

UNDERSTANDING THE SETTLEMENT PROCESS

Property Settlement refers to the process of ensuring all the conditions of the standard sale of property contract are fulfilled. This fact sheet outlines the process of property settlement and the general conditions that usually apply.

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:

- Contract for the sale of land by offer and acceptance and
- Joint form of general conditions for the sale of land

The signatures of the seller and the buyer on the Offer and Acceptance indicates that the parties agree to the conditions of the contract, including 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 instalment and connection to sewerage mains where relevant
- Errors, risk, default and interpretation of terms

The Offer and Acceptance also contains a section for the parties to insert their own special conditions into the contract, such as:

- Where 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 needs to provide an original of Form 29 and signed original 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 general and special conditions of the contract have been satisfied. At settlement, the balance of the purchase price for the property is paid and 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.

When entering into a contract to buy or sell a property, there is provision on the contract to nominate a date for 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

Under the General Conditions, the seller must give the buyer an opportunity to inspect the property within 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 and any appliances remaining on the property
- The taps, lights and hot water system
- The curtains and curtain tracks
- The pool and any associated equipment

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

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 fulfil 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.

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
- 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 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.