are to proceed to settlement of the property.

Contaminated Sites

The Contaminated Sites Act 2003 Western Australia requires owners of land that is to be **sold, mortgaged or leased**, to disclose any contamination or potential contamination to a Buyer, a mortgagee, or a tenant at least 14 days prior to completion of the transaction.

Contamination occurs when a substance is present on the land, water or sites in high enough concentrations such that it presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value.

Where past or present land use activities involve, or have involved, the storage, handling or disposal of chemicals, there is an increased risk of contamination. Examples of potentially contaminating activities include service stations, landfills, power stations, gasworks, and market gardens. Contamination is usually caused by spills or leaks, such as from fuel or chemical storage tanks, or poor management practices at industrial sites.

We will make enquiries on your behalf as to the status of the property you are purchasing, however if you are concerned that the property has or may have any form of contamination please contact us.

If after we have settled the property you have purchased you receive a Contamination Classification from the Department of Environment and Conservation you must not ignore the classification.

You must give a notice called a Form 6 to any future **buyer tenant or mortgagee** of the property 14 days before the transaction is completed.

You can obtain fact sheets on contaminated sites from the following website:

<http://www.dec.wa.gov.au/content/view/2873/2061/>

Tenants

The General Conditions require the seller to provide a vacant property when the buyer takes possession unless provided for otherwise in the Contract. Ask the real estate agent if there is a lease agreement with an existing tenant. If there is and it is a fixed term lease then the tenant is entitled to stay until the lease expires.

If the fixed term has expired or the tenant is on a periodic tenancy and you want to take vacant possession of the property, then the tenant must be given a minimum of 30 full days notice to leave. If you want the tenant to stay on, you will need to amend the Contract to waive the vacant possession condition.



You should also check the tenant's rental history and amend or sign a new lease with the tenant.

If the seller has engaged a property manager, there is no requirement for you to use the same person. You are free to select another property manager or manage the property yourself. If the property is tenanted please inform your conveyancer.

Inspection of the Property

The Contract to purchase the property gives you the right to a final inspection of the property on one occasion within 5 business days before the settlement date or possession date.

You should contact the real estate agent and make arrangements to inspect the property to ensure its condition is the same as it was when you made your offer to purchase.

If the Contract has a condition which states that certain items are to be in working order at settlement or if it states that repairs are to be carried out by the Seller, you need to check that these have been attended to satisfactorily.

Keys

We will notify you once settlement has taken place. You may then contact the real estate agent to arrange to collect the keys and any other security devices to the property.

If the property is the Seller's normal place of residence, the Seller is entitled to stay at the property until 12.00 noon on the day following settlement.

After Settlement

If your Lender registers a mortgage to secure a loan made to you to buy the property the Certificate of Title will be held by the Lender until all money borrowed by you is repaid and the mortgage is discharged.

If you are paying cash for the property, we will forward the Certificate of Title to you by registered mail once it has issued back to us after settlement. This may take a few weeks. We recommend that you make arrangements for safe keeping of the Certificate of Title.

Things to be done

- You should arrange connection of electricity, gas and telephone services to the property. We are unable to attend to this on your behalf.
- We will notify the Local Council, Water Corporation or alternate water supply authority (if applicable) of the change of ownership and arrange for a water meter reading as close as possible to the settlement date.
- With the exception of common insurance on strata title properties, we will not make insurance arrangements for you.
- It is strongly recommended that you make arrangements for insurance for both the property and your contents, direct with the insurer. Please arrange such insurance prior to settlement or possession date, whichever

occurs first. Please note that most lenders will require seeing adequate insurance cover in the form of a Certificate of Currency of Insurance.

- You may want to redirect your mail to your new address.
- Do not forget to provide your new address and contact details to friends, relatives, sporting organisations, schools and anyone else with whom you deal regularly.
- You may wish to arrange a removalist prior to the settlement date. Make sure that you keep in regular contact with us so that we can inform you if a delay in settlement is possible.



Title Insurance

Title insurance is a unique type of insurance which protects the ownership and use of real estate. Illegal buildings, unapproved pergolas, fences in wrong places, pools with no building licences are examples of some of the risks covered by a title insurance policy which may not come to light before a settlement takes place. The premium is paid only once. If you need more information ask your conveyancer.

More information

If you have any queries concerning any aspect of your transaction or need more information, please contact Axiom Conveyancing on 1800 077 527 or email conveyancing@axiomconveyancing.com.au

This publication is provided on complimentary basis. It represents a brief summary of the law and should not be relied on as a definitive or complete statement of the relevant laws.