



Property settlement

Property settlement is the finalisation of a real estate transaction between a buyer and a seller.

This fact sheet outlines the process of property settlement and the general conditions that usually apply.

Scope of this publication

This publication provides general information and explains the law in simple language. It is no substitute for the legislation. You should get expert or legal advice about your particular situation.

What is a property settlement?

Property settlement refers to the process of transferring a property from a seller to a buyer, when the conditions of the standard contract for the sale are fulfilled. In most instances before a property settlement can occur, both the buyer and the seller must have signed a contract of sale. In Western Australia, the standard residential sales contract has two sections:

- *Contract for Sale of Land or Strata Title by Offer and Acceptance* (the O & A); and
- *Joint Form of General Conditions for the Sale of Land* (General Conditions).

The signatures of the seller and the buyer on the O & A generally indicate that both parties agree to the conditions of the contract, including the purchase price. However, this may not be the case where a counter offer is submitted by either party. Where this occurs, all amendments to the O & A will need to be initialled and dated by both parties in order for the instrument to be deemed a fully executed contract.

The General Conditions are the contractual conditions that apply to the O & A. They include such matters as:

- encumbrances (a lodged or registered interest in the land by a person who is not the registered proprietor. Examples include mortgages, lease agreements, an adjoining property owner's right of way, or a claim that has been lodged on the title);
- payment and holding of the deposit;
- settlement and delays in settlement (where penalty interest may apply);
- possession (including vacant possession);
- adjustment of outgoings;
- payment responsibility for costs such as underground power line instalment, and connection to sewerage mains where relevant; and
- errors, risk, default and interpretation of terms.

The O & A also contains a section for the parties to insert their own special conditions into the contract, such as:

- where and when finance is to be obtained;
- any repairs to be made to the property; and
- whether any inspections are to take place, such as building, plumbing, pool and termite inspections.

If it is a strata titled property, the seller must provide the buyer with the following information prior to the O & A being signed:

- Form 29 (*Buying and Selling a Strata Titled Lot*);
- a completed and signed original of Form 28 (*Disclosure statement*), either in the form of this statement or incorporated in the contract of sale of the strata titles lot;
- a copy of the registered or proposed strata or survey-strata plan;
- a copy of standard bylaws; and
- any other information relevant to the lot being sold.

In order for settlement to occur, all the general and special conditions of the O & A must be satisfied. Prior to settlement the O & A and Transfer of Land documents must be presented to the Office of State Revenue or a 'Responsible Party' (usually a conveyancer or lawyer) who is registered under the Office of State Revenue's Online Duties system for payment and endorsement of transfer duty (formerly known as 'stamp duty'). For this reason it is important that the buyer establishes the amount of duty payable, if any, and ensures that these funds are available prior to settlement. At settlement, the balance of the purchase price for the property is paid and the legal title to the property is transferred from the seller to the buyer.

Often tasks associated with a settlement are complex, so many sellers and buyers choose to appoint a settlement agent (conveyancer) or solicitor (see the fact sheet *Choosing a settlement agent*). However, you may conduct your own property settlement if you wish.

Setting a time for settlement

When entering into an O & A to buy or sell a property, there is provision to nominate a date for settlement.

Whether you are the buyer or the seller, consider your particular circumstances when nominating a settlement date. Make sure that settlement can be achieved in the time nominated before you agree to a settlement date as penalties apply for delayed settlement (*refer to the section Delay in settlement*).

A useful guide in setting a date for settlement is 28 days after one of the following:

- an offer becomes unconditional; or
- finance approval is received.

Pre-settlement inspections

It is recommended that prior to making an offer a buyer should conduct a thorough inspection of the property to make themselves familiar with the fixtures, fittings and condition of the property. If any repairs are required, a condition should be included in the offer compelling the seller to undertake the repairs prior to settlement. It is prudent to make the offer conditional upon all gas, electrical and plumbing equipment being in working order at settlement.

Under the General Conditions, the seller must give the buyer an opportunity to undertake a final inspection of the property within five business days prior to the settlement date or the possession date.

Buyers are encouraged to inspect the property during this time to ensure the condition of the property is essentially the same as when the property was originally inspected. Items to consider checking during the inspection include:

- the stove and any appliances;
- the taps, lights and hot water system;
- the garden irrigation system;
- the curtains and curtain tracks; and
- the pool and any associated equipment.

The buyer may seek compensation from the seller if the condition of the property differs between the signing of the O & A contract and the pre-settlement inspection.

Prior possession

Buyers can generally move into the property once settlement has taken place unless the O & A otherwise specifies or the home is the seller's residence. If this is the case the seller may remain until noon on the day after settlement. However, buyers sometimes reach agreement with the seller to move into the property earlier than the settlement date.

Buyers who are considering taking possession of a property prior to settlement may be asked to sign a form which states that the buyer agrees to take the property 'as is', and a statement that the buyer makes their offer unconditional. Consequently, the seller may not be required to fulfil any special conditions which have been inserted into the O & A. Both the seller and the buyer should seek legal advice about the potential problems that could arise from prior possession and consider the risks carefully.

Settlement

At settlement, the settlement agents or solicitors representing the seller and the buyer will meet at the office of the buyer's mortgagee (financial institution) or at Landgate. These representatives ensure:

- all relevant parties have fulfilled their obligations in the lead up to settlement;
- all conditions of the O & A have been met, to the satisfaction of the seller and the buyer;
- transfer duty, if applicable, has been paid to the Office of State Revenue;
- the property is free from restrictions on the transfer of the title (or, the restrictions will be removed in time for a transfer of title to be registered); and
- all documents presented at settlement are correctly signed and registrable.

At settlement, the balance of the purchase price will be handed over to the seller's representative and the buyer's representative will ensure that documents are registered so that the title reflects a change of ownership.

The settlement agents or solicitors will inform the seller, buyer and real estate agents that settlement has been completed. Arrangements will be made for the keys to be handed to the buyer.

Delay in settlement

If the seller is ready to settle, but the buyer cannot settle on or within three business days of the agreed settlement date, the buyer is liable to pay penalty interest to the seller. Interest is calculated on a daily basis on the balance of the purchase price and other money due to be paid on settlement, and is charged from the original settlement date. The rate of interest is set down in the General Conditions.

Similarly, if the buyer is ready to settle and the seller causes settlement to be delayed for longer than three business days, the seller must pay compensation on the balance of the purchase price from the original settlement date. The amount is calculated daily at the interest rate set down in the General Conditions and may be deducted by the buyer from the money owed.

If either party refuses or is not able to complete settlement, you should discuss the matter with your settlement agent or solicitor.

Possession at settlement

Once settlement takes place, the seller is generally required to give the buyer vacant possession of the property – that is, the property should not be occupied. Before the buyer takes possession of the property, the seller must remove all vehicles, rubbish and chattels, other than the chattels sold with the property such as dishwashers or light fittings.

A seller who has lived in the house that is being sold can remain until noon on the day after settlement but is liable for any damage caused in that time. In some cases, an agreement may be made for the seller to rent the property. The seller must deliver to the buyer on settlement, or on possession, all access devices such as keys and security codes.

Buyers should be aware of any tenancy agreement which may legally affect the ability of the seller to deliver vacant possession. Where the property is rented under a periodic tenancy agreement and the buyer's offer is subject to obtaining vacant possession at settlement, the seller must give the tenant a minimum of 30 days notice to move out on a *Notice of Termination* (Form 1C) in accordance with the *Residential Tenancies Act 1987*.

The buyer should seek legal advice if the seller fails to deliver vacant possession by the possession date.

Where the property is rented under a fixed-term tenancy agreement the tenant is entitled to stay until the agreement expires and the buyer automatically assumes the responsibilities as the new landlord.

We are available

Other publications produced by Consumer Protection that could assist you are available online at www.commerce.wa.gov.au/consumerprotection or by calling 1300 30 40 54, and include:

- *Buying a home through an agent*
- *Buying vacant land*
- *Choosing a settlement agent*
- *Real estate auctions*
- *Real estate fees - negotiating with an agent*
- *Sale by offer and acceptance*
- *Timber pest inspections and reports - a guide for home buyers*
- *You and your property manager*

For enquiries about settlement matters contact the Consumer Protection Advice Line on 1300 30 40 54 (for the cost of a local call statewide).

Complaints about settlement agents can be lodged in writing to:

Consumer Protection
Locked Bag 14
Cloisters Square, Perth WA 6850

Fax: 9282 0861

Email: consumer@commerce.wa.gov.au

A complaint form is available:

By phone: 1300 30 40 54

In person: Consumer Protection
The Forrest Centre, Level 6,
219 St Georges Terrace, Perth WA

Online: www.commerce.wa.gov.au/consumerprotection

National Relay Service: 13 36 77
Quality of service feedback line: 1800 30 40 59
Translating and Interpreting Service (TIS) 131 450

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