

BUYING A HOME



[SECTION 2]

BUYING A HOME

OPTIONS FOR BUYING AN ESTABLISHED PROPERTY

GENERALLY, RESIDENTIAL PROPERTY OFFERED FOR SALE IN WESTERN AUSTRALIA IS A FORM OF FREEHOLD LAND AND IS KNOWN AS 'FEE SIMPLE' OWNERSHIP. ALTHOUGH THE CROWN IS THE ABSOLUTE OWNER, FREEHOLD LAND IS THE HIGHEST FORM OF OWNERSHIP THAT THE LAW IN WESTERN AUSTRALIA ALLOWS. OWNERSHIP IN FEE SIMPLE ALLOWS OWNERS TO SELL THE LAND OR PASS THE PROPERTY ON TO OTHERS UPON DEATH, BUT THERE ARE SOME RESTRICTIONS EXPLAINED FURTHER.

A USEFUL DISTINCTION CAN BE MADE BETWEEN THREE TYPES OF FEE SIMPLE LAND, KNOWN AS GREEN TITLE, PURPLE TITLE AND STRATA TITLE.

OPTIONS FOR BUYING AN ESTABLISHED PROPERTY

TYPES OF FEE SIMPLE LAND

GREEN TITLE

Green title refers to land that generally has no common areas (unless indicated on the certificate of title) and may include a freestanding dwelling. The term green title refers to the sketch on the certificate of title that used to be shaded green.

However, green title properties may have restrictions or instructions about how the land can be used. For example, the Water Corporation may have a right to install or access a sewer line on the property, and depending on its location, it may restrict your ability to install a pool or build an extension.

As many restrictions are recorded on the certificate of title, it is a good idea to check the title and make other relevant enquiries before buying a property (see pages 30–38 of this Guide).

PURPLE TITLE

Purple title refers to ownership of an undivided share in a property. The term similarly refers to the colour of the sketch on the title, which used to be shaded purple.

Although not a common form of title, some retirement villages or multi storey flats (for example) offer residents an undivided share in the complex. The right to occupy certain areas in the complex is determined by the contract with each resident.



STRATA TITLE

A strata title is a certificate of title for a lot and a share in the common property in a strata scheme set up under the *Strata Titles Act 1985*.

Buying a strata titled unit, flat or apartment (called a lot) gives you the right to own the space inside the walls of your lot, but may include parts of the building and land if that is shown on the strata plan, and also gives you the right to use areas that are designated as common property.

Depending on the strata scheme, common property may include the exterior walls, roof, driveway and courtyards. Common property may also include shared facilities, such as laundries or swimming pools, stairwells and lifts.

Before buying a strata titled property, you need to see a copy of the strata plan to see what you will own and what is common property. This can be determined by viewing the ground floor page of the strata plan.

As an owner of a strata titled property, you would be subject to a number of duties and restrictions, including:

- becoming a member of the strata company (previously called the body corporate), which entitles you to participate in its management;
- being subject to any by-laws (or rules) of the strata company;
- paying levies to administer the strata scheme, including insurance for the common property, maintenance and repair of the complex; and

- eligibility to attend meetings to discuss and vote on issues, including expenses, for repairs and improvements to the complex.

Strata information you must be given

Before you buy a strata titled property, the property seller must give you the following:

- A form called *Disclosure Statement: Sale of Strata Titled Lot or Proposed Strata Titled Lot* (Form 28).

Form 28 sets out a list of all the information you should receive before buying a strata titled property and your rights if you do not receive the information.

- A form called *Buying and Selling a Strata Titled Lot* (Form 29).

Form 29 outlines your rights and obligations if you decide to become an owner of a strata titled property.

- A copy of the strata plan, which indicates the lot being sold and provides information relating specifically to the lot.
- A copy of the standard by-laws (and amendments) and any non-standard by-laws.

Only if you are happy with the content of the forms should you sign the Form 28. Signing the Form 28 is not an offer or contract to buy the strata titled property—it simply shows that you have received and understood the information provided.

Strata information you should know

After reading through the forms, make sure you have answers to the following questions, or find out in writing from the property seller or real estate agent.

- Does the strata company have rules about keeping pets, car parking and use of common property?
- How much are the strata company fees and levies, water and local authority (council/shire) rates?
- Are there any shared facilities, like a swimming pool or a laundry area?
- Is there a clear procedure to follow regarding maintenance problems?
- Is there a person who is paid to maintain the complex?
- How old is the strata property?
- How often is maintenance carried out?
- Does the strata company have enough funds to properly maintain the complex?
- What is the financial position of the strata company?
- Are there any legal and/or insurance claims pending against the strata company or outstanding levies due?
- Does the strata company employ a strata manager and what functions does he/she carry out?
- Is there a mechanism for resolving disputes between owners or tenants of the complex?
- Regarding issues such as noise or the opportunity to meet people within the complex:
 - what is the age group/mix of tenants?
 - are units owner-occupied or rented?
 - are the unit walls free standing or are they shared?

FOR MORE INFORMATION

ABOUT STRATA SCHEMES:

- to view *A Guide to Strata Titles* go to www.landgate.wa.gov.au; or
- contact **Landgate's Land Registration Centre** by:
 - phone on **9273 7044**; or
 - fax on **9273 7651**; or
 - email at lrc@landgate.wa.gov.au

DO YOUR HOMEWORK WHEN BUYING A STRATA TITLED PROPERTY

Laila, a sole parent, was given \$20,000 by her parents for a deposit on a flat. After a long search, she found a neat and sunny two-bedroom, first floor apartment in East Fremantle, with newly landscaped gardens. Laila bought her four-year-old son a little puppy to help him settle into their new home.

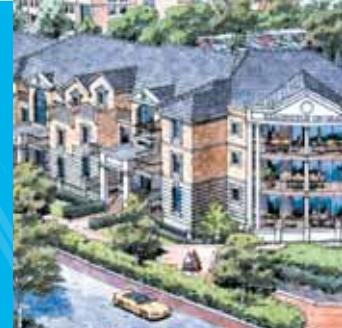
Laila did not really read the forms or the contract when she made an offer for the unit.

With 20 flats on the property, owned by a range of organisations and people, it was difficult for the strata company to make decisions. She was one of only two owners who actually lived in their units. Many of the tenants in the other units regularly held noisy parties until very late in the evening.

Laila was not aware that the strata company had banned pets from the complex. Although Laila owned her property, she was required to give away her son's beloved puppy.

Laila did consider selling her unit, but after taking into account the cost of relocating and buying another home, she decided to live with the choice she had made.

Case study



IF BUYING A STRATA TITLED PROPERTY, get a copy of the strata plan to see what you will own

TYPES OF SALES

Property can be bought either by private sale or at auction. An auction is a publicly held sale where the property is sold to the highest bidder. A private sale can be conducted directly with the property owner (also called the owner/seller) or through a real estate agent.

Whether you purchase property privately or by auction, THE LAW IN WESTERN AUSTRALIA DOES NOT REQUIRE THAT CONTRACTS FOR THE PURCHASE OF PROPERTY CONTAIN A COOLING-OFF PERIOD. If the contract you sign does not include a cooling off period, you cannot get out of a contract because you have changed your mind.

PRIVATE SALE

When buying a property, you may negotiate directly with a property owner or through the seller's real estate agent (or sales representative). You should be aware that the real estate agent is experienced in property transactions and is employed to get the best deal **for the seller**.

The role of the real estate agent is explained in further detail on page 36.

Property owners may choose to sell their home themselves. The owner/seller handles the tasks usually performed by the real estate agent, such as advertising, home opens and negotiation, so no commission is involved.

When buying a property by private sale, it is a good idea to:

- employ an expert, such as an independent settlement agent or a lawyer, to ensure that you receive good advice before and during negotiations to purchase a property;
- read the six tips for homebuyers described on pages 30–38; and
- consider employing your own real estate agent (that is, one who is not acting for the seller) who can act as your buyer's agent to help you investigate a property and/or negotiate a sale for you.



**WHEN SELLING A HOME,
the real estate agent is
employed to get the best
deal for the seller**

FOR MORE INFORMATION

ABOUT BUYING AN ESTABLISHED PROPERTY:

- call Consumer Protection on 1300 30 40 54 and ask for a free set of real estate and settlement fact sheets;
- visit www.commerce.wa.gov.au

IF YOUR BID AT AUCTION IS SUCCESSFUL, **you will be required to sign an auction contract**



AUCTIONS

Property auctions are not as common in Western Australia as they are on the east coast, especially for lower priced properties. However, should the property you're thinking about buying be auctioned, the auction process is described briefly below.

- Prior to an auction, information about the property is provided to prospective buyers on a form called *Auction Particulars and Conditions of Sale of Freehold Property* (the auction form).
- A reserve price is usually placed on the property by the seller.

This is the minimum price that the seller will accept for the property at auction. The reserve price is not known by any potential buyers.

- By law, the auction form must specify whether the seller (or seller's agent) will be making bids and if so, how many bids the seller (or seller's agent) will make.
- Before bids are called, the auctioneer will read the auction form as the information on this form sets out the conditions (or rules) of the sale.
- If your bid for a property is successful, you will be required to sign the auction form as this becomes the contract of sale.

You will not be able to add special conditions (your own terms) to this contract.

Some handy tips to consider before bidding at auction are provided below.

- Try to attend as many auctions as possible to get a first-hand idea about the auction process.
- Make sure that you have access to finance, set a limit for yourself about how much you are prepared to pay for the property before the bidding starts and stick with that limit.
- Thoroughly read through the auction form to make sure you are familiar with, and understand, the information provided.
- Ask the real estate agent any questions you may have about a property you are thinking about buying at auction.
- Inspect the property at least once before auction.
- Find out as much as you can about a property before the auction and consider employing a settlement agent or lawyer that can assist you with the process.
- If you are interested in an older property, you may wish to have the property independently assessed by a building expert at your own cost before auction day.

FOR MORE INFORMATION

ABOUT AUCTIONS:

- call **Consumer Protection** on **1300 30 40 54** and ask for the fact sheet *Real estate auctions*;
- visit: www.commerce.wa.gov.au

THINGS YOU NEED TO KNOW ABOUT BUYING A PROPERTY

[SECTION 2]

BUYING A HOME



This section contains six essential tips to protect your interests and help you to get a good deal when buying a property.



Home-buying tip #1:

GET FINANCE

Once you've done your own sums about what you can afford, find out whether you can get a loan and whether you are eligible for any financial assistance.

PRE-APPROVAL

Before you go looking for properties, you should approach a lender to approve a home loan in principle and in writing for a certain amount of money. As a general guide, you may be eligible for a home loan for a certain amount where the monthly repayments are not greater than 25 per cent of your income before tax.

When determining how much money you may want to borrow, consider your budget (pages 10–12), develop a savings history (page 12) and shop around for a lender (pages 20–21).

FINANCIAL ASSISTANCE

First Home Owner Grant (Federal Government Initiative)

- First homebuyers may be eligible for a First Home Owner Grant.

This grant is administered through the Office of State Revenue and at the time of print is a single \$7,000 payment.

Some lenders may take the grant into consideration when deciding to offer finance.

FOR MORE INFORMATION

ABOUT THE FIRST HOME OWNER GRANT:

- contact the **Office of State Revenue** by:
 - calling **9262 1299** or **1300 363 211** (WA country callers, for the cost of a local call);
 - fax: **9262 1597**;
 - email: **firsthomesgrant@dtf.wa.gov.au**;
 - attending Plaza Level, 200 St Georges Terrace, Perth; or
 - visiting the websites: **www.firsthomes.gov.au** and **www.dtf.wa.gov.au**

Home Buyers Assistance Account (State Government initiative)

Under the *Real Estate and Business Agents Act 1978*, first homebuyers may be eligible for a grant of up to \$2,000 (at the time of print) towards the cost of 'incidental expenses' associated with buying a partially built or established home through a licensed real estate agent.

Incidental expenses may include mortgage insurance premiums, settlement fees and lending institution fees associated with lodging the home loan application.

FOR MORE INFORMATION

ABOUT THE HOME BUYERS ASSISTANCE ACCOUNT:

- call Consumer Protection on **1300 30 40 54**;
- visit: www.commerce.wa.gov.au

Assistance with loans

- Keystart has a number of initiatives to assist people who may find it difficult to obtain a loan in the general marketplace.

FOR MORE INFORMATION

ABOUT KEYSTART:

- call **1300 361 517**; or
- visit their **Keystart** website: www.keystart.com.au

Assistance with duties

- First Home Owner Rate of Duty.

As a first home owner you may be eligible for the first home owner rate of duty on the purchase of a home or vacant land where the value does not exceed \$600,000 for a home or \$400,000 for vacant land and you are eligible to receive the First Home Owner Grant under the *First Home Owner Grant Act 2000*.

- Concessional rate of duty.

You may be eligible for a concessional rate of duty on the purchase of a principle place of residence where the value of the property does not exceed \$200,000.

FOR MORE INFORMATION

ABOUT DUTY:

- contact the **Office of State Revenue** by:
 - attending 200 St Georges Terrace, Perth;
 - calling **9262 1100** or WA country STD callers can ring **1300 368 364** (local call charge);
 - fax: 9226 0834;
 - email: duties@dtf.wa.gov.au; or
 - visiting the website: www.dtf.wa.gov.au (Click on 'State Revenue' and then 'Duties').

BUYER BEWARE: WRAP-AROUND MORTGAGES

If you haven't done your homework on the loan options available or you're having trouble getting a home loan, you may be tempted to enter a 'wrap-around' mortgage scheme or 'wrap'. Be wary of these types of schemes!

HERE'S A VERY SIMPLIFIED EXAMPLE OF A 'WRAP'.

Andrea buys an investment property for \$100,000 and obtains a home loan from Bank A. Andrea pays Bank A about \$707 per month (7 per cent interest per annum) over 25 years to repay the loan. Andrea puts the property up for sale at \$110,000 and convinces Evan to enter a 'wrap' contract. Evan applies for, and receives, the \$7,000 First Home Owner Grant, which he then pays to Andrea as a deposit towards the home. Evan also pays Andrea \$923 per month (9 per cent interest per annum) so that he can eventually own the house.

As is typical under these arrangements, Evan is paying a lot more than Andrea for the home and for the loan. In addition, the certificate of title does not recognise that Evan is paying off the house with the intention of becoming the sole owner.

Andrea could sell the property at any time, without Evan's knowledge. If Andrea doesn't keep up her payments to Bank A, or goes bankrupt, Evan may not be able to remain in the house even though he continued to make his repayments to Andrea.

The 'wrap' contract between Evan and Andrea includes a term that does not allow Evan to rent out the house to anyone while he is paying off the loan and while Evan is not on the certificate of title, he cannot sell the house.

A variation of this type of scheme involves signing a rent to buy (or lease option) contract. Usually, under this type of agreement, a deposit is paid and regular payments are made for the term of the lease. Once the lease term expires, the 'tenant' has an option to buy the property from the seller/owner.

People considering this scheme should bear in mind that the risks involved in a wrap also apply to rent to buy schemes. In addition, even though you are making regular payments toward the property, you may not receive the benefits or protections of the *Residential Tenancies Act 1987*.



Home-buying tip #2:

DO VISUAL INSPECTIONS
conduct a thorough visual inspection and ask questions about the property.

BUYER BEWARE

It is important to remember that, unless the contract makes specific provision, properties are sold in reasonably the same state as when first inspected. So it is essential to conduct a thorough visual inspection. Once you have inspected the property, if you want changes to be made to the property prior to sale and/or you want to ensure certain items are included in the sale, you should insert specific terms (or conditions) in the contract (see pages 39–41 of this Guide). These terms would need to be accepted by the seller.

The types of features to consider and the types of questions to ask are contained in Table 2 opposite.

TABLE 2: THE PHYSICAL ELEMENTS OF THE PROPERTY (CHECKLIST)				
PROPERTY DETAILS	Property 1	Property 2	Property 3	Property 4
Address of property				
Age of property				
Type of sale? Private - Seller's phone number Agent - Agent's phone number Auction - Auction details				
Price				
Inspection date				
CHECKLIST (MODIFY, AS REQUIRED)	Property 1	Property 2	Property 3	Property 4
Location <ul style="list-style-type: none">• Sun (morning/evening)• Distance from:<ul style="list-style-type: none">• public transport• work• shops• schools• Neighbours' report				
Outside Condition (Visual) <ul style="list-style-type: none">• BUILDING MATERIALS (Note condition)<ul style="list-style-type: none">• bricks (cracks?)• timber (warped/dry /rotting?)• gutters/downpipes (rust?)• roof (type of material?)• retaining walls• paintwork (blistered/bubbled?)• fencing• FACILITIES:<ul style="list-style-type: none">• sewer or septic tank?• garage or carport?• clothesline (near laundry?)• shed?• swimming pool/spa? (condition of pump and equipment/are these fenced?)• availability of mains water?• GARDEN:<ul style="list-style-type: none">• private?• size?• trees (close to house? need pruning?)• pots (anything underneath?)• bore/reticulation (present and working?)				

CHECKLIST (MODIFY, AS REQUIRED)	Property 1	Property 2	Property 3	Property 4
Inside Condition (Visual)				
<ul style="list-style-type: none"> BUILDING MATERIALS: <ul style="list-style-type: none"> floor (coverings/ is floor level?) walls & ceilings (large cracks?) insulation? interior paintwork (generally) 				
<ul style="list-style-type: none"> VENTILATION IN WET AREAS: <ul style="list-style-type: none"> mouldy walls lifting tiles peeling paintwork any pools of water? 				
<ul style="list-style-type: none"> FACILITIES: <ul style="list-style-type: none"> enough power points? toilets (flush ok?) shower (pressure/heat) bench tops (check condition) curtains (usable?) cooling/heating systems general storage areas? 				
<ul style="list-style-type: none"> APPLIANCES/FITTINGS (do they work?): <ul style="list-style-type: none"> stove/wall oven dishwasher lights taps (dripping/ water pressure?) hot water system 				
<ul style="list-style-type: none"> ROOMS: <ul style="list-style-type: none"> bedrooms (number/size/ built in robes?) bathrooms (number/ensuite?) separate dining room? extensions (council approved?) 				
ESTIMATE OF RENOVATION COSTS				



Unless you place special terms in the contract, you generally buy an established property in the condition as first inspected



Home-buying tip #3:

CHECK THE THINGS YOU CAN'T SEE

EMPLOYING EXPERTS

Checking the things you can't easily see may require some special skills, and it is a good idea to employ experts to do these inspections for you. The types of inspections you may want to arrange with experts include:

- a building inspection;
- an electrical inspection;
- a plumbing/sewerage inspection; and
- a timber pest inspection.

Of course, it would be costly if you arranged for experts to inspect each property that you were thinking of buying.

Once you are ready to make an offer on a property you want to purchase, you will be invited to complete a contract to sign, which will be given to the seller. Before you sign the contract, you can insert special conditions (your own terms) about the types of inspections to be carried out and indicate that the sale will not go ahead if the inspections show there are any major problems (see pages 39–41 of this guide).

MAKING ENQUIRIES

Checking the things you can't easily see may also involve asking the property seller or real estate agent to confirm in writing if:

- there are restrictions on the use of the property that are not listed on the title (for example, access to a sewerage line);
- any buildings, improvements and fences on the property were constructed without the relevant approvals;
- the building or any additions are less than six years old and if so, whether home indemnity insurance has been taken out; and
- there are any legal ownership issues and tenants on the property.

If the house or unit is in the metropolitan region, you can ask the Department of Planning for a Clause 42 Certificate, which provides information about the how the land is zoned or reserved under the Metropolitan Region Scheme. In the Peel Region, the equivalent is a certificate under Clause 47. In the Greater Bunbury Region, the equivalent is a certificate under Clause 53.

There is a fee for these certificates. You can also ask the local government responsible for the district where the property is situated for a zoning certificate, which provides information on how the land is zoned or reserved under the local government scheme.

Information about how the land is zoned or reserved outside the Metropolitan, Peel and Greater Bunbury Schemes as well as information about how the land is zoned or reserved under the local government scheme is available (for a fee) from the local authority.

A word about tenants

If a property is currently occupied by tenants, you should ask for details of the lease agreement, especially the term of the lease.

If the tenants have a fixed term agreement with the current owner, and the tenants will not agree to move earlier, the tenants may remain in the property until the fixed term expires, with the buyer as their new landlord from the settlement date.

If the tenants and owner do not have an agreement about when the tenancy will end, this arrangement is known as a periodic tenancy. If you are thinking about buying a property that is subject to a periodic tenancy, you could specify in the contract of sale that the owner must give the tenant(s) 30 days' written notice to terminate the lease agreement on the grounds that the property is being sold. By law, 30 days is the minimum notice period that an owner can give to a tenant to leave a property subject to a periodic tenancy.

FOR MORE INFORMATION

ABOUT THE PURCHASING CONTRACT:

- see pages 39–41.

ABOUT TENANCY MATTERS:

- call Consumer Protection on 1300 30 40 54.

ABOUT METROPOLITAN ZONING CERTIFICATES:

- call the Western Australian Planning Commission on 9264 7777;
- visit 469 Wellington Street, Perth; or
- visit the website: www.wapc.wa.gov.au

FIND OUT ABOUT any lease agreements that may exist



Home-buying tip #4:

CHECK THE TITLE

TITLE DETAILS

Each parcel of land available for purchase in Western Australia is recorded on an electronic register by the Land Titles Office. The Land Titles Office is part of Landgate. The original record of each portion of land is known as a certificate of title. The certificate of title outlines important information about each portion of land, including:

- the legal description of the land (lot number, plan number and title number);
- whether the land is green title, purple title or a strata title (see page 26);
- who 'owns' the land; and
- some types of restrictions about if and how the land can be used (if applicable).

FOR MORE INFORMATION

ABOUT CERTIFICATES OF TITLE:

- contact Landgate's Tenure Information Services by:
 - phone on **9273 7333**
 - fax on **9250 3187**; or
 - email at **tismail@landgate.wa.gov.au**
 - visit the website: **www.landgate.wa.gov.au**

ABOUT SALES MAPS:

- contact Landgate by:
 - phone on **9429 8433**; or
 - fax on **9429 8460**; or
 - email at **vs.sales@landgate.wa.gov.au**
 - visit the website: **www.landgate.wa.gov.au** (Search for 'sales map')

OBTAIN A COPY OF THE TITLE **from Landgate (for a fee), or from the real estate agent**



You can request a copy of the title of the property from Landgate for a fee. Otherwise, the real estate agent should provide you with a copy of the certificate of title.

When requesting a copy of the title (which is now in digital format) from Landgate, ask for a sketch of the title. The sketch is provided at no extra cost and shows the size of the property you are thinking of buying.

A sales map can also be obtained from Landgate for a fee, which shows the size of the allotments for a given property and neighbouring properties.





Home-buying tip #5:

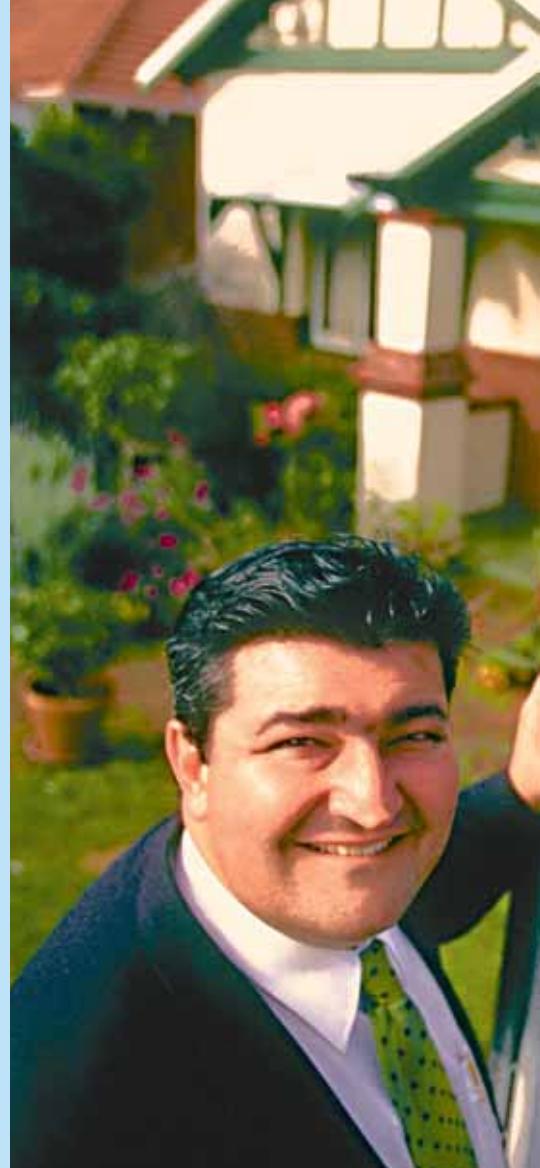
THE ROLE OF A REAL ESTATE AGENT

When you are looking at properties, you will often come into contact with real estate agents or sales representatives. The most important thing to understand about real estate agents or sales representatives when buying a property is that they have been hired by the seller. The aim of the agent is to sell the property for the seller at the best possible price and under the best terms.

THE ROLE OF A REAL ESTATE AGENT

So what can YOU (the buyer) expect from a real estate agent or sales representative who is employed by the seller?

- ✓ The real estate agent must be licensed by Consumer Protection to operate in Western Australia.
- ✓ Sales representatives must be registered with Consumer Protection. Real estate agents are responsible for the conduct of the sales representatives they employ.
- ✓ The real estate agent must have a written contract with the owner/s to sell the property.
- ✓ If you make a written offer on a property, the real estate agent or sales representative must present your offer to the seller, unless its terms don't meet those specified by the seller.
- ✓ The real estate agent or sales representative must obtain a copy of the certificate of title for the property.
 - The real estate agent or sales representative should try to find out and tell you important information about a property, such as whether there are any restrictions about the use of a property.
 - Where an extension is **obviously badly built**, the real estate agent or sales representative should make enquiries with the local authority about the legality of the extension.
 - Advise you if the home was built by an owner-builder and if sold within seven years, a certificate of Home Indemnity Insurance provided to the purchaser.



- ✓ If the real estate agent or sales representative suggests that you use a service provider, such as a termite inspector or settlement agent, the agent must tell you in writing if they have any connection with that supplier.
- ✓ If you are considering buying a strata titled property, the real estate agent or sales representative must give you a copy of the strata plan, showing what you are buying and Forms 28 and 29 of the Strata Titles Regulations (see page 26 for more details).

FOR MORE INFORMATION

ABOUT REAL ESTATE AGENTS:

- call **Consumer Protection** on **9282 0839** to find out whether a real estate agent is licensed or a sales representative is registered;
- call **ASIC** on **1300 300 630** or visit the **ASIC** website: www.asic.gov.au to find out whether a real estate agent is licensed to give you financial advice.



There are some things to remember about the role of a real estate agent or sales representative.

- ✗ The real estate agent's job is not to get you the 'best deal' as a buyer as they are employed by the seller to get the best price and conditions for the seller.
- ✗ The real estate agent may not be appropriately qualified to give you financial advice, such as tax advice or investment advice.
- ✗ The real estate agent is not required to tell you why the seller has decided to put the property on the market.

GETTING INFORMATION ABOUT A PROPERTY

The seller is not currently required to supply information about a property directly to the buyer, except for a strata title property (see pages 26-27). However, buyers may (if the seller agrees) receive a *Seller Disclosure Summary*, which provides information about a property. It is important that the seller (and agent) do not deliberately mislead buyers about the condition of a property.

It is equally important that buyers look after their own interests by:

- conducting thorough inspections of the property and making enquiries with, for example, the local authority (or employing appropriate and independent experts to do these checks on your behalf);
- getting all assurances about a property's condition in writing; and
- wording the contract so that any offer on the property can be withdrawn if the property does not meet standards that have been written into the contract.

Home-buying tip #6:

UNDERSTAND THE ROLE OF A CONVEYANCER

When you are buying a property, it is necessary for all the paperwork to be completed and all the promises fulfilled in the contract for the sale of the property. Such work is known as conveyancing. You can employ a licensed settlement agent or a lawyer with a current practising certificate in law to attend to all these details on your behalf.



The main difference between employing a settlement agent as opposed to a lawyer is that settlement agents are not qualified to give you legal advice. However, a settlement agent is required by law to let you know when it is a good idea to get legal advice.

It is a good time to think about employing a settlement agent or a lawyer when you make the decision to start looking at properties.

CHOOSING A CONVEYANCER

When selecting a settlement agent or lawyer, shop around using the Yellow Pages and ask for recommendations from family and friends. It is recommended that you choose your own conveyancer, who is not also providing conveyancing services to the seller.

The maximum (GST-inclusive) fee that settlement agents can charge for their services is set by law. Settlement agents are free to charge less than the maximum fee. The maximum fee varies depending on:

- the value of the property;
- whether you are the purchaser or seller of the property, because settlement agents must do more work when acting for a purchaser; and
- whether the house you are purchasing is a strata titled property, as there is more work to do if the property is strata titled.

To find out the maximum fees that can be charged in your circumstances by the settlement agent, use the fee calculator at www.commerce.wa.gov.au/consumerprotection.

Lawyers tend to charge similar amounts to those charged by settlement agents, but you should check that this is the case.

In addition to the fee for service, settlement agents and lawyers can ask you to pay for any additional costs they incur while attending to your settlement. These costs include search fees, phone calls and faxes. You can ask your settlement agent for an itemised list of these costs.



CONVEYANCING is the legwork to make sure the promises in the contract are carried out

ROLE OF THE CONVEYANCER

The following are some typical things you can expect from a conveyancer.

- ✓ Settlement agents must be licensed by Consumer Protection to operate as a real estate settlement agent in Western Australia.
- ✓ Lawyers must have a current practising certificate in law from the Legal Practice Board to perform conveyancing in Western Australia.
- ✓ If using a settlement agent, you must be given an *Appointment to Act* form, that you and the settlement agent need to sign, that authorises him/her to act on your behalf.
 - A settlement agent must tell you when it is a good idea to get some legal advice about buying a property.
 - If someone who is involved in buying or selling the property, such as the real estate agent or bank that is lending you money, suggests that you use a particular settlement agent, they must give you a form for you to sign that explains your rights.

Note: you do not have to use a particular settlement agent because someone else has suggested or recommended you do so.

✓ The conveyancer:

- ensures the completion and lodgement of documents to transfer the details of ownership on the certificate of title;
- makes necessary enquiries, such as title, rates and zoning;
- double checks that all inspections and other special conditions in the contract have been completed prior to settlement and ensures that their client is satisfied that the conditions have been met;
- requests funds to proceed to settlement; and
- attends settlement on your behalf.

✓ The conveyancer should keep you informed about the progress of buying your property and let you know about any problems.

✓ You are free to choose or change your conveyancer at any time. However, if you do, you may be required to pay some money to any previous conveyancer for the work already done on your behalf.

There are some things to remember about the role of a conveyancer.

- ✗ If using a settlement agent, he/she cannot give you legal advice.
- ✗ If using a settlement agent, he/she cannot act for both the buyer and the seller UNLESS YOU AND THE SELLER GIVE THE SETTLEMENT AGENT PERMISSION TO DO SO ON THE APPOINTMENT FORM.
- ✗ A conveyancer must not act (or continue to act) for you if he/she can't look after your best interests because he/she has other (opposing) interests in the transaction.

FOR MORE INFORMATION

ABOUT CONVEYANCERS:

- call the **Consumer Protection** on **9282 0839** to find out whether a settlement agent is licensed;
- call the **Legal Practice Board** on **9325 1311** to find out whether a lawyer has a current practising certificate in law; or
- call the **Law Society** on **9322 7877** for referrals to lawyers practising in this area.

CHOOSE A CONVEYANCER carefully

THE CONTRACT FOR BUYING REAL ESTATE

THE OFFER AND ACCEPTANCE CONTRACT

The standard contract for buying real estate in Western Australia is often called an Offer and Acceptance contract.

The Offer and Acceptance contract is in two physically separate, but equally important parts. The titles of each part of the contract are listed below.

1. *Contract for Sale of Land or Strata Title By Offer and Acceptance*—we'll call this part the 'O & A Contract'.
2. Joint Form of General Conditions for the Sale of Land—we'll call this part the 'General Conditions'.

The O & A Contract is produced by the Real Estate Institute of Western Australia (REIWA) and the General Conditions booklet is produced jointly by REIWA and the Law Society. It's best to use the most up-to-date versions of the contract (both 2011 at time of printing).

There may be other contracts used in the marketplace.

As mentioned earlier, contracts are made up of a number of terms (you could call them rules or conditions). When each party signs the contract, they agree to all the terms of the contract.

It is important to remember that THE LAW IN WESTERN AUSTRALIA DOES NOT REQUIRE THAT CONTRACTS FOR THE PURCHASE OF PROPERTY CONTAIN A COOLING-OFF PERIOD. If the contract does not include a cooling off period, you cannot get out of a contract to buy a property because you have changed your mind.



THE O & A CONTRACT

PURCHASE PRICE

When making an offer to buy a property, you indicate the price that you are prepared to pay for the property on the O & A Contract. Generally, the price will be the subject of negotiation between you and the seller. Make sure any final agreement about price is clearly written at the relevant part of the O & A Contract.

DEPOSIT

You will need to indicate on the O & A Contract the amount of a deposit, if any, that you are willing to pay up-front (that is, when your offer is accepted by the seller). The amount of any deposit you offer when buying a property is negotiable between you and the seller.

One of the purposes of the deposit is to show that you are serious about purchasing the property. So what happens to the deposit?

- If your offer to buy a property is accepted, the deposit is used towards the purchase price of the property you are buying.
- If the contract remains in force but you don't go ahead with the deal, the seller may seek to keep the deposit and you may have to pay other penalties.
- If the contract does not proceed for valid reasons, for example, if you are genuinely unable to get a home loan, the deposit must be refunded.

The deposit is usually held in the trust account of the seller's real estate agent. The agent is called a 'stakeholder' and can only release the deposit from the account with the permission of both the buyer and the seller or in accordance with a court order. Other persons, such as lawyers or settlement agents, could act as stakeholders by holding the deposit in a trust account on behalf of the buyer and seller.

FINANCE TERM

The finance term in the O & A Contract states that buyers must try their best to get a home loan. If you need to borrow money to buy a property, do not cross out this term—it will protect you if lenders refuse to give you a home loan.

Some financial conditions may be written to suggest that if you are offered a loan then you have been granted finance and the O & A Contract becomes binding. To avoid having to agree to an unreasonable loan, you should talk to a lender about getting a loan before you make an offer on a property and to find out how long the approval process may take. Make sure that the terms of the loan, for example, the interest rate, fees and charges, are reasonable.

On the O & A Contract, it is recommended that you specify the financial institution you want to borrow from.

For more information about searching for a loan, turn to pages 19–24 of this Guide.

SETTLEMENT DATE

The settlement date is the deadline for all the promises made in the contract to be completed. If all the contract terms have been satisfied, Landgate will, upon lodgement of the relevant documents and a fee, transfer the title in the property from the seller(s) to the buyer(s).

Be careful when negotiating a settlement date with the seller. It is understandable that you may want to move into the property as soon as possible, but it is necessary to leave enough time before the settlement date so that:

- the lender has sufficient time to approve a loan application and attend to all relevant paperwork;

- any inspections required under the contract can be completed and the results of any reports can be considered; and
- relevant enquiries can be made with, for example, the local authority and Government departments.

If you, your settlement agent or your bank can't meet the settlement date nominated on the O & A Contract, you might have to pay penalty fees to the seller.

It is recommended that you discuss the settlement date with your lender and conveyancer. As an approximate guide, a **minimum** of four weeks is required for settlement, but you should not rush the settlement and you should also keep in mind that settlements can sometimes become complicated, which may require extra time.

GET ADVICE FROM YOUR SETTLEMENT AGENT OR LAWYER before negotiating a settlement date

DELAY IN SETTLEMENT

Bonita was in the process of buying her first unit in Inglewood and was very excited about the prospect of moving in. When putting an offer on the unit, Bonita requested a settlement date in two weeks' time. She couldn't wait to move out of home. The sellers accepted Bonita's offer.

Bonita needed to arrange finance to buy the unit. It took longer than Bonita expected before the bank approved her application for a loan. There was so much paperwork to organise.

Bonita also employed a settlement agent. The settlement agent got to work immediately on her file and was alarmed by the short amount of time he had to arrange the settlement. The process was made even more difficult as the bank's lending section was located in Melbourne. The settlement agent persisted with calls to the bank to highlight the urgency in processing the mortgage documents so that settlement could proceed on the date nominated by Bonita on the contract.

Bonita had also placed some special conditions on the purchase, such as getting a termite inspection and report done on the property and a general building inspection was also required.

The settlement agent made enquiries with the relevant utilities about the property, made sure that rates and taxes were adjusted correctly and ensured all paperwork was filled out and signed. The settlement agent was working under significant time pressure and there was little time to deal with any unexpected surprises.

The settlement date arrived and it became clear that Bonita's bank would not be in a position to settle.

Bonita wondered what would happen, now that settlement would not take place. She asked her settlement agent for advice.

The settlement agent told Bonita that because she was unable to settle at the time stated on the contract, she would have three business days before she was required to start compensating the seller. The daily amount she was required to pay is written in the General Conditions—part of the contract she signed to buy the unit.

After repeated requests by the settlement agent, the bank was able to settle late the following week. Bonita had to pay some compensation to the seller. This payment could have been avoided if Bonita had employed the settlement agent earlier and got some advice about choosing a more realistic settlement date before signing the contract.

SPECIAL CONDITIONS

The bottom of the O & A Contract has space for you and the seller to include terms (or special conditions) in the contract.

If the seller has included any special conditions on the O & A Contract, make sure that you are happy to accept these terms before you sign the contract.

If you are thinking about including your own special conditions, consider the following tips to minimise confusion and complaints, and protect your interests.

- Get some legal advice about the wording of special conditions.
- Ensure the special conditions specify clearly what has to be done, when and by whom.
- Include the consequences if any special condition is not met.

For example, as explained under the section regarding contracts (see page 17) and home-buying tip two (see page 32), specify the fittings that you want to remain in the property, such as curtains, pool equipment and light fittings.

You should also consider inserting conditions dealing with termite and building inspections, particularly if you are considering the purchase of an older house (see home-buying tip three on page 34).

Remember that your terms must also be acceptable to the seller.

THE O & A CONTRACT (STRATA TITLE)

The O & A Contract can also be used for buying strata titled properties.

Before signing the contract, you should receive some forms (outlined on page 26) that provide information about the complex you are thinking about buying into. You should read and discuss any questions you may have in relation to these forms with the real estate agent or the seller.

Any questions of a legal nature should be discussed with a lawyer.

THINK CAREFULLY BEFORE SIGNING A CONTRACT FOR AN ESTABLISHED PROPERTY as there is no requirement for a cooling-off period in WA

CASE STUDY: GET ADVICE SOONER RATHER THAN LATER!

Hana was putting in an offer to buy a home in Scarborough. One of the special conditions Hana wanted in the contract was for a building report to be done by a building consultant. Hana did not want to buy the property if the report found that the property recommended that a lot of work be done to the house.

The special condition in the contract read 'this offer is made, subject to a building inspection report'.

The following are some of the problems with the wording of this condition.

- The condition does not indicate who will pay for the inspection report.
- It is not clear who will choose the building consultant.
- Although Hana understood that she did not want to purchase the property if there were structural problems with the house, the condition says nothing about what happens to the contract if the building report is unfavourable.

A lawyer could have advised Hana about the wording of her condition to protect her interests. Hana would definitely need legal advice about how to proceed if the building consultant discovers building defects in the property she was thinking about buying.

THE GENERAL CONDITIONS

The General Conditions booklet outlines terms that are common to most property transactions. It is easy to overlook this document, but it is an important booklet to read. It outlines matters such as:

- how much of the rates and taxes will be paid by you and the seller in the first year;
- what happens when either party does not go through with the contract;
- what happens if either party delays settlement; and
- when the buyer can move into the property.

As with any of the other terms, you can seek to change the general conditions, but it is recommended that you seek legal advice. Any changes to the general conditions also need to be accepted by the seller.

A GENERAL WORD ABOUT CONTRACT TERMS

Remember that you can protect your interests by:

- getting legal advice about the contract terms;
- crossing out any terms that do not suit you;
- adding any suitable terms (legal advice is recommended); and
- having all parties to the contract initial each change, when agreement is reached.

UNFAIR CONTRACT TERMS

The Australian Consumer Law contains protections in relation to unfair contract terms. Unfair terms in standard form consumer contracts may be declared void by a court. For more information about unfair contract terms, call the ACCC's Infocentre on 1300 302 502 or visit www.accc.gov.au

BEFORE SETTLEMENT

Before the legal title in the property is transferred from the seller to you, it is important to conduct a thorough inspection of the property as close to the settlement date as possible. Use the inspection checklist on pages 32–33 and note any changes in the condition of the property from the time of your first inspection. As explained earlier, unless you indicate specific terms (or conditions) in the contract, the property you inspect will be sold

to you in reasonably the same state as when you first inspected it.

You should discuss how to rectify any significant changes in the condition of the property with your conveyancer. It is important to try to resolve any disputes about the condition of the property with the seller before settlement. After settlement, it may be more difficult to prove your claim and/or you may not be able to contact the seller.

MOVING IN

Providing that the contract terms are met, the general conditions provide that the buyer can start moving in to the house from 12 noon on the day after the settlement date.

MAKING A SPLASH!

Erik was looking at buying a three-bedroom home with a swimming pool in Osborne Park. The swimming pool was a major attraction. Erik wanted to make sure that he got good advice before putting an offer on the property.

Erik knew that swimming pool equipment was costly and he wanted to make sure that he would not have to pay extra to maintain the pool if his offer was successful. Erik also wanted to ensure that the pool fence complied with Western Australian requirements.

In addition to the swimming pool, Erik wanted a building and termite inspection to be conducted and did not want to proceed with the sale if the reports indicated the house had major problems.

Erik got some legal advice about the wording of special conditions on the above matters to insert into the contract.

Erik also inspected the property very carefully, overturning pots to make sure that the surfaces underneath were sound and checking that appliances, such as the oven and stovetop, were in good working order.

Erik told his friends that he was going to put an offer on the property, and had paid for some legal advice about the wording of special conditions. Erik's friends were concerned that if he put too many conditions on his offer, he might miss out on the property. Erik explained that he would find another property if the sellers could not accept most of his terms.

Erik put in an offer on the property, and included his conditions on the contract. The sellers negotiated with Erik about the price of the property, but seemed to accept the other conditions. Erik finally came to an agreement about the price for the property.

The termite and building inspection reports did not find evidence of any significant problems.

Before the settlement date, Erik inspected the property again to make sure the house was in similar condition to his first inspection. Erik noted that the stove was now not working. Erik wrote to his settlement agent to seek the seller's permission for \$1,000 to be withheld at settlement to cover the cost of fixing the stove. The agreement (which was in addition to the Offer and Acceptance contract) provided that if the stove was not fixed within seven days of settlement, Erik would have the stove repaired, submit a repair report to the settlement agent and claim the cost of the repair from the \$1,000 retained. If this situation occurred, Erik's settlement agent was authorised by the buyer and the seller to release the remaining money to the seller.

However, the sellers fixed the stove within seven days of the settlement date and sent a copy of the repair report to Erik's settlement agent. Erik's settlement agent released the \$1,000 to the seller's settlement agent.

case study

