



# Buying a home through an agent

***Purchasing a home is one of the most important decisions many people will make during their lives.***

***This fact sheet advises you of some of the issues that may be important to you when buying a home.***

## **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.

In most cases, there will be a real estate agent, or their sales representative, involved in the marketing and sale of the home 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.

However, the agent has a duty to tell you, as the buyer, relevant facts about the property. Ask the agent precise questions about the property. If the agent cannot answer your questions right away, then clearly ask them to find out the answers within a specific time period. You can also contact the relevant local council and other government organisations yourself and ask them for the information.

If you are not able to make all the appropriate enquiries yourself, or want someone to act on your behalf, you may appoint another agent as a 'buyer's agent' who will represent you and act in your best interests. A buyer's agent will negotiate with the seller's agent on your behalf. If you decide to do this, you will need to enter into a contract with the agent in the same way that a seller contracts with their agent. For more information about contracting with an agent see the fact sheet produced by the Consumer Protection, *Real estate fees: negotiating with an agent*.

## **The standard property contract**

The standard buying/selling contract for the transfer of property consists of two sections:

- *Contract for Sale of Land or Strata Title by Offer and Acceptance*, commonly called the O & A; and
- *Joint Form of General Conditions for the Sale of Land* also referred to as simply the General Conditions.

This publication refers to the O & A which is produced by the Real Estate Institute of Western Australia (REIWA). The General Conditions form is produced jointly by REIWA and the Law Society of Western Australia. These forms are widely used in the real estate industry, however, these contractual documents are not prescribed. The General Conditions were last revised in 2011 and differs in some areas to earlier versions. It would be wise to ensure that your agent is using the latest version of the General Conditions when drawing up a contract.

The General Conditions cover important contractual obligations for both buyer and seller including such matters as the paying and holding of a deposit, settlement, adjustment of outgoings, 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 choose. The seller would have to agree with the changes if the contract is to be binding.

Note that special conditions can be added to the O & A to meet the particular needs of both buyer and seller. Special conditions may cover issues about property inspections (such as building and timber pest inspections), who pays for necessary repairs (such as the repair of a broken window, fixing plumbing), or anything else important for either buyer or seller.

Any special conditions made to the O & A should be as precisely worded as possible and 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 O & A, you should carefully consider your financial situation and thoroughly inspect the property. These two issues are discussed below.

## Capacity to pay

Buying a home is generally a long-term financial commitment so it's important the home you buy is one you can afford.

Before you begin looking at properties it's important that you determine how much you can borrow, and whether or not your income is sufficient to meet the repayments. You may also be required to pay a deposit on the property and an establishment fee for a home loan, so ensure you have the money for this.

If you require a home loan, visit financial institutions or mortgage brokers to discuss the various finance options available to you.

You should also be aware that property owners are required to make annual payments such as property and contents insurance, local council rates and service charges for water and sewerage. Generally, 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. Electricity, gas and water consumption, general house maintenance, as well as the upkeep of any lawns and gardens are other costs that should also be considered.

## Home Buyers Assistance Account

The purchase of a property itself also involves substantial costs such as settlement and establishment fees. If you are purchasing a property through a licensed real estate agent Consumer Protection may be able to help with some of these fees through a scheme called the Home Buyers Assistance Account (HBAA).

To be eligible to obtain assistance you must meet a number of criteria, one of which is to ensure that the purchase price of the home is within the prescribed limit for dwellings purchased in Western Australia. This threshold figure is subject to change. Ask your financial institution about the HBAA.

**Further information:** See the Consumer Protection fact sheet *Home Buyers Assistance Account*. For the current threshold figure and details on how to apply, please visit the Consumer Protection website [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au).

## First Home Owners Grant

In addition to the HBAA, the Federal Government offers first home buyers a financial incentive through the First Home Owners Grant.

**Further information:** Contact the Department of Finance, Revenue WA on 08 9262 1299 to find out more about the Federal Government's First Home Owners Grant.

## Finance condition

If finance is to be arranged to purchase the property a number of general requirements apply. These requirements are shown on the bottom of the front page of the O & A. Make sure you fully understand the implications of the general requirements.

Before signing an offer to purchase property you should be aware that there are different finance conditions contained in various versions of the O & A. Some finance conditions suggest an offer to lend is the same as finance approval. The implication of this is that you as a buyer would be legally required to accept any loan offer even if the terms of that offer may seem unreasonable to you. To avoid the possibility of having to agree to unreasonable conditions, you should inform yourself as to the usual terms and conditions offered by a particular financial institution before making a finance application. There is provision on the O & A form to specify the name of a financial institution (i.e. lender) from which you intend to seek a loan.

Only after being satisfied that the finance terms and conditions are reasonable should you make an offer on the property.

Alternatively, you may also wish to consider amending the finance condition on the O & A, either yourself or with the assistance of your professional adviser, to suit your own particular finance requirements.

If unchanged and no financial institution is specified in the O & A, the standard finance condition requirements that you should be particularly aware of are:

- the 'best endeavours' of the buyer must be used to obtain finance by applying to **at least** one lending institution (such as a bank, building society, credit union);
- if asked in writing, the buyer must provide written evidence that a loan application was made;
- if a lending institution makes a loan offer, the buyer must immediately notify the seller (or the seller's real estate agent) in writing; and
- if a loan application is not approved, the buyer must immediately notify the seller or the seller's real estate agent and provide written evidence of the rejection.

If a loan application is delayed, or likely to be delayed for any reason, you should advise the agent as soon as possible so that the seller can be approached to consider an extension of time. Failing to obtain finance within the specified timeframe can result in the standard contract being terminated.

If a loan is not required and you have immediate access to funds representing the purchase price, the finance section should be deleted and replaced with the word 'cash'. Those who sign the O & A should then initial this amendment.

**Beware:** If you have applied for pre-approved finance before signing the O & A it is important you make sure the bank's offer is still valid. Many home loans are granted upon conditions of assessment at the time. If your financial conditions change, the bank may withdraw their offer. See your financial institution for more information on loans and approvals.

## Property inspection

Always inspect a property first before making an offer by signing an O & A. You can visit the property during a home open opportunity, or arrange an inspection with an agent at a time convenient to both you and the seller.

Adopt an objective approach during the inspection, taking into account the features of the home and its advantages, as well as disadvantages. Be prepared to put time into each inspection. You can miss important factors if you do not take your time when looking at a property.

Ask the agent detailed questions. Keep notes of the information the agent tells you and copies of all written documents, such as marketing material. Where possible, try to obtain information about the property in writing.

It is advisable to have an independent expert (such as a building surveyor, registered builder, architect, independent valuer, structural engineer or plumber) give you a report on a property you are interested in. You can include the results of a building inspection as a condition of the O & A. If you decide to include a special condition about obtaining a satisfactory written report on the structural soundness of the property in the O & A then the inspection should be done to Australian Standard 4349.1 of 1995.

In addition, any timber pest (termite) inspection carried out should be done to Australian Standard 4349.3 of 1998.

**Further information:** Contact the Consumer Protection Contact Centre on 1300 304 054 for a range of publications on buying real estate.

## What is a land title?

### Land 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/s 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. Check these documents yourself prior to signing the O & A. 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 O & A.

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.

**Further information:** Contact Landgate Title Searches and Survey Information on 08 9273 7373.

## 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'.

In a **joint tenancy**, 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, their interest in the property automatically passes to the other/s. Married couples often adopt this form of ownership.

In a **tenants in common** situation, an owner holds a set share of the whole of the property, with the remaining owner/s 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.

**Further information:** Contact Landgate Title Searches and Survey Information on 08 9273 7373.

## 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' made up of the owners of the individual properties controls these areas. As a strata title owner, you may need to pay a fee which is

commonly called a strata management fee, which is usually paid quarterly. These fees are used to cover the costs of repair, maintenance and management associated with the common areas of the property.

Before making an offer on a strata title property, the seller, through their agent, must disclose to you all the strata title information outlined in Forms 28 and 29 as required under the *Strata Titles Act 1985*. 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 O & A.

Strata title properties also have by-laws that owners (or tenants) must abide by. For instance, pets may not be permitted. A copy of the standard by-laws can be obtained from Landgate. 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.

**Further information:** Contact the Landgate Contact Centre on 9273 7044.

## What else do you need to consider before signing an offer?

### Extensions and future plans

Pay particular attention to extensions. If extensions have been built (such as an extra bedroom, enclosed back verandah, patio, garage, swimming pool etc), make sure these have been approved by the local council. Ask the agent if he/she has checked council records to ensure that the property is approved. You are entitled to check council records yourself to be absolutely sure that any extensions are legal. You risk making an expensive mistake if part of the building is illegal and blocks access to sewerage drains or power lines.

If you are considering adding on rooms, subdividing, or changing the use of the property (eg. from residential to office) you should check with the local council to ensure that the Town Planning Scheme permits this to be done.

If the home has a swimming pool, check that its installation was approved by the local council and it complies with the council's safety requirements. You should also check that the skimmer box complies with product safety requirements by phoning the Consumer Protection Contact Centre on 1300 304 054.

The local council can inform you if any changes to zoning in the immediate area are occurring which may affect the value of the property.

### Home indemnity insurance

Under laws introduced 1 February 1997, all residential building work over \$20,000 requires home indemnity insurance to protect property owners against financial loss linked with building work.

In most instances, the insurance policy must cover the construction period plus six years from the date of 'practical completion'. There are special insurance rules for owner builders who plan to sell. Owner builders are not required to take out indemnity insurance before they can build, but must do so if they sell within seven years of obtaining an owner builder licence from the local government authority. Ask the agent about this.

**Further information:** Phone the Consumer Contact Centre on 1300 304 054 for the cost of a local call from anywhere in the State.

### Electrical work

As per the 2009 amendments to the *Electricity Regulations Act 1947*, sellers must now ensure that two safety switches or residual current devices (RCDs) are fitted in residential premises prior to the sale of the property. Most homes built since 2000 already comply with this requirement.

If the house has been re-wired, or extra lights or power points have been installed, check whether a qualified electrician carried out the work. You could ask for the name of the electrician, or whether accounts have been kept for the work done.

If you are buying a house that was built before 1960, you may want to have an independent electrical inspection done.

Further, you may have to pay higher insurance costs, or have difficulty obtaining fire cover, if the house is very old and has not been rewired. This may also affect your ability to secure a mortgage. Check with your insurer and financial institution.

### Smoke detectors

Since 1 October 2009, it is mandatory for the seller to ensure mains powered smoke alarms are fitted to all properties built before 1997 that are being sold. It was already mandatory that all new houses be fitted with mains powered smoke alarms.

### Underground power

A project to put electricity lines underground is under way 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 latest version of the General Conditions contains 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 'date of the contract' means the latest date and signature (or initial) by either the buyer or the seller that appears on the O & A.

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 before settlement if 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 advise of the property's status in regards to underground power.

These types of potential future expenses should be kept in mind when negotiating the purchase price. Contact your local council for more information.

## Sewerage connection

In some areas of Perth and in country towns, land was developed without the provision of a sewerage system, and septic tanks were installed.

When sewerage connection becomes available, the homeowner is legally obliged to connect to the sewerage mains within five years. A person who purchases a property where sewerage connection is available has 12 months to connect to the service. Connection to the sewerage mains can cost the owner between \$600 and \$2,500 in plumbing costs, depending on the property.

If at the contract date the property is connected to the sewer and there are any monies 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 these monies to the Water Corporation immediately following settlement.

If at the contract date 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 agent for a Sales Disclosure Statement. The Sales Disclosure Statement is completed by sellers 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 O & A then it will be part of the standard contract. If it has not been provided with the contract delete the condition mentioning it on the O & A (i.e. Condition 4), then sign and date the amendment.

Given the importance of sewerage connections and septic tank decommissioning, it is advisable to request a Sales Disclosure Statement before negotiating the purchase price and signing the O & A.

**Further information:** Phone the Water Corporation on 13 13 95.

## Decommissioning septic tanks

Under Regulation 20A of the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*, after a property is connected to the sewerage mains, the owner of the premises must 'decommission' any septic tanks or other sewerage apparatus (such as leach drains).

Decommissioning means that the apparatus must be emptied in accordance with environmental guidelines. Tanks must be removed (or if this is not practicable the base broken up) and the apparatus backfilled with clean fill. Decommissioning should occur:

- no more than 60 days after a change in ownership occurs and the person who was the owner of the property at the time it was connected to the sewer ceases to be the owner; or
- no more than 60 days after there is material change in the use of the premises; or
- if foundations are going to be built closer than 1.2 metres to the apparatus or a building is to be constructed above the apparatus.

Since these costs could be in the order of \$1,000 it is advisable to check that the septic tanks or other sewerage apparatus have been decommissioned. Again, this can be done through the seller's Sales Disclosure Statement. The latest version of 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.

**Further Information:** Contact the Department of Health on 9222 4222 on waste water, or the relevant local council.

## Roads and other reservations

When purchasing a house, you can request a Clause 42 Certificate from the Department of Planning for about \$25. This legal document certifies whether or not a property will be affected by road reservation or public works. Application forms for obtaining a Clause 42 Certificate are available from the Planning, Lands and Heritage website [www.dplh.wa.gov.au](http://www.dplh.wa.gov.au). You can also apply electronically via Landgate.

**Further information:** Phone the Department of Planning on 6551 8002. Main Roads WA or the local council may also be able to assist regarding information about any future road projects.

## Roads and rural properties

If you are considering buying a rural property ensure that you will be able to have legal access. You may also choose to have a survey carried out to check the boundaries of the property.

**Further information:** Phone Landgate Title Searches and Survey Information on 08 9273 7373.

## Tenants

Unless otherwise stated, the General Conditions require the seller to provide a vacant house when the buyer takes possession.

Ask the 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. Copies of the existing lease and any property condition reports should be provided to the new owner in accordance with section 6 of the General Conditions.

If a bond has been taken as security for the house, the account should be varied into the name of the new owner and the existing tenant. Upon termination of the lease, the new owner will be responsible for returning the bond back to the tenant.

Under the *Residential Tenancies Act 1987*, the bond must be lodged into a trust account with an approved financial institution. If the bond is lodged with the Bond Administrator a *Notice of Variation of Security Bond* (Form 9) can be used.

If the bond is lodged with a financial institution, you will need to enquire with the institution about options for variation.

If the fixed term lease 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 on a Notice of Termination (Form 1C).

If you want the tenant to stay on, you will need to amend the O & A 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 continue this arrangement. You are free to select another property manager or manage the property yourself.

**Further information:** including copies of Form 9 or Form 1C, phone the Consumer Protection Contact Centre 1300 304 054.

### If you encounter problems

During your search for information you may discover problems with the property. Make sure that you resolve these before signing the O & A.

If a problem becomes evident after you have entered into a contract, it may be possible to withhold money from settlement to fix problems on the property. Your settlement agent or lawyer can inform you about this option.

### Further information

For general inquiries about real estate and settlement matters, phone the Consumer Protection Contact Centre 1300 304 054 for the cost of a local call from anywhere in the State.

Other publications that could assist you when buying a home include:

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

Solicitors can give you legal advice about the standard contract for the sale of property.

If you are experiencing financial difficulty, places such as the Citizen's Advice Bureau and the Law Society's 'Law Access' can provide discounted legal advice.

**Disclaimer** – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

**Consumer Protection** | Department of Mines, Industry Regulation and Safety

**1300 304 054**

8.30 am – 4.30 pm Mon, Tue, Wed and Fri  
9.00 am – 4.30 pm Thurs  
Gordon Stephenson House  
Level 2, 140 William Street  
Western Australia 6000  
M: **Locked Bag 100, East Perth WA 6892**  
W: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)  
E: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

#### Regional Offices

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
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National Relay Service: 13 36 77

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