

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

Seller's Guide
January 2010

A Guide to Your Real Estate Sale

This guide is provided to help your sale of the property to proceed efficiently and to settle by the due date.

Please read it carefully as it may answer many questions concerning your sale. Let us know should you have any questions this guide may not cover.

Your Right to Choose

Did you know that you have the right when you sell 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 sell property.

What You Must Do

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

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 sell the property that you have signed with the Buyer. This agreement for the purposes of this document we will call the *Contract*.

General

- It is important that you attend to any of our requests as early as possible and that you carefully read, sign and return documents which we send to you. If you have any queries contact us.
- Take prompt action in attending to any Special Condition in the Contract, which you have either stipulated or need to satisfy, by the due date.

- Always remember what date the Contract is due to settle.
- If you will be away during the period leading up to the date of settlement please tell us and provide us with alternate contact details.

Discharge of Mortgage

If there is a mortgage currently registered over the property you want to sell you must contact your Lender as soon as possible to arrange the discharge of such mortgage on the settlement date.

In most cases you will be required by your Lender to sign an Authority to Discharge form. Please attend to this without delay.

In cases where you are partially repaying money to the Lender, the discharge of mortgage process may take even longer, especially if a valuation is required for the remaining security property.

You should follow up with your Lender to ensure the discharge process is running smoothly.

Contract to Sell 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. Both the Seller and the Buyer 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.

Special Conditions

If there are any Special Conditions on the Contract which you as the Seller are required to satisfy, please make sure that they are attended to by the due date.

Documentation

We will forward the Transfer of Land document to you for signing once the Buyer has signed it. Please ensure that it is signed, witnessed as instructed and returned promptly to avoid any delay with settlement.

Certificate of Title

If the property you want to sell is currently mortgaged, your lender will have the duplicate Certificate of Title in its possession.

If you hold the Certificate of Title, please either deliver it to our office or send it to us by registered post. Once received, it will be held by us until settlement when it is given to the Buyer's representative in exchange for balance of the purchase price.

Settlement Statements

We will provide you with a Preliminary Settlement Statement showing the amounts payable by you to the real estate agent in respect of the selling fee and advertising costs, settlement fees and disbursements. The Preliminary Settlement Statement will include an amount to be held in trust by us on your behalf in respect of the adjustment of rates and taxes pending receipt of the relevant

details from entities such as Water Corporation, the Local Council, Strata Body and Office of State Revenue.

After settlement, we will provide you with a Final Settlement Statement setting out the full disbursement of the sale proceeds including the adjustment of rates and taxes.

Rates and Taxes

If you receive any account for water rates, local council rates, land tax or strata levies prior to settlement, please forward them to us so we can ensure that payment is made following settlement. If the due date for payment is a date prior to settlement, please pay it to avoid any penalty charges. We will collect any adjustment amount required from the Buyer at settlement.

If the property has a water meter, an amount of money will normally be held back from the sale proceeds to cover any final water usage to settlement.

Residual Current Devices (RCD's)

Legislation effective from 9 August 2009 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.

If your property does not already comply, please arrange for a Licensed Electrician to install these prior to settlement.

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 in 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.

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

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.

Please urgently advise our office if:

- You have received notification from the Department of Environment & Conservation (DEC) that your property has or may have any form of contamination and has been classified; or
- You are aware of any information that may suggest that your property is or may be contaminated.

Even if a memorial has been lodged by the DEC against the Property then a notice must still be sent to the Buyer by the Seller who must also give a copy to the Chief Executive of DEC.

Home Indemnity Insurance

If a building license was issued since 1 February 1997 for a dwelling or improvements to the value of \$12,000.00 or more, the Builder must take out Home Indemnity Insurance in the homeowner's name. This amount has increased to \$20,000 since 1 July 2007. If this applies to you, please provide a copy of the insurance policy so we can provide it to the Buyer.

Home Indemnity Insurance is also required to be taken out by an owner builder if the owner builder wishes to sell the property within 7 years of issue of the building license and this must be taken out prior to signing of a Contract for sale of the property. Owner Builders must also receive Ministerial approval if they sell within 3 years of building.

Moving Out

After Settlement, please make sure that all keys, remote control devices or other things of security are handed to the real estate agent who will have them available for collection by the Buyer.

If the property is your usual place of residence, you are entitled to stay in possession and continue to occupy the property until 12:00 noon the next day following settlement.



If the property is sold with vacant possession and there are people other than you occupying the property, please ensure that they have vacated the property by

time and date of settlement.

Things to Be Done

- You will need to discontinue electricity, gas or telephone services to the property. We will not attend to this on your behalf.
- We will however notify the local council and Water Corporation of the change of ownership and will arrange for the water

meter to be read as close as possible to settlement date.

- The property continues to be at your risk, for insurance purposes until settlement date or date the Buyer takes possession of the property.
- You will need to make arrangements to transfer or cancel any insurance policy for building and contents. If you pay a portion of an insurance premium on a strata titled property, which is not included in a regular strata levy contribution, please forward details to us so that we may attend to the necessary adjustment between you and the Buyer.
- Please provide us with your forwarding address in the event we need to contact you following settlement.
- You may want to organise your mail to be redirected to your new address.
- Don't 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 book a removalist prior to the settlement date. Make sure that you keep in contact with us so that we can inform you if there is likely to be a delay in settlement.

If you have any queries or concerns in relation to any aspect of your transaction, please contact us without delay.

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.