

# Property Settlements

## What does settlement involve?

Before property settlement can occur, a buyer and a seller must have both signed a contract of sale. In Western Australia, the standard residential sales contract has two sections.

1. Contract for the sale of land by offer and acceptance (Offer & Acceptance) and
2. Joint form of general conditions for the sale of land (General Conditions)

The signatures of the seller and the buyer on the Offer & Acceptance indicate that the parties agree to the conditions of the contract, including the purchase price.

The General Conditions are the contractual conditions that apply to the contract, and include such matters as:

- Encumbrances (a mortgage, or other charge on a property which can hinder its use or transfer e.g. Lease; part of the land is used by an adjoining property owner; a claim has been lodged on the title)
- Payment and holding of the deposit;
- Settlement and delays in settlement (penalty interest will apply);
- Possession (including vacant possession);
- Adjustment of outgoings;
- Payment responsibility for costs such as underground power line installment, and connection to sewerage mains where relevant; and
- Errors, risk, default and interpretation of terms

The Offer & Acceptance 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 –titles property, the seller needs to provide an original of Form 29 and signed original of Form 28 and give them to the buyer before the buyer signs the Offer and Acceptance contract.

Settlement is the important final stage in the sale of a property, requiring that all the general and special conditions of the contract have been satisfied. 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

As the tasks associated with settlement can often be complex, many sellers and buyers choose to engage a settlement agent or solicitor (see 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 a contract to buy or sell a property, there is provision on the contract 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 section Delay in settlement).

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

- An offer becomes unconditional; or
- Finance Approval is received.

### **Pre-settlement inspections**

Under the General Conditions, the seller must give the buyer an opportunity to inspect the property with five working days prior to settlement.

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, air-conditioning and any appliances remaining on the property;
- The taps, lights and hot water 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 Offer and Acceptance contract and the pre-settlement inspection.

### **Prior Possession**

Unless the contract otherwise specifies, or the home is the seller's residence, buyers can generally move into the property once settlement has taken place. 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, agreeing to take the property “as is”. Consequently, the seller may not be required to fulfill any special conditions, which have been inserted into the contract of sale. Both the seller and the buyer should seek legal advice about the problems that could arise from prior possession and consider these risks carefully.

### **Settlement**

Usually, the settlement agents or solicitors representing the seller and buyer will meet at settlement. These agents ensure that:

- All relevant parties have fulfilled their obligations in the lead up to settlement;
- All conditions of the contract of sale have been met, to the satisfaction of the seller and the buyer; and
- 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).

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

The settlement agent 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. 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. The amount is calculated daily at 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.

A seller who has lived in the house, which 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 (e.g. 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 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.

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