



Government of Western Australia  
Department of Mines, Industry Regulation and Safety



# Home Buyers Survival Guide for WA

6th Edition 2017



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Most of the publications referred to in this guide can be found on the consumer protection website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

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#### DISCLAIMER

The information including advice (**information**) provided in the Department of Mines, Industry Regulation and Safety (**the department**) *Home Buyers Survival Guide for WA* (**the Guide**) is provided by the officers of the department in good faith and derived from sources believed to be accurate and reliable at the time of publishing. Changes in circumstances after information is published in the Guide may impact on the accuracy of that information. No assurance is given about the accuracy of the information.

The information provided is of a general nature only and is provided solely on the basis that you are responsible for making your own verification and assessment of it. The purchase of real property is a serious and complex process and the department stresses that you should obtain your own independent advice (including legal advice) in relation to your own particular circumstances.

The information should not be understood to waive any legal obligations of persons/entities to you, including persons/entities who provide financial, real estate and home building services.

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# Introduction

**The Home Buyers Survival Guide for WA is produced by the Department of Mines, Industry Regulation and Safety. The guide provides relevant and useful information for Western Australians when buying or building their first home. The guide also provides information to assist people when buying their first 'easier living' home.**

Please note that the term 'property' in the guide is used to mean either a dwelling and land or land only. Additionally, the Commissioner for Consumer Protection, through the Consumer Protection Division of the Department of Mines, Industry Regulation and Safety, administers the Western Australian real estate and settlement licensing and regulatory systems. Although Consumer Protection assists the Commissioner, it is ultimately the Commissioner who exercises his or her discretion. For ease of reference, this publication will refer to 'Consumer Protection' in all instances.

Building and Energy (B&E) administers the licensing and regulation of building, painting and plumbing services, issues owner-builder approvals and provides a dispute resolution service to the community.

#### BUILDING AND ENERGY – CONTACT US

For further information about entering into a contract for a building service, call Building and Energy on 1300 489 099 or visit [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

#### CONSUMER PROTECTION – CONTACT US

For further advice or information about buying or building a house, call the Consumer Protection Advice Line on 1300 304 054.

National Relay Service for the hearing impaired: 13 36 77

[www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

Email address: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

#### TRANSLATIONS

Call the Translation and Interpreting Service on 13 14 50. Ask for a connection to 1300 304 054.

# PLANNING



## Overview of housing options

We are often encouraged to fulfil the dream of owning our own home, but home ownership is not for everyone. When thinking about the best type of living arrangement for you, it is a good idea to weigh up all of your options.

It is also worth thinking about how your living needs may change in the future and making sure that your choice of living arrangement can meet those expected changes. For example, you may be thinking about starting a family or moving to a job in a different area, or you might have elderly parents who are living with you or intend to live with you in the future.

Here are a few examples of different sorts of housing options that you may wish to consider.

## Boarding and lodging

If you are a boarder, you have permission to stay at another person's property, for which you pay rent, and usually, meals are provided.

Lodgers pay rent to stay at another person's property, but usually, meals are not supplied.

### PROS

- The arrangement can work well if you get along with the owner and/or other housemates.
- Depending on your agreement with the owner, you may only have to give the owner a short period of notice that you intend to leave.

### CONS

- Generally you can't control who else is able to live in or visit the property.
- Depending on your agreement, the owner may only have to give you a short period of notice to leave.
- There may be 'house rules' about matters such as keeping pets, using common facilities and the amount of noise that is acceptable.

### FOR MORE INFORMATION

#### ABOUT BOARDING AND LODGING:

- for a free copy of our brochure *Boarders and lodgers* call Consumer Protection on 1300 304 054; or
- visit our website at [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

## Owning a home is not for everyone

### Renting

Tenants can generally exclude anyone, including the owner, from accessing the property or land site that they rent. However, owners may carry out inspections or repairs on the property as long as they give notice and comply with the law.

### PROS

- Tenants have their rights and responsibilities set out in the *Residential Tenancies Act 1987* and other laws.

- You may be able to afford to rent, but not to buy a house, in your preferred suburb.
- Generally, you don't need to worry about paying local authority (council/shire) and water rates or doing repairs to the house that are the result of fair wear and tear.

### CONS

- Generally owners are able to ask tenants to leave by giving them the appropriate notice required by law.
- There are likely to be rules about how the property should be used, for example whether pets may be kept on the property.
- You may be penalised if you leave the property before the lease expires.

### FOR MORE INFORMATION

#### ABOUT RENTING:

- call Consumer Protection on 1300 304 054 and ask for a copy of our free booklet, *Renting a home in Western Australia: a tenant's guide*;
- visit our website at [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

## Caravan and park homes

Mobile homes for living (rather than holidaying) may include buying or renting a caravan or park home. The land on which the caravan or park home is placed is however generally leased.

### PROS

- The legal rights and responsibilities of caravan park owners and residents are set out in the *Residential Parks (Long-stay Tenants) Act 2006* and the *Caravan Parks and Camping Grounds Act 1995*.
- The cost of buying a caravan or park home is generally less than buying or building.
- The land sites are generally located in natural settings, are close to popular amenities where you may meet new people and might also be sites you may not normally be able to afford to buy.

### CONS

- While you may own a caravan or park home, you only rent a site and therefore do not own the land. The property owner can generally ask you to leave by giving you the notice required under the *Residential Parks (Long-stay Tenants) Act 2006*.

- The cost of relocating a caravan or park home is likely to be high.
- There are often rules that may affect how you behave on the land site, for example making noise, having visitors and pets and the use of common facilities.

### FOR MORE INFORMATION

#### ABOUT CARAVAN AND PARK HOME LIVING:

- turn to page 63 of this Guide;
- call Consumer Protection on 1300 304 054 or visit [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

## Retirement villages

There are a number of options for the over 55 age group, who may not only be thinking about 'putting a roof over their head,' but may also be looking to live a different lifestyle.

### PROS

- Complexes may offer residents direct access to facilities to enhance their quality of life, such as maintained swimming pools, gymnasiums and gardens.
- Some complexes provide access to facilities that offer residents greater peace of mind, including security and health care.
- Many complexes provide opportunities for similarly aged residents to meet and socialise.
- Depending on the complex, residents have their legal rights and responsibilities set out in the *Retirement Villages Act 1992*, the Code of Fair Practice for Retirement Villages and other law.
- The units may be smaller than the current family home and therefore easier to clean, live in and maintain.

### CONS

- If you own or occupy a unit in a complex, restrictions and/or fees may apply when selling the unit.
- Complexes require that residents pay ongoing fees and sometimes these ongoing fees must still be paid even if you leave and your unit is not immediately re-sold, re-leased or occupied.
- Complexes are generally designed for people to live closer together, which may sometimes create disagreements.

### FOR MORE INFORMATION

#### ABOUT RETIREMENT VILLAGES:

- call the Seniors Housing Advisory Centre on 1300 367 057 for free independent information on the operation of retirement villages; or
- visit our website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

## Buying an established Property

A general overview of the pros and cons of buying an established property is provided below.

### PROS

- When buying an established property you can see many aspects of what you are buying and you can generally move straight into the property after settlement.
- Home ownership is a form of forced saving toward an asset that may increase in value.
- Depending on the property you buy, you can usually make your own decisions about the use of the property, for example keeping pets, renovating or putting in a swimming pool.

### CONS

- If you are paying off the mortgage on your property, changes in your circumstances, such as a job loss, may affect your ability to keep making your repayments and if so, you may lose your property as a result.
- If you are paying off the mortgage on your property, interest rate rises may affect your ability to keep making your repayments and if so, you may lose your property as a result.
- It may be more difficult to move, especially if you need to sell your property before buying or moving elsewhere.
- As a homeowner, you are required to pay local authority rates and charges for water, sewerage and drainage services each year as well as keep up with your regular bills, for example electricity, phone and gas.
- You may be prevented, either financially or by law, from making changes to the property, and this may not be apparent without thorough investigation before you buy.

# Your choice of living arrangement should suit your current and future needs

## FOR MORE INFORMATION

### ABOUT BUYING AN ESTABLISHED PROPERTY:

- turn to pages 10–39 of this Guide;
- call Consumer Protection on 1300 304 054 and ask for your free set of real estate and settlement fact sheets;
- visit: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

## Building a house

A general overview of the pros and cons of building a house are provided below.

### PROS

- You can choose the design and features of the house, for example room size, light and tap fittings and floor coverings.
- Home ownership is a form of forced saving toward an asset that may increase in value.
- When you own your own house, you can usually make decisions about the use of the property, for example having pets and making changes to the property.

### CONS

- There may be unexpected costs, for example, site preparation or attending to things overlooked in the building contract.
- There may be delays in completing the house, for example, due to the weather.
- You may need to spend more money to finish off your house after building, such as buying floor coverings, paint, curtains and plants.
- If you are paying off the mortgage on your house, changes in your circumstances, such as a job loss, may affect your ability to keep making your repayments and if so, you may lose your property as a result.

- If you are paying off the mortgage on your house, interest rate rises may affect your ability to keep making your repayments and if so, you may lose your property as a result.
- As a homeowner, you are required to pay local authority rates and charges for water, sewerage and drainage services each year as well as keep up with your regular bills, for example electricity, phone and gas.
- It may be more difficult to move, especially if you need to sell your house before buying or moving elsewhere.
- Owner building your own home means that you take on some of the obligations and responsibility for the building work as a registered building contractor.

## What you need to know when deciding to build or buy

### Looking at your finances

To find out what you can afford, you will need to sit down and look closely at how much you spend and save now. You'll also need to think about what you think you are likely to spend and save in the future.

Below is a method that will help you look at your spending habits and work out whether you can afford to buy a house now or in the future.

#### The expenses file

Buy yourself an expandable folder with pockets from A to Z. Over a period of time, file all your bills, receipts, movie/sport/theatre tickets, credit card statements and any personal loan statements into the expandable folder. Also, file any payslips, pension or any other statements that indicate any regular payments.



Make a note (and file it in the folder) of the date when you started the process of filing all your income and expenses.

Over time, the contents of the file will give you a good idea about where your money comes from and where your money goes. The information will help you to work out a budget. A budget is a tool that helps you make decisions about where to spend your money, how much to save and also helps you regularly keep an eye on your progress.

A budget is a very useful starting point if you are serious about owning (and keeping) your own home. A budget planner is provided at Table 1 on page 8 or use an online budget planner from the MoneySmart website.

### FOR MORE INFORMATION

#### ABOUT BUILDING A HOUSE:

- turn to pages 6–22 and pages 40–57 of this Guide;
- call Consumer Protection on 1300 304 054 and ask for your free set of building fact sheets; or
- Visit our website [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy) or call 1300 489 099



## Consider whether you can afford to buy or build now and maintain payments in the future

Making a decision to enter the real estate market is not only a financial commitment, but an emotional commitment as well. After all, you're buying a property that satisfies a basic human need and it is a place where you'll spend a good deal of your time.

The emotions involved in buying a home are important, but it is a good idea not to get too attached to a particular property or to make quick decisions.

For example, when buying a block of land, you can get carried away by the sales pitch about the position and price of a particular block. Unfortunately, you may fail to take into account that preparing the block for building may cost you thousands more dollars than you intended to spend and the house you wanted to build on the land might not even fit on the block!

Taking the time to look into a deal may mean missing out on a good buy, but more often than not, it will save you from making unwise decisions. And if you do happen to miss out on a good deal, remember there will be others.

Following are six tips we suggest you consider before you enter the real estate market that will help you make good choices when buying or building.

## Planning tip #1:

### KNOW WHAT YOU CAN AFFORD TO BUILD OR BUY

When buying or building a home, it is likely that you will be paying off a home loan over many years. In addition, when you own a property there are all the other ongoing bills that must be paid. It is not only important that you can afford to buy or build and meet your expenses now, you must also be able to continue to afford your home and expenses in the future.

Table 1: Weekly Budget Planner

<b>Income</b>	<b>\$ per week</b>
<b>Income Types:</b>	
• Wages/Salary	
• Pension/Benefit	
• Other	
<b>TOTAL INCOME</b>	

<b>Spending</b>	<b>\$ per week</b>
<b>Housing</b>	
• Mortgage/Rent	
• Land/Water rates	
• Repairs/Maintenance	
<b>Groceries/Food</b>	
• Groceries/Takeaways	
<b>Credit</b>	
• Payments on personal loans	
• Payments (if you have outstanding debts) on credit/store cards	
<b>Insurance</b>	
• Building/Contents	
• Car	
• Life/Health	
<b>Medical</b>	
• Doctor/Dentist	
• Specialists/Other	
<b>Car/Transport</b>	
• Petrol	
• Fares/Parking	
• Licence/Registration	
• Maintenance/Other	
<b>Clothing</b>	
• Clothes	
• Shoes	

<b>Utilities</b>	
• Water/Gas/Electricity	
• Telephone/Mobile phone/Internet/Pay TV	
<b>Education</b>	
• School/Kindergarten/Crèche fees	
• Books	
• Excursions	
• School uniforms	
• Child maintenance	
<b>Pets</b>	
• Vet/Medication/Treatment	
• Registration	
• Pet food	
<b>Personal</b>	
• Haircuts	
• Chemist	
• Cigarettes/Alcohol	
• Dry-cleaning	
• Gifts: Christmas/Birthdays/Donations	
<b>Entertainment</b>	
• Movies/Hobbies/Sport/Lotto	
• Books/Papers	
• Travel/Accommodation	
<b>Savings</b>	
• Emergency	
• Voluntary superannuation contributions	
• General	

<b>TOTAL SPENDING</b>	
Net income	

## Income

The first step in filling out your budget is to work out how much money you receive per week (but don't include any tax or superannuation that you've paid). Add up all weekly sources of income and put these amounts in the 'income' section of the budget planner at Table 1 left or use an online budget planner from the MoneySmart website.

The task of filling in your income may be tricky if your income is irregular, but you should attempt to calculate a conservative average.

## Spending

The next step is to work out where your money goes.

If you have been using the expandable file, take out all your bills, receipts, loan and credit card statements. Group your bills together and work out how much (on average) you spend on each area per week.

For example, Jane got all her electricity bills together over a six month period. The electricity bills came every three months, and on average, Jane paid \$150 per bill (or \$12.50 per week). Jane writes down \$12.50 next to electricity spending on the budget worksheet.

By grouping all her grocery bills together over the same six month period, Jane found that on average, she spent about \$100 per week on groceries. Jane writes down \$100 next to the grocery item on the budget worksheet.

Keep grouping your bills together for each category of the budget planner, estimate the amount you spend on each category per week and then put the figure next to each relevant category on the worksheet.

Make sure you include items that you don't pay for often—you may need to guess. For example, Jane estimates that her contents insurance is \$300 per year (about \$6 per week). Jane writes down \$6 next to the contents insurance item on the budget worksheet.

If you don't like the idea or haven't had the time to use the expandable file, you may have to guess or estimate your spending and income for each item in the budget planner. Your budget will then only be as good as the guesses you've made.

## Look at your budget

The budget will really help you to look at your spending habits if you try to be as accurate as you can with your spending on each item.

If your total spending is more than your total income, you may need to look at ways to cut back on your spending, especially if you want to save up

for a deposit on a home. If you spend a lot of money on certain areas, such as food or clothing, you may want to target these areas for possible cutbacks.

Below are some other tips to help you save money and start saving for a deposit on a home.

- Make up a shopping list before you get to the supermarket and stick to the items on the list.
- Make sure you have enough food to last until your next shopping trip, so you don't need to go to convenience stores or buy take-away food, which can often cost you more.
- Instead of buying your lunch, consider making your lunch and bringing it into work every day.
- Make paying off any debts, such as your credit card and personal loans a priority.
- Try to pay off your credit card within the interest-free period.
- Consider setting a savings goal, so you can start saving for a deposit.
- Shop around for a bank/building society or other financial institution that will set up an account or accounts for you with no monthly fees.
- Regularly check that fees do not apply to your accounts and be prepared to move your money to institutions that allow you reasonable access to your funds but do not charge you fees.
- Make sure you save for gifts, holidays and entertainment rather than buying these things on credit.
- Plan your spending on gifts so that you're not buying on impulse or leaving your shopping until the last minute.

## Borrowing money for a house

Lenders may be more willing to give you a home loan if you pay your bills regularly, have demonstrated a savings history, or have saved a substantial proportion of the purchase price.

By carefully drawing up and sticking to your budget, you can be confident that you have the skills to pay off a home loan and continue to pay all your other bills.

The budget exercise will also help you to determine how much you can borrow. If you have access to the internet, type 'mortgage calculators' into your search field and try using the different calculators. This will give you an idea about the amount of money you may be able to borrow.

## A budget will help you make spending and saving decisions

You may also wish to view your credit file, to ensure that it is accurate and to find out whether there are any references on your file that may cause your potential lender some concern about your ability to repay a loan. Copies of your credit file can be obtained from credit reference agencies online by typing 'credit reference' into your search engine on the internet.

Otherwise, you can search the yellow pages under 'credit reporting services' to obtain your credit file.

Be aware that you will be charged a fee to get a copy of your credit file.

## Assistance available

The budget process described previously may not suit everyone or you might want someone to go through the budget process with you individually.

The information box below lists organisations that can either provide you with free advice on credit, debt and financial problems, or can refer you to an appropriate financial service to meet your requirements.



## List of fees and charges

Costs associated with borrowing money

- A loan application or establishment fee may apply. This is a one-off 'administration' charge to set up the loan.
- The interest rate is a consideration. It is important to remember that the longer it takes you to pay off the loan, the more interest you will pay to your lender. The interest rate may also rise during the term of your loan, which will increase your repayments to your lender. The rise in your repayments may affect your ability to keep making the payments and if so, you may lose your property as a result.
- Consider taking out income protection insurance. Unlike mortgage insurance, this is a policy that you can take out to help pay your mortgage if you are unable to work due to illness, retrenchment, or death.
- Valuation fees may apply when buying an established property. The lender will generally send a valuer to the place you intend to buy to ensure that the market price you've agreed to pay for the property is close to its value. Although you pay the one-off valuation fee, you don't usually receive a copy of the report.
- Mortgage insurance may apply when buying an established property. The lender may require you to pay mortgage insurance, particularly if you are borrowing more than about 80 per cent of the value of the property or if you are buying property outside the metropolitan area. Even though you pay for the mortgage insurance, it won't protect you if you cannot meet your repayments. (It only protects the lender when you cannot repay the loan).
- Regular loan administration fees may apply.
- Changing the features of your loan during its term (such as applying for a fixed interest rate) may also attract fees.

### FOR MORE INFORMATION

ABOUT THE BUDGET PROCESS:

- Consumer Credit Legal Service WA  
[www.cclswa.org.au](http://www.cclswa.org.au)
- Financial Counsellors' Association of WA  
[www.financialcounsellors.org](http://www.financialcounsellors.org)

### Other one-off expenses

- Government charges apply.
- Duty is payable on the market value of the property. You should check with the Office of State Revenue about the time limits for lodging the contract and payment of duty.
- There is the cost of expert advice when buying or building, such as settlement agents, lawyers and building consultants. Turn to page 13 of this Guide for more information on employing experts to give you information to help you build or buy.
- Moving costs may be incurred, including:
  - hiring removalists;
  - connection fees for utilities, like electricity, telephone and gas; and
  - cleaning and repair costs associated with leaving a rental property.
- Home indemnity insurance permit fees and a building service levy apply when you employ a builder (included in the building contract but taken out by the builder): see pages 47 and 57 for more details.

### Ongoing costs

- Strata levies may apply, which include the cost of building insurance for strata titled properties.
- Consider taking out contents and building insurance.
- Home utility costs apply, including electricity, gas and phone bills.
- Water and local authority rates and water consumption are payable yearly when living in the property.
- Most homes cost money to maintain – some more than others.

#### FOR MORE INFORMATION

##### ABOUT STRATA TITLED PROPERTIES:

- turn to pages 24–25 of this Guide.

Take time to look into a deal carefully. It will pay off in the long run

## Planning tip #2:

### CONSIDER FEES, CHARGES & CONCESSIONS

The cost of buying a home is much more than just the price of land and any dwelling. Similarly, the cost of building isn't just the block price and the cost of building work. There are other costs you need to plan for when buying or building.

## Concessions

You may be eligible for various concessions in relation to the costs of buying or maintaining a property from a range of government departments.

## Research

After gaining some idea about the amount of money you can afford to spend on a property, think about the type of features you want within your price range.

- List the features that are important to you in a property.
- To get you started, use the buying checklist on pages 29–30 and visit display homes.
- Get a map book and list suburbs where you would like to live, with properties that fall within your price range.
- Research newspapers and the internet for up-to-date information about the general price and demand for blocks or properties in your preferred suburbs.
- Be realistic and choose suburbs where you can find houses in your price range.
- Visit real estate websites on the internet and talk to family and friends about the type of real estate you're interested in buying.

## Planning tip #3:

### FIND OUT WHAT FEATURES YOU CAN AFFORD

#### FOR MORE INFORMATION

##### ABOUT CONCESSIONS:

- turn to pages 27 and 28 of this Guide.

## Planning tip #4:

### ESTABLISH A RECORDS SYSTEM

From the planning phase to the time you step into your new home, you will not only be dealing with a number of people, but you will have collected lots of paperwork with important information.

## Information storage

Here are some tips to help you keep all the important information at your fingertips.

- Keep a file for all paperwork to do with buying or building.
- The types of paperwork to include in your file are:
  - any advertisements for properties or blocks that interest you;
  - quotes for any experts you are thinking about employing;
  - copies of contracts and other forms;
  - a copy of the building plan; and
  - general information about the home buying process or home building process.
- Keep a diary to record any discussions with salespeople, builders, or agents and indicate:
  - the time and date of all telephone conversations;
  - the name of the person with whom you spoke; and
  - what was discussed, and particularly what was agreed. You may also use the diary to record details of any home inspections you carry out if you are purchasing an established property.



## Types of experts

Employing the right experts at the right time may be the difference between buying or building your dream home or making a very expensive mistake.

For more information about the types of experts you may want to use when buying an established property, turn to page 31.

For information on the types of experts who can help you when building a house, turn to pages 41, 45-46 and 54-55.

## Choosing an expert

So what sort of things should you be looking for to increase your chances of employing someone who will do a good job for you with no hassles? Here's a checklist.

- The person comes highly recommended by people you know. Talk to people at work, your family, friends and anybody else who you trust.
- Contact the relevant industry association to recommend suitable experts in your area.
- The person has the relevant licence or qualifications to act for you.
- The person is a good communicator, approachable and easy to deal with.
- You understand exactly what the person will be doing for you, how much it will cost and approximately how long the job will take. Get written quotes.
- The person you employ can approach the deal as if it was his/her own property purchase or his/her own house being built. Ask the person to put in writing that their only involvement in your deal is to act under your instructions.

More information about loan contracts is on pages 19-21.

**If you miss out on a good deal, don't worry, there will be others!**

## Dealing with experts

You will also have separate contracts between you and any experts that you decide to employ.

For example, if you employ a building inspector, there will be a contract between you and the building inspector to write up a building report.

Some of the contracts you enter, for example, the employment of a building inspector, may have terms that are agreed verbally. However, for the purchase and sale of real estate or agreements for home building work, contracts MUST be in writing by law.

We strongly urge that all contracts you enter into are in writing. Verbal contracts are very difficult to resolve if things go wrong. Read on for more information about contracts.

Anyone building a home is well advised to engage the services of an Independent, qualified Building Inspector, to conduct staged, Under Construction Inspections. The inspector should be a Registered Builder and have the ability to provide written reports compliant with the Australian Standards for inspecting and reporting. (AS4349-2007). Qualified Inspectors will likely be members of one of the following associations:

### **Building Inspectors Association of WA**

Website: [www.biawa.org.au](http://www.biawa.org.au)

### **Master Builders Association**

Website: [www.mbawa.com](http://www.mbawa.com)

## Planning tip #5:

### USE EXPERTS

The process of buying or building involves finding out and using lots of information, which takes time and experience. However, people don't buy or build a house every day, so there are times when you may need to employ experts who have the time and expertise to help you make good decisions.

## What is all the fuss about signing a contract?

Contracts can be thought of as setting rules between you and another party or parties. The contract rules (called terms or conditions) set out what each party will do for the other, the time by which such actions will be done and what happens if any party fails to play by the rules.

The contract should set out all the rules so there is no uncertainty. The law treats contracts seriously and you should be very careful before entering into a contract.

There may be certain terms that are important to you, or that you might expect when buying or building like:

- the gas heater or pool equipment is included with the property you are buying; or
- the hot water system in the house you are building is sufficient for a family of four; or
- the electrical wiring has been correctly installed by a licensed electrician and is safe to use.

If there are any terms that are particularly important to you when buying, it is important that these terms are written into the contract. Problems can be avoided if terms are in writing and their meaning is clear.

If you sign a contract, you are agreeing to abide by the terms set out in the contract. This will be enforceable through the courts. Once everyone affected by a contract has signed, generally you can only get the terms changed if everyone who signed the contract agrees in writing to any changes.

**Choose your experts carefully when buying or building, employing the right experts at the right time should save you money in the long run**

# Before signing anything take the contract away to read and get advice

## Planning tip #6:

### UNDERSTAND HOW TO USE CONTRACTS

A contract is a legally binding agreement and may involve a number of people (or entities, such as companies). When buying or building, you will necessarily enter into a number of contracts, some of which are mentioned below.

- A contract, between you and the seller of a property, sets out the terms and conditions of buying property and must be in writing.
- You may enter a contract with a money-lending institution, setting out the terms and conditions of a loan.
- As explained earlier, you may enter separate contracts with any experts that you decide to employ.

You should be very careful before entering a contract. The law treats contracts seriously

## Handy tips for dealing with contracts

- Make sure all things that are important to you (your rules) are clearly included in the contract.
- Make sure that the person(s) you are buying the property from is/are legally entitled to sell the property.
- Consult a lawyer when adding your own terms to a contract so that they are clear and enforceable.
- Don't use liquid paper on a contract.
- Cross out and initial any terms in a contract that you want to delete or change and ask the other party to the contract to initial the changes and deletions as well.
- Don't sign a blank contract or allow details to be filled in later by any person, including a salesperson. Draw a line through any blank spaces that do not need to be filled in.
- Take as much time as you need to read and understand each contract—don't be rushed! Before signing anything, ask for a copy of the contract to take away with you to read carefully and to show to a friend or advisor (preferably your lawyer).
- Contracts are often complex documents, so if there is anything you don't understand, get some legal advice or seek other advice from an appropriate expert (for example, an architect) before signing.
- Ask for a copy of any contract you sign (you are entitled to a copy).
- Remember that every person who is a party to the contract is usually responsible for making sure that the terms of the contract are followed.

It is important to note 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 or build because you have changed your mind.

When entering into a building contract the plans and specifications form part of it. Where the *Home Building Contracts Act 1991* applies the builder must give to the owner a notice setting out the provisions of the Act. See page 48 for further information.



# Don't sign a blank contract or allow details to be filled in later

## FOR GENERAL INFORMATION

### ABOUT CONTRACTS:

- call Consumer Protection on 1300 304 054 and ask for your free brochure entitled *Contracts: information you need to know*; or
- visit the website:  
[www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

### ABOUT GETTING LEGAL ADVICE:

- consult the Yellow Pages;
- Law Society WA [www.lawsocietywa.asn.au](http://www.lawsocietywa.asn.au);
- Citizens Advice Bureau WA [www.cabwa.com.au](http://www.cabwa.com.au)

### 1. Ownership in the property as joint tenants.

As 'joint tenants', you and another or others own the property jointly. All owners must agree to the property being sold. When you die, your ownership in the land is passed to the other surviving owner or owners. The surviving owner or owners will need to lodge an 'Application by Survivor' form with Landgate to remove the deceased proprietor.

### 2. Ownership in the property as tenants in common.

'Tenants in common' hold undivided shares in a piece of property. You can transfer your share of a property to others and you can specify who will inherit your share of a property upon your death in your will. All owners must agree to the property being sold.

**Buying or building has long-term effects, so if you are thinking about sharing ownership, discuss whether it will be as joint tenants or tenants in common and talk about what will happen if the relationship doesn't last.**

## Contracts and property ownership

Not only is it important to consider carefully who will be named on the contracts you sign to buy a property and get finance, but it is also important to consider who will own the property.

When buying property in Western Australia, a duplicate certificate of title may be issued. If a certificate of title is issued it will generally be held by your lender as security.

If you are buying or building a house with another person, at law there are two types of ownership on a title that you should think about and discuss.



## Casestudy

### Relationships and contracts–A painful mix

John and Leo had been renting a house as a couple for five years and decided it was time to buy a house together. Although John put down the deposit on the house, both John and Leo's names appeared on the contract to buy the house and the home loan contract.

The couple's offer to buy the house was accepted by the sellers and the bank accepted John and Leo's application for a home loan. John and Leo owned the property as joint tenants. However, it was only John that actually made the mortgage repayments.

Three years after the couple moved into their home, John decided to end the relationship with Leo. John wanted to sell the home, but Leo was determined to stay in the house. John realised he could only sell the house with Leo's agreement or with a court order.

John asked the bank to release him from the credit contract, but the bank refused. John knew it would be difficult to move out of the house and keep making the mortgage repayments. If Leo did not keep up the payments, John's credit record would be affected.

John decided that he needed to get some legal advice to sort out the situation between himself and Leo. After Leo agreed to attend a series of mediation sessions, John was hopeful that they could soon reach a fair settlement.

## Casestudy

### Remaining friends

Greg and Sarah decided to buy a house together and were thinking of marrying in the distant future. Before looking for houses, the couple sat down and discussed what they would do with the house if the relationship didn't last.

When the couple found a house they both liked, Greg put down three-quarters of the deposit on the house and Sarah contributed the rest of the deposit. The couple employed a lawyer to create an agreement between Greg and Sarah, which would clearly set out what the couple would do with the house if the relationship ended.

Greg and Sarah also decided that Greg would pay three-quarters of the mortgage and Sarah would pay a quarter. The couple decided that only Greg would apply for a loan for the house. The sellers agreed to sell the house to Greg and Sarah and the bank gave Greg a loan for the house. At settlement, the certificate of title showed that Greg and Sarah owned the property as tenants in common, with Greg owning a 75 per cent share and Sarah owning a 25 per cent share.

The couple did not marry and the relationship ended after two years. According to their agreement, Greg had an option to pay Sarah market value for her share in the property. Greg decided to stay in the house and paid Sarah for her share of the house.

The agreement between Greg and Sarah made dealing with the house a lot easier for everyone and the couple remain friends.

# Before deciding to build or buy, shop around for a home loan

# Finance issues for building or buying

## Types of loan features

### The interest rate

The interest rate is the 'price' you pay to the lender when you borrow money.

### Variable rate loans

With a variable rate loan, the interest rate can rise or fall throughout the life (or 'term') of the loan. The interest rate can change depending on the economic climate and competition among lenders. You should ensure that you would be able to meet any increases in your mortgage repayments if the interest rate increased during the term of your loan.

### Fixed loans

With a fixed loan, the interest rate is 'locked in' for a certain period – usually between one and 10 years. This type of loan provides borrowers with certainty about the amount of their repayments during the fixed period and protects them from interest rate increases. However, borrowers will not be able to take advantage of any drop in interest rates.

### Introductory rates

'Honeymoon' or 'introductory' rates on loans are interest rates that are generally lower than most lenders are offering in the home loan market and may be fixed or variable for a short period of time, usually between six months and one year. Beware! You should make sure that you could still afford your mortgage repayments once the fixed interest rate period finishes and the interest rate becomes the standard variable rate.

### Combination loans

A combination loan allows you to split your home loan into a fixed rate part and a variable rate part. Generally, you can decide how much of the loan will be subject to a fixed rate of interest and a variable rate of interest.

Usually, the fixed rate part of your home loan is available for a period of between one to five years. Beware! You may be required to pay two sets of application fees for a combination loan and you may be charged a fee every time you re-negotiate a new fixed term portion of the combination loan.

Whether building or buying, it is a good idea to start doing some homework to find a home loan that is right for you. Home loans have different features, including fees and charges and different pay back options. The home loan with the lowest interest rate is not necessarily the cheapest.

Working through different finance options can be difficult and confusing for many people. Shop around, ask as many questions as possible and get help, if necessary.

### Repayment features

Some home loans, such as fixed interest rate loans, may have restrictions on making payments that are greater than the agreed or scheduled payments. It is useful when the terms of a loan allow you to make extra repayments towards the loan, including making lump sum payments. If you are able to make extra repayments on a loan, it will reduce the amount of money you must repay to the lender and it will also reduce the length of time it takes you to repay the loan.

If you have a fixed interest rate loan for a certain time period, there may be high penalties applicable if you decide to pay out the loan before the time period expires, for example, if you sell your property or you decide to refinance with another lender.

### Redraw

Some loans will allow you the flexibility to withdraw any extra payments that you have made towards the loan. You should check the rules about withdrawing these extra payments, such as fees you may be charged and minimum amounts you can withdraw at any one time.

### Offset loans

Offset loans are a particular type of loan facility where you pay all of your income into the loan account and withdraw funds, as required. The loan typically includes the use of a credit card to pay for your daily expenses, which can be paid off once a month via the loan account.

A benefit of this type of loan is that your income is being used to pay off the loan. A drawback with this type of loan is that it may be tempting to overspend.

With this type of loan, if you do not pay off your home at a reasonable rate, you could end up paying the loan off over a longer period of time. If you overuse the credit facility, you may find that the amount you are required to repay blows out so that you are unable to repay the loan and if so, you may risk losing your house.

## Fees and charges

A list of typical fees and charges associated with taking out a home loan was provided on page 10. You should also ask about any fees or penalties that apply:

- paying out your loan early;
- redrawing any extra payments you may have made towards the loan; and
- negotiating another fixed term on your loan.

## Lenders

The following are the types of lenders that can offer you a home loan.

### Banks

Banks often have a convenient branch network and offer a range of different savings and credit accounts, in addition to home loans. Banks, which are subject to supervision by the Australian Prudential Regulation Authority, provide security for their customers, but may be stricter about who is eligible for a loan.

### Non-bank lenders

Non-bank lenders include credit unions, building societies and other financial institutions.

Some non-bank lenders operate through mortgage brokers and increasingly via the internet. However, most of the business is done over the phone and you can make an appointment to be visited by a representative.

Non-bank lenders may offer competitive and creative home loan products. Lenders that are not so strict about who is eligible for a loan may charge higher interest and fees.

Non-bank lenders may also offer associated products, such as deposit accounts and credit cards. However, some non-bank lenders may not have the ease of access to such accounts through local branches and automatic teller machines (ATMs).

### FOR MORE INFORMATION

#### ABOUT BANKING COMPLAINTS:

- contact the Australian Financial Complaints Authority [www.afca.org.au](http://www.afca.org.au)

### Disputes with lenders

If you have a dispute with your lender, you should try to resolve the problem (preferably in writing) with the lender's customer relations department. If the problem is still unresolved, you may be able to lodge your complaint with the and Financial Ombudsman Service.

### Keystart

Keystart aims to provide Western Australians with access to home ownership, and can offer loan packages to borrowers who may find it difficult to borrow money in the general marketplace, including:

- low-income earners;
- people who have a low deposit for a house; and
- those in casual employment or on commission.

Keystart also operates specific schemes for people with disabilities, Aboriginal people, Housing Authority tenants and people experiencing temporary financial hardship.

## Shopping around for finance

Ways you can shop around for finance include:

- checking television, newspapers and the internet to find out whether lenders are offering any special deals, such as Keystart;
- checking various consumer and finance magazines;
- considering the comparison rate for loans (see page 20); and
- using the services of a mortgage broker (read on for more information).

## What does a mortgage broker do?

A mortgage broker can help you find out about different home loans available in the marketplace and may be able to arrange special deals. A mortgage broker may also be able to assist people who might otherwise find it difficult to borrow money, for example, if you have had problems repaying a debt in the past. However, you may pay a higher interest rate if you have a bad credit history.

It is useful to note the following information and tips when using mortgage brokers.

- Do your own research about the type of home loan that suits your circumstances.
- Shop around for loans by doing some research, for example on the internet, check magazines, talk to family and friends and set your own financial limits (see pages 6–10).
- Contact two or three mortgage brokers by phone or over the internet and find out what they can offer.
- Some brokers may offer a limited range of loans. Ask the broker to provide you in writing with a list of the lenders whose products he/she promotes or considers on behalf of clients.
- You can find out if a mortgage broker is registered or licensed with ASIC by:
  - calling ASIC's Infoline on 1300 300 630; or
  - searching ASIC's database at [www.moneysmart.gov.au](http://www.moneysmart.gov.au).
- Check if the mortgage broker will charge you a fee for their service. Generally, mortgage brokers do not charge you to look for a home loan, but do not assume that this is the case. Mortgage brokers are usually paid by lenders.
- The maximum fees that a mortgage broker can charge you for their services are regulated by the *Finance Brokers Control Act 1975*.
- Find out in writing if the mortgage broker receives a commission or other benefits, (such as profit sharing) from the lender for negotiating or managing the loan.
- Brokers are sometimes paid for the length of time the loan remains with the lender.
- A mortgage broker should act in your best interest.
- By law, the broker must tell you if they have any involvement in the transaction, other than as your agent, or if they know anybody else who is involved in the transaction, for example employees of the broker or members of the broker's family.

Consider whether these associations might affect the broker's ability to act in your best interest.

- A mortgage broker should carry out all relevant instructions.

Instruct the broker in writing to find you a loan that best suits your circumstances and ask the broker to explain in writing how they make any recommendations.

## The credit contract and the Consumer Credit Code

Once you have selected a lender, you may be given a finance contract to sign.

Make sure you read, understand and accept the terms of the contract before you sign it. Obtain legal advice from a lawyer if you are at all unsure.

Remember, THE LAW DOES NOT REQUIRE THAT CREDIT CONTRACTS CONTAIN A COOLING-OFF PERIOD. If the credit contract does not include a cooling-off period, you cannot get out of a credit contract because you have changed your mind.

Most loan contracts for residential homes will be covered by the National Credit Code. We'll call it the Code for short. Some information about how the Code protects you before and after signing a credit contract is provided.

### Information

Before you sign a credit contract, the Code requires that lenders give you the following information to help you make good credit choices.

- You must be told about fees and charges, if these are known before the contract is signed.
- The contract should set out how the interest charges are calculated and how often these charges are made.

### FOR MORE INFORMATION

#### ABOUT LOAN PRODUCTS AVAILABLE:

- contact a number of banks and non-bank lenders; or
- contact Keystart on 1300 578 278 or visit the Keystart website at [www.keystart.com.au](http://www.keystart.com.au)

## Choose a mortgage broker carefully

### FOR MORE INFORMATION

#### ABOUT MORTGAGE BROKERS:

- contact ASIC [www.moneysmart.gov.au](http://www.moneysmart.gov.au)

## Think carefully before signing a credit contract, as there is no requirement for a cooling-off period in WA

- The contract may allow for changes to be made to the interest rate and credit fees and charges.
- If the contract allows for new charges to be made, the contract should specify how you would be notified of any changes or new charges.
- If mortgage insurance is required under the contract, you must be told the name of the mortgage insurer and the amount payable, or how the insurance is calculated.

Information about fees and charges and your rights and obligations may be given to you separately or included with the credit contract. Read through these statements before you consider signing a credit contract.

### The comparison rate

A comparison rate is a figure that gives you a better idea about how much you are really paying for credit and allows you to compare the cost of credit for loan products from different lenders.

Comparison rates apply a standard formula that uses the fees, charges and annual interest rate applying to a loan product (using specific loan amounts and loan periods) to obtain a single percentage figure.

The Code requires lenders to supply their own list of comparison rates to consumers with applications for fixed term credit.

However, it is recommended that you treat the comparison rate as a guide only, particularly if you are choosing a loan with optional features that attract fees. The comparison rate does not take into account government charges, mortgage insurance, or fees that cannot be determined at the start of a loan. You should also note that the comparison rate does not apply to credit cards and may not apply to home equity loans.



## The Code requires that lenders give you information to help you make good credit choices

### FOR MORE INFORMATION

#### ABOUT COMPARISON RATES:

- contact ASIC on 1300 300 630 and ask for a copy of *Comparison rates – a consumer guide* and *comparison rates – frequently asked questions*.

# Your rights after signing a credit contract

**The Consumer Credit Code provides some level of protection if something unexpected should happen that affects your ability to repay your loan or if the contract is 'unfair'.**

**Listed below are some typical concerns and how the Code may help.**

Q. Can I get out of a loan contract after I have signed it?

A. If you have only signed an offer to borrow, you can withdraw that offer before the lender accepts it. Upon the lender's acceptance of an offer to borrow, you will not generally be able to get out of the loan.

Q. Who can change a loan contract?

A. There are different ways that a loan contract can be changed:

## Changes by the lender

If the contract allows and the legal requirements for giving notice are followed, lenders can make changes to the contract, such as varying the interest rate or repayments.

## Changes by the borrower

You can ask your lender to agree to change the loan contract. If the lender agrees, the lender should give you a notice showing details of any agreed changes.

If you are unable to repay your loan because you are suffering hardship, such as if you are sick or unemployed, you may be able to get your lender to agree to change your contract. You can contact Consumer Protection for help in dealing with the lender. If you and your lender still cannot agree, you may be able to make an application to the State Administrative Tribunal for an order to vary the contract.

Q. What is a guarantor?

A. A guarantor is someone (for example, a parent or relative) who signs a contract, called a guarantee, with a lender. The guarantor promises to repay the loan if the borrower is unable to pay.

Generally, lenders ask for a guarantor where they believe there is a greater than average risk that the borrower may not be able to make their repayments on the loan.

The guarantor may be asked to list assets, such as a family home, to provide as security for the guarantee. If the borrower is unable to repay the loan, the lender can take possession of, and sell, any of the assets owned by the guarantor that have been listed to repay the debt.

The Consumer Credit Code outlines rules to ensure that guarantors are made fully aware of their potential obligations when signing a guarantee. Guarantors should be given an information notice headed 'Things You Should Know About Guarantees'. Guarantors should also be given a copy of the contract or proposed contract.

In Western Australia, a guarantor can withdraw their guarantee at any time before credit has been provided.

Q. What should I do if I'm late making repayments and the lender threatens legal action?

A. If this happens, the most important thing to remember is to be upfront and honest with the lender. If you explain the problem, you may be able to come to an arrangement with the lender.

If you can't pay your loans due to temporary illness, unemployment or relationship breakdown and you haven't been able to negotiate a new repayment arrangement with your credit provider, you can ask them to 'vary' the terms of your loan contract by completing one of their hardship variation forms or by using a sample letter requesting a hardship variation from [www.moneysmart.gov.au](http://www.moneysmart.gov.au).

After you apply for a hardship variation, the credit provider must respond to your request in writing within 21 days. If your credit provider refuses your hardship application, it must give reasons.

If you think the reasons provided are unfair, you can make a complaint to the Financial Ombudsman Service.

Q. Where can I get more help with loans?

A. If you have a dispute that you are unable to resolve with the lender, need help making a hardship variation to your loan or you think that your contract does not comply with the Code, consider:

- calling ASIC's Infoline on 1300 300 630;
- making an enquiry at [www.asic.gov.au/question](http://www.asic.gov.au/question); and
- seeking independent advice from a lawyer or financial counsellor.

## Casestudy

### **Buying a home is a long-term commitment!**

Carol and Geoff have been married for two years and have a young son. Carol and Geoff both work outside the home and their combined income is more than enough to cover their monthly mortgage repayments. However, the couple were finding it harder and harder to make ends meet. The stress between the couple was beginning to mount and their young son was also feeling the tension.

After some time, with their situation worsening, Carol and Geoff decided to see a financial counsellor. The couple were not sure where their money was going and relied heavily on their credit cards.

Carol and Geoff agreed to work with the financial counsellor to come up with a budget that they could live with. The couple also returned their credit cards and the banks agreed to a payment plan to pay off their considerable debts. This would take some time, but Carol and Geoff were determined to get back on track and were so relieved that their problems were finally getting sorted out.

Geoff was able to find some extra work on weekends to help pay the bills, like water, electricity and the yearly rates. The couple continued to make their mortgage payments. It was hard at first to stick to the budget, but the couple found it easier as it became part of their routine.

As the credit cards were paid off, Geoff was able to leave his second job and had more time to spend with family and enjoy their home.



# BUYING A HOME

# 2

## 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?

## Casestudy

### 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.

## If buying a strata titled PROPERTY, get a copy of the strata plan to see what you will own

### FOR MORE INFORMATION

ABOUT STRATA SCHEMES:

- to view *A Guide to Strata Titles* go to [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)

## When selling a home, the real estate agent is employed to get the best deal for the seller



## 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.

### FOR MORE INFORMATION

ABOUT BUYING AN ESTABLISHED PROPERTY:

- call Consumer Protection on 1300 304 054 and ask for a free set of real estate and settlement fact sheets; or
- visit [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

### 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 32 and 33.

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 28–34; 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.

## 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. If the property you're thinking about buying is 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 THE FIRST HOME OWNER GRANT:

- contact the Office of State Revenue by:
  - [www.osr.wa.gov.au/FHOGEnquiry](http://www.osr.wa.gov.au/FHOGEnquiry);
  - [www.firsthome.gov.au](http://www.firsthome.gov.au) and
  - [www.finance.wa.gov.au](http://www.finance.wa.gov.au)

# Things you need to know about buying a property

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

## 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 6–10), develop a savings history (page 9) and shop around for a lender (pages 18–19).

## Financial assistance

First Home Owner Grant (State Government Initiative)

First home owners may be eligible for a First Home Owner Grant if they are purchasing or building a new home. This grant is administered through the Office of State Revenue and at the time of print is a single \$10,000 payment. Some lenders may take the grant into consideration when deciding to offer finance. 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 AUCTIONS:

- call Consumer Protection on 1300 304 054 and ask for the fact sheet *Real estate auctions*; or
- visit: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.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.**

### 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 \$530,000 for a home or \$400,000 for vacant land and you are eligible, or would have been 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.

## 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.

### FOR MORE INFORMATION

#### ABOUT THE HOME BUYERS ASSISTANCE ACCOUNT:

- call Consumer Protection on 1300 304 054; or
- visit: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

### FOR MORE INFORMATION

#### ABOUT DUTY:

- contact the Office of State Revenue by:
  - email: [duties@finance.wa.gov.au](mailto:duties@finance.wa.gov.au);
  - [www.osr.wa.gov.au/fhogenquiry](http://www.osr.wa.gov.au/fhogenquiry);
  - visiting the website: [www.finance.wa.gov.au](http://www.finance.wa.gov.au) (Click on 'State Revenue' and then 'Duties').

## Home-buying tip #2:

### DO VISUAL INSPECTIONS

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.

## 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 First Home Owner Grant, which he then pays to Andrea as a deposit towards the home. Evan also pays Andrea \$923 per month (nine 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*.

### FOR MORE INFORMATION

#### ABOUT KEYSTART:

- [www.keystart.com.au](http://www.keystart.com.au)

<b>Table 2: The physical elements of the property (checklist)</b>				
<b>PROPERTY DETAILS</b>	<b>Property 1</b>	<b>Property 2</b>	<b>Property 3</b>	<b>Property 4</b>
<b>Address of property</b>				
<b>Age of property</b>				
<b>Type of sale?</b>				
Private - Seller's phone number				
Agent - Agent's phone number				
Auction - Auction details				
<b>Price</b>				
<b>Inspection date</b>				

<b>CHECKLIST (MODIFY, AS REQUIRED)</b>	<b>Property 1</b>	<b>Property 2</b>	<b>Property 3</b>	<b>Property 4</b>
<b>Location</b>				
Sun (morning/evening)				
Distance from:				
- public transport				
- work				
- shops				
- schools				
Neighbours' report				
<b>Outside Condition (Visual)</b>				
<b>BUILDING MATERIALS</b> (Note condition):				
- bricks (cracks?)				
- timber (warped/dry/rotting?)				
- gutters/downpipes (rust?)				
- roof (type of material?)				
- retaining walls				
- paintwork (blistered/bubbled?)				
- fencing				
<b>FACILITIES:</b>				
- 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?				
<b>GARDEN:</b>				
- private?				
- size?				
- trees close to house?				
- trees close to house - require pruning?				
- pots (anything underneath?)				
- bore/reticulation (present and working?)				

<b>Table 2: The physical elements of the property (checklist)</b>				
<b>CHECKLIST</b> (MODIFY, AS REQUIRED)	<b>Property 1</b>	<b>Property 2</b>	<b>Property 3</b>	<b>Property 4</b>
<b>Inside Condition (Visual)</b>				
<b>BUILDING MATERIALS:</b>				
- floor (coverings/ is floor level?)				
- walls & ceilings (large cracks?)				
- insulation?				
- interior paintwork (generally)				
<b>VENTILATION IN WET AREAS:</b>				
- mouldy walls				
- lifting tiles				
- peeling paintwork				
- any pools of water?				
<b>FACILITIES:</b>				
- enough power points?				
- toilets (flush ok?)				
- shower (pressure/heat)				
- bench tops (check condition)				
- curtains (usable?)				
- cooling/heating systems				
- general storage areas?				
<b>APPLIANCES/FITTINGS (do they work?):</b>				
- stove/wall oven				
- dishwasher				
- lights				
- taps (dripping/water pressure?)				
- hot water system				
<b>ROOMS:</b>				
- bedrooms (number/size/built in robes?)				
- bathrooms (number/ensuite?)				
- separate dining room?				
- extensions (council approved?)				
<b>ESTIMATE OF RENOVATION COSTS</b>				

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

## 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 35–38 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 above.



## 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 35–38 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.

#### FOR MORE INFORMATION

ABOUT THE PURCHASING CONTRACT:

- see pages 35–39.

ABOUT TENANCY MATTERS:

- call Consumer Protection on 1300 304 054.

ABOUT METROPOLITAN ZONING CERTIFICATES:

- Department of Planning, Lands and Heritage  
[www.dplh.wa.gov.au](http://www.dplh.wa.gov.au)

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.

## Find out about any lease agreements that may exist

# Home-buying tip #4: Obtain a copy of the title from landgate (for a fee), or from the real estate agent

## 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 24);
- who 'owns' the land; and
- some types of restrictions about if and how the land can be used (if applicable).

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.

### FOR MORE INFORMATION

#### ABOUT CERTIFICATES OF TITLE:

- contact Landgate's Tenure Information Services by:
  - [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)

#### ABOUT SALES MAPS:

- contact Landgate by:
  - [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au) (Search for 'sales map').

### 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 must be 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 24 for more details).

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 24-25). 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.

## 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.

Settlement agents must be licensed to operate in Western Australia.

- A settlement agent must provide you with a written quote (costs disclosure) setting out the maximum amount they will be charging for their services, before you sign the appointment to act. The maximum amount must include all fees, commissions, charges and general office disbursements payable for the settlement agent's services.
- Settlement agents must give you an Appointment of Settlement Agent form that you and the settlement agent need to sign. This authorises the agent to act on your behalf.

## 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.

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

### FOR MORE INFORMATION

#### ABOUT REAL ESTATE AGENTS:

- call Consumer Protection on 1300 304 054 to find out whether a real estate agent is licensed or a sales representative is registered; or
- call ASIC on 1300 300 630 or visit the ASIC website: [www.asic.gov.au](http://www.asic.gov.au) to find out whether a real estate agent is licensed to give you financial advice.

- If someone who is involved in buying or selling the property, such as the real estate agent or bank that is lending you the money, suggests that you use a particular settlement agent, they must give you a form for you to sign that explains your rights.

Settlement agents cannot act for both the buyer and the seller unless both the buyer and the seller give permission to do so on the appointment form. You do not have to use a particular settlement agent because someone else has suggested or recommended you to do so.

Lawyers tend to charge similar amounts to those charged by settlement agents, but you should check that this is the case and always ask for a quote for the entire service.

## 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.
- 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.

## 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 practicing 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.

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

## 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 contract for buying real estate

### FOR MORE INFORMATION

#### ABOUT CONVEYANCERS:

- call Consumer Protection on 1300 304 054 to find out whether a settlement agent is licensed;
- Legal Practising Board of WA. To find out whether a lawyer has a current practising certificate in law [www.lpbwa.org.au](http://www.lpbwa.org.au); or
- Law Society of WA. For referrals to lawyers practising in this area. [www.lawsocietywa.asn.au](http://www.lawsocietywa.asn.au)

## 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 17–22 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.

### 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 14) and home-buying tip two (see page 28), 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 31).

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 24) 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.

## Get advice from your settlement agent or lawyer before negotiating a settlement date

### 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.

## Casestudy

### 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.

## 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 Australian Competition & Consumer Commission Infocentre on 1300 302 502 or visit [www.accc.gov.au](http://www.accc.gov.au)

## Before settlement

Before the legal title on 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 29–30 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.

**Think carefully before signing a contract for an established property as there is no requirement for a cooling-off period in WA**

## 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.





## 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 required 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.

## Casestudy

### 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.

# BUILDING A HOME

# 3

## Options for building

There are many different options available to the person who is thinking about building a home. You can choose how much involvement you have in the project, based on your experience and expertise. In this chapter, we look briefly at the general steps and options involved in building a home.

### FOR MORE INFORMATION

#### YOUR BUILDING PROJECT:

- contact Consumer Protection on 1300 304 054 and ask for your free copy of our booklet *Building your new home: a checklist*

# What's involved in building a house?

Building a house can be broken down into the following stages, namely:

- choosing a house design;
- choosing land; and
- choosing a builder.

Beware! The type of land you buy can sometimes limit your options for the design of your house. Also, the type of house design you choose may impact on your choice of builder. You will need to think about all three stages at the same time.

To keep things simple, we'll consider each stage separately.

## Designing a house

You can start considering house designs by:

- browsing the newspaper for house designs and contacting the relevant builder;
- consulting with a building designer; or
- consulting with an architect (who can also check that the technical aspects of the contract are being followed by the builder).

## Existing house designs

House designs in newspapers are generally protected by copyright. Project builders who employ designers generally produce copyrighted house designs. A builder cannot build houses using these designs without the permission of the copyright owner.

If you have seen a design in the newspaper that you like, you can approach the builder who placed the advertisement in the newspaper. The builder's designer can modify the design to accommodate any specific requirements that you may have. These modified designs are also likely to be protected by copyright.

You should keep in mind that there is very little detail provided in the advertisements, so if you like a particular design, you should ask lots of questions and note what is included in the package. Check that these items are in the purchase contract.

Similarly, if you come across a house design you like by visiting a display home, contact the builder who built the display home. Make sure you check that all the features of the display home are included in the building contract.

You should also make sure that you choose a block of land that is compatible with the house design you have selected. Many project builders offer house and land packages (within specified locations), where the house designs available will fit on the blocks you can buy. More information about house and land packages is on page 45.

## A house design that is subject to copyright cannot be built without the permission of the copyright owner

## Creating house designs

If you have an idea for a house design, you can employ a building designer, architect or builder (who offers a design service) to draw the design for you. Before employing an expert, you should discuss both the cost of the design service and who keeps the design copyright. If you want to build again using the created design, you may want to retain copyright. Make sure this is specified in writing.

Again, it is important that you choose a block of land that is compatible with your house design.

### Other information

When considering house designs, you may be interested in considering the benefits of energy efficient housing and energy efficient appliances.

## Buying 'off-the-plan'

One option for building, is to buy 'off-the-plan', which includes buying a project home or an apartment before the plan (or development) has been approved by the local authority and registered at Landgate. In other words, the piece of land does not yet have its own certificate of title.

The term 'buying off-the-plan' as described here does not include buying a block of land without having viewed the property before sale.

When buying 'off-the-plan', you generally view an architect's impression and a floor plan. You will be asked to sign a contract with a developer, such as an *Offer and Acceptance* contract (see page 35–37 for more information) for the property you are buying. You generally pay a deposit, which is held in a trust account and it is necessary to pay the balance of the purchase price once the property is completed and the certificate of title for the property has been issued. For more information refer to the publication *Buying property 'off-the-plan'* on the DMIRS website.

## Pros and cons of buying 'off-the-plan'

The **advantages** of buying 'off-the-plan' may involve:

- getting a place in a popular development; and
- securing a good price if market prices are rising.

The **disadvantages** of buying 'off-the-plan' may include:

- not knowing what the finished product looks like in reality;
- the possibility of the developer not being able to proceed with the development within the time specified in the contract;
- not knowing (and not being able to choose) the builder as the developer chooses the builder (and generally after you have signed the relevant contracts); and
- the possibility that you'll be locked into a price if market prices are falling.

**Note** that home indemnity insurance (discussed on page 47), is not available for multi-unit developments that exceed three storeys in height above ground and/or that have two or more basement levels—usually for car parking.

Another option for building is to buy a block of land and build on the land at a later date. You should be aware that choosing a block of land can affect the cost of building and the design of house that will be possible to build. Making a good choice of block will depend on a number of factors, some of which are discussed below.

## CHECKLIST FOR BUYING 'OFF-THE-PLAN'

When considering buying 'off-the-plan', you are advised to do the following.

	Take a copy of the sale contract to a lawyer to minimise your risks.
	Check for provisions in the contract such as the completion date; whether you are entitled to resell the property before you complete the purchase and whether you have the right to a pre-settlement inspection.
	Visit any other projects that the developer is involved in, to find out if the projects are on schedule and if the quality of the work is good.
	Find out how much of the development has already been sold.
	Get a copy of the plan and get the plans and specifications checked by an independent architect or building consultant.
	Check the plan for car parking, any amenities in the complex like swimming pools, spas and saunas and whether strata levies apply.
	Choose your own licensed valuer to value the property.

### FOR MORE INFORMATION

ABOUT ENERGY EFFICIENT HOUSING:

- [www.wa.gov.au/organisation/energy-policy-wa](http://www.wa.gov.au/organisation/energy-policy-wa)

### FOR MORE INFORMATION

ABOUT BUYING OFF THE PLAN:

- contact Consumer Protection on 1300 304 054 and ask for a copy of the *Buying land or property off-the-plan*.

## The site

When choosing a block, consider:

- the location (including your budget, distance to schools, shops, transport, and other facilities);
- access to services, such as electricity, water, gas, sewer and telephone (and the cost and time it would take to connect to these utilities);
- where the sun rises and sets and climatic conditions; and
- the plans for the area, especially if the block is part of a development.

### Site conditions

Land features (or site conditions) can affect the price of building and the layout or design of the house that will be possible to build. Site conditions will have an impact on the cost of building as it affects the amount of preparation (or site works) required to lay the foundations for the house. Site conditions include:

- the type of soil;
- how the soil is distributed across the block;
- the height of the water table; and
- any trees or rock contained in the soil.

Some of these factors can be assessed before you build. It may be a good idea to employ an expert who can assist you (as accurately as possible) to determine whether the block you are thinking of buying will involve a lot of site works.

For a copy of the Building and Energy's *Site considerations* fact sheet, phone **1300 489 099** or visit [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

## The title

As previously mentioned, each parcel of land available for purchase in Western Australia is recorded on a register held at the Land Titles Office of Landgate.

It is important to obtain a copy of the title (available for a fee from Landgate) to determine whether:

### FOR MORE INFORMATION

#### ABOUT CERTIFICATES OF TITLE:

- contact Landgate's Tenure Information Services:
  - [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)

## Buying land



- the block you are looking at is the same as the block described in the contract to buy;
- there are any restrictions on the title that are likely to affect where you can build your house or other amenities (like a garage or swimming pool);
- there are any restrictions on the title that have the effect of dictating the materials you use, the style and colour of the exterior of your house and/or the timeframe for building; and
- the person who is selling the land is actually the registered owner (or the agent of the registered owner) of the land on the certificate of title.

You should ask the seller of the land or the real estate agent to show you the boundaries of the block and if there is any doubt, a licensed surveyor may be required to clarify the boundaries.

## Requirements of the local authority

It is crucial that you talk with the local authority about:

- any special by-laws, policies or planning aspects in the area or restrictions relating to the land;
- previous recorded use of the land by industry;
- whether there are any restrictions on the title that

have the effect of dictating the materials you use, the style of your house and/or the timeframe for building; or

- any plans for the area that might affect your enjoyment of the property, such as any commercial or industrial activity or road construction, which may involve noise or produce unpleasant smells.

## Ways to select a block of land

When selecting a block of land that will meet your requirements, you might:

- choose a block of land on your own;
- employ a builder to help you select a block of land after discussing your design requirements (see pages 41); or
- select a house and land package through a builder (see page 45).

## Dividing fences

As a rule of thumb, the *Dividing Fences Act 1961* requires that owners of adjoining land pay half the cost of erecting a 'sufficient fence' between their properties.

You should discuss details about any boundary fences to be erected with the owners of adjoining land. The agreed details should be confirmed in writing and signed by all parties.

It should be noted that retaining walls forming part of a dividing fence are regulated by the relevant local authority and are not covered by the *Dividing Fences Act 1961*.

### FOR MORE INFORMATION

#### ABOUT DIVIDING FENCES:

- contact your local government authority for relevant local requirements; or
- visit the Building and Energy website at [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy) for a copy of *Dividing fences—a guide*.

## Site conditions will have an impact on the cost of building

### The contract for buying land

The standard contract for buying real estate and land 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 by REIWA and the Law Society.

Many of the details about the O & A Contract in relation to land and a dwelling apply equally to the purchase of land only. You may wish to refer to pages 35–37 before reading further.

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

#### The terms of the contract

When making an offer to buy land, you will need to consider:

- whether you will be making any deposit toward the land, the total amount you are offering to pay for the land, nominating a settlement date and stating how you will pay for the land;
- inserting any special conditions, or your terms, on the O & A Contract; and
- the terms, or general conditions, contained in the General Conditions booklet.

These general conditions include the amount of any rates and taxes required to be paid by you or the seller in the first year, what happens if either party does not go through with the contract and what happens if settlement is delayed.

A general reminder about the terms of the contract

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 any changes, where agreement is reached.

You will also need to consider the tasks associated with settlement or you may consider employing a conveyancer to do this for you. Read pages 33–34 for further information.

## Choosing a builder

There are broadly two different types of builders to choose from, namely: project builders; and contract builders.

### Project builders

Project builders generally:

- have a number of different houses being constructed at one time;
- have a team of salespeople to negotiate the building deal;
- offer the home buyer access to a design service; and
- offer house and land packages and possibly finance.

#### House and land packages

Many project builders can offer house and land packages, where you can choose from blocks in specified locations and choose between designs that will fit the available blocks.

## Think carefully before signing a contract for land, as there is no requirement for a cooling off period in WA

When buying a house and land package, you are entering into a contract to buy the land and you are also entering a contract to have your selected house built. You may also be entering into a contract for finance arranged by the builder with a lending institution. It is important that you don't sign anything unless you are happy with the total deal. Get legal and/or other relevant advice from independent experts before you sign anything.

### Contract builders

Contract builders generally:

- offer a more personalised service and custom built houses;
- remain personally involved with a project from start to finish; and
- offer a design service.

### Finding a builder

Builders must be registered building service contractors to undertake building work worth \$20,000 or more in most parts of Western Australia.

To check if your builder is registered, call Building and Energy on **1300 489 099** or visit [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

There are many ways that you can find a builder, including:

- asking family and friends for names of builders they have used and could recommend;
- looking through the Yellow Pages and newspapers;
- researching on the Internet; and
- contacting building associations, such as the Master Builders' Association or the Housing Industry Association for the names of members.

## Checking out the builder

The following are the types of questions to ask when considering a particular builder.

1. Is the builder a registered building service contractor?

You can find out if a builder is registered by contacting Building and Energy:  
ph: 1300 489 099 or visit: [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

2. How long has the builder been in business?

Find out how long the builder has been in business and whether he/she has always traded under the same name.

You can obtain (for a fee) an extract about companies from the Australian Securities and Investments Commission (ASIC):  
ph: 1300 300 630 or visit: [www.asic.gov.au](http://www.asic.gov.au)

3. Is the builder registered to carry out all types of building work?

A builder may have conditions placed on their registration. If so, any conditions are shown on the Register of Builders, maintained by the Building and Energy. The register will also contain any disciplinary action that has been taken against the builder for inappropriate conduct under the *Building Services (Registration) Act 2011*.

4. Can the builder obtain home indemnity insurance?

It is compulsory for registered building contractors to take out a home indemnity insurance policy before accepting any payment or obtaining a building licence or permit from the local government. Ensure that your builder provides you with a copy of the insurance certificate.

5. Has the builder been recently 'named' due to the number and/or nature of complaints received by the department?

To find out if a builder has been recently named by the Commissioner for Consumer Protection, or Building and Energy you can ring 1300 304 054.

6. Can you communicate with the builder?

Make sure you can feel comfortable discussing your requirements and any concerns you may have with your builder or builder's representative. Your ongoing relationship with your builder can affect the success or otherwise of the project.

7. What are the terms of the builder's guarantee?

Find out about the terms and conditions of any builder's guarantee that is over and above what is required by law, including the types of defects that the builder will rectify and the length of time of any guarantee.

8. Is the builder affordable?

You can ask builders to provide you with an estimate of how much it will cost to build your house.

### FOR MORE INFORMATION

ABOUT PREPARATION OF PLANS AGREEMENTS: contact Consumer Protection on 1300 304 054 or click here for more information: [www.commerce.wa.gov.au/announcements/building-regulators-top-10-preparation-tips-new-home-constructions](http://www.commerce.wa.gov.au/announcements/building-regulators-top-10-preparation-tips-new-home-constructions)

## Preparation of plans agreements

Once the plans for your house have been drawn up for the block you have bought, you can enter into a contract with your preferred builder to undertake preparatory work only. This agreement is generally not a contract to build—but you should check that this is the case.

The purpose of undertaking preparatory work is to give you a good idea about the basic costs of building your house. **However, it is not a final cost**, as some actual costs may only become apparent once the surveys are completed and engineering details are known. You should discuss this matter with your builder.

The written agreement should also set out the type of preparatory work that will be done for you, for example:

- general inspection of the block to note any special requirements that need to be taken into consideration;
- consideration of the site conditions and the likely costs of preparing the foundation;



- preparation of any special structural engineering details; and
- preparation of detailed drawings and specifications.

The fee for undertaking the preparatory work should be included in the agreement, but there may be provision for this fee to be varied for difficult or unusual sites. The fee for undertaking the preparatory work for a Preparation of plans agreement is normally not refundable. However, **some builders** may agree to deduct the fee you have paid them the deposit, if you later agree to sign a building contract with that builder.

Make sure you read the Preparation of plans agreement carefully and get independent legal advice before you sign.

It should be noted that the Preparation of plans agreement does not generally give you copyright over the plans.

Beware of any forms that commit you to signing a building contract with the builder at a later stage.

It should also be noted that some Preparation of plans agreements allow the builder to make applications for a local authority building licence and for Water Corporation approval. Consider before signing whether you want to incur the expense of such approvals at this stage, or delete this clause and check that these tasks form part of the building contract.

## Home indemnity insurance

Unless your house is part of a multi-unit development exceeding three storeys above ground **and/or** has two or more basement levels—usually for car parking, your builder is required by law to take out home indemnity insurance on your behalf.

The insurance policy should assist to ensure that your house can be finished in the event that your builder:

- dies;
- disappears; or
- has gone out of business because he/she can't pay his/her debts (ie is insolvent).

The insurance policy is required to be in place during construction and until six years from the date of 'practical completion,' that is, when the house can be reasonably used for its intended purpose.

Here are some important points to note about home indemnity insurance.

- The cost of taking out home indemnity insurance should be included in the building contract.
- The builder chooses the insurer from a list of approved insurers and takes out the policy on behalf of the homeowner. A list of approved insurers is available from Consumer Protection.
- Under the minimum level of insurance cover required by law:
  - the maximum payout for loss of building deposit is currently \$20,000; and
  - the maximum payout that can be made to rectify or complete a house under the insurance cover is currently \$100,000 or the value of the contract work (whichever is less).
- Your builder should provide you with a certificate of home indemnity insurance **before** starting any building work or taking any money from you under the building contract (including the deposit).
- It is a good idea to keep the certificate of home indemnity insurance, so that you can give this to the new owner, should you sell the house before the six-year expiry date.
- If you need to make a claim under the home indemnity insurance policy, you may be required to pay an excess.

You should consider taking out home and contents insurance when you take possession of your house in case of damage (unrelated to construction), fire, or theft.

## Check that the preparation of plans agreement is not a building contract

### FOR MORE INFORMATION

#### ABOUT HOME INDEMNITY INSURANCE:

- call Consumer Protection on: 1300 304 054 and ask for a copy of our free fact sheet *Home indemnity insurance*; or
- visit our website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

# The building contract

It is very important to read the building contract thoroughly and get legal advice from your lawyer if you are unsure.

The building contract is a complex document and is generally made up of:

- the building contract, including a Schedule of Particulars, Addenda or Appendix;
- drawings; and
- specifications.

Before you sign a building contract for work valued at between \$7,500 and \$500,000, your builder must give you a copy of a document called *Notice to the Home Owner*. The notice summarises your rights and responsibilities under the *Home Building Contracts Act 1991* when employing a builder. Where applicable, make sure you receive and read this document, as well as the building contract.

**THE LAW IN WESTERN AUSTRALIA DOES NOT REQUIRE THAT BUILDING CONTRACTS CONTAIN A COOLING-OFF PERIOD.** If the contract does not include a cooling off period, you cannot get out of a building contract because you have changed your mind.

## Casestudy

### A costly change of mind

After getting a number of quotes to build a home in Yanchep, Kathy and Chen signed a Preparation of plans agreement with one of the builders who had supplied a quote. The agreement required the builder to carry out a site inspection and survey, soil test, drawings and details of building methods to be used to construct the home.

Kathy and Chen paid \$2,500 for the Preparation of plans agreement. After they paid the money, the couple began to have second thoughts about whether they could afford to build a home. They finally decided to sell their block in Yanchep and buy an established home instead. They told the builder they wanted to cancel the Preparation of plans agreement and asked for their money back.

By the time Kathy and Chen had told the builder they had changed their mind, the builder had completed most of the work. The builder refused to give Kathy and Chen their money back.

The Preparation of plans agreement, that Kathy and Chen signed, authorised the builder to carry out the inspections and to investigate the scope of work to be carried out if they built a home. There was no cooling off period in the contract.

The couple received the information they paid for under the Preparation of plans agreement and the builder retained the full payment.

Kathy and Chen realised that they should only have signed the Preparation of plans agreement when they were certain that they would build.

### Terms of a building contract

Generally, the building contract outlines the general rights and responsibilities of the builder and the homeowner. If you have any queries with any of the terms of the building contract, it is very important to consult a lawyer before you sign it.

It is also important to remember that the salesperson you speak with before signing the contract is generally not the builder, so make sure any promises made by the salesperson are in the contract.

Contracts that allow the costs of the project to be calculated as a 'running tab' are called 'cost-plus' contracts. Such contracts must be titled 'cost-plus contract'. As it is difficult to monitor and control the ongoing costs of a building contract, it is recommended that you think very carefully before entering a cost-plus contract and seek expert advice.

For most building contracts, a figure can be calculated (including certain estimates explained under 'Payment details') for the total cost of the building project. Such contracts are called 'lump sum' contracts.

Regarding the rest of the information in this section, we will assume that you have been given a lump sum contract for the building of your house.

### Payment details

#### FOR MORE INFORMATION

##### ABOUT 'COST-PLUS' CONTRACTS:

- ring the Building and Energy on 1300 489 099 and ask for the fact sheet *The Home Building Contracts Act*.

# Think carefully before signing a building contract, as there is no requirement for a cooling off period in WA

The building contract usually includes a payment schedule. The schedule sets out how much building work must be completed before the next instalment or 'progress payment' is due.

The first payment under the contract is usually a deposit and should be limited to the builder's initial costs. Under the *Home Building Contracts Act 1991*, for building contracts valued between \$7,500 and \$500,000, the builder cannot ask for more than 6.5 per cent of the contract price as a deposit.

Before signing the building contract, you should check that arrangements for the release of progress payments are acceptable to you and your lender. The builder usually submits an invoice before a progress payment is due. Your lender may make the progress payments directly to the builder on your behalf.

Most contracts specify a total amount for the building work. Two areas where the costs are estimated in the contract are:

- the cost of goods that you will select during construction (known as prime costs); and
- the cost of work that cannot be known with certainty (known as provisional sums).

If the actual costs (including the builder's margin) are less than the estimated costs, the builder will pay you the difference. However, if the actual costs (including the builder's margin) are underestimated, you are required to pay the difference to the builder. Your builder must use reasonable care and skill when estimating costs in the contract.

## Payment details and delays

In relation to building contracts, the builder can include a term in the contract that allows for prices to be changed if the builder faces or incurs an increase in costs if:

- government taxes or charges increase after the contract is signed; or
- a State or Federal government law changes and affects the builder's costs; or
- work does not start on the project within 45 days from the signing of the contract (and the delay is not caused by the builder).

## Inspections

Your builder cannot prevent you or your representative from inspecting the building work. However, you should ensure that you do not unreasonably interfere with the building work. In the building contract, the builder may seek your agreement to limit your inspections to normal working hours.

## A date for completion

The building contract should also include the time limit to complete the house and the handover date. You may consider inserting a clause that allows for a penalty to be inserted if the date is not met (or a financial incentive for the early completion of the project). Any such term would need to be accepted by the builder.

## Drawings & Specifications

The drawings are the visual instructions or plans to the builder (and the local authority) about the measurements and features of the property being constructed.

The specifications are the agreed written instructions about the materials and building methods to be used to build the house.

If you have any queries or concerns about this part of the contract, you may consider employing an architect or draftsman to give you some advice.

# Building contract issues

It is recommended that the building contract includes all your final requirements about the building and features of your house. You should check that your building contract covers matters such as:

- the type and size of the hot water system, which satisfies your requirements;
- the type and location of light, gas and TV fittings;

- a provision for site works;
- the method for termite prevention treatment;
- the number and location of power points and taps;
- the extent of tiling;
- the crossover (where the driveway on your land meets the verge); and
- whether any surfaces are to be painted and the quality of paint to be used.

### FOR MORE INFORMATION

#### ABOUT BUILDING A HOUSE:

- call Consumer Protection on 1300 304 054 and ask for a copy of our free booklet *Building your new home: a checklist* and the fact sheet *Termites and your home*.

#### Contract variations

It is sometimes necessary to make changes after the building contract has been signed. In this situation, you can approach the builder to make changes to the contract, but be aware that generally it is costly to do so.

Consider the following when you request changes be made to the building contract<sup>1</sup>.

- Any requests for changes (known as a variation) to the contract must be made in writing to the builder as early as possible to minimise cost and time delays.

If you discuss any changes with the builder over the telephone, confirm what was verbally agreed with the builder in writing and keep a copy of your letter or email for your records.

## Casestudy

### Not the right time

Jonas wanted a new home to be built on a block of land he bought and signed a contract to the value of \$160,000 with a local registered builder, Dave. Jonas chose Dave because he had a good reputation for building quality homes in the area and Jonas could talk easily with him about the project. The local authority (council) approvals were given and work was due to commence on schedule.

Jonas had already chosen the bricks he wanted for the home. There had been a lot of building work going on in Western Australia and Dave thought it was a good idea to order the bricks without delay. Unfortunately, Dave was unable to buy bricks because there was a massive shortage. It was likely that Dave would have to wait two months before he could be assured of supply.

Dave found out that he would have to pay more for the bricks once they were available and would also face increased costs of bricklaying. Dave met with Jonas as soon as possible to explain the situation.

Jonas understood that the delays and price rises were not Dave's fault and he had to think carefully about what to do. Dave explained to Jonas that under WA law, Jonas could terminate the contract, as it was likely that the increase in the contract price would be more than 5 per cent of the original contract.

Jonas and Dave agreed to terminate their existing contract. Jonas decided he would consider the state of the building industry in six months' time and hoped to enter into a new building contract with Dave at this time.

Variations should not be made verbally as they are difficult to prove if there are disputes (and disputes can and do arise).

- As with any contract, changes to any terms, including the cost, must be dated and signed by all the parties to the contract. All variations to contracts between \$7,500 and \$500,000 must be in writing, the terms set out and agreed to by all the parties and you must receive a copy of the signed variation before the work covered by the variation begins.
- If you cannot agree with the builder about the cost of any variation, see the section headed *Disputes* on page 53.

### FOR MORE INFORMATION

#### ABOUT VARYING A BUILDING CONTRACT:

- call the Building and Energy on 1300 489 099 and ask for a copy of the fact sheet *The Home Building Contracts Act* or
- visit: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

#### Getting finance

You should check that the building contract has a condition that allows you to make every reasonable effort to get finance by a specific date, so that if you are unable to get finance the contract will not proceed. However, it is important that you take the time to 'shop around' for a lender **before** you enter a building contract.

<sup>1</sup> For contracts between \$7,500 and \$500,000, the builder can issue a statement of a price rise to the owner where a variation to the contract is required in circumstances that could not be reasonably foreseen by the builder, or where a lawful direction is issued.

There are a number of ways you can organise your finance for building, including:

- arranging finance through the project builder or as part of a house and land package;
- extending an existing loan for land to finance the construction of your house; or
- paying off the block and then applying for a loan for the construction of the house.

There is an important difference between getting a loan to build as opposed to a loan for an established property. When you employ a builder, you agree to pay the builder by instalments (called progress payments) depending on specified building milestones being achieved. Usually, you will only pay interest (the price of borrowing money) on the amount of the progress payments that have been paid to the builder, not the total amount of the loan.

So, until the final progress payment is made, you will generally only pay interest on the amount of money actually paid to the builder.

## FOR MORE INFORMATION

ABOUT THE FIRST HOME OWNER GRANT:

- contact [www.osr.wa.gov.au/FHOGEnquiry](http://www.osr.wa.gov.au/FHOGEnquiry)

### Financial assistance

When building a house that is to be your first home, you may be eligible for the First Home Owner Grant.

## Stages of construction

Below is a simplified overview of the stages of construction to give you a general idea about what to expect when you are building a house through a builder.

### Getting approval

Before starting work, the builder must apply to the relevant local authority for a building licence or permit and obtain Water Corporation approval. The local authority confirms that your plans comply with the relevant building laws including the Building Code of Australia.

Where the *Home Building Contracts Act 1991* applies (for example, where the home building work is between \$7,500 and \$500,000), the builder has 45 working days from the date of the contract within which to obtain approval to build. Both the builder and the homeowner are required to do whatever is reasonable to ensure that this timeframe is met.

### Pre-start meeting

The 'pre-start' meeting involves meeting with the builder so that you can make a number of important decisions about the types and colours of fittings and materials for your house. Your builder may have asked you to select items, such as tiles, from certain suppliers, prior to the pre-start meeting.

If you are thinking about any changes to the contract, make them now. If you make changes during construction, it will be expensive and will delay the completion of your house.

At this meeting, the builder may introduce you to the builder's representative, who you will be able to contact during construction.

### Construction

During construction, it is recommended that you observe the following.

- Do not inconvenience or issue instructions to the tradespeople on site.
- Check that the building is proceeding according to plan.
- Communicate only with the builder or builder's representative and make sure you record the details of any discussions you may have about the construction of your house.
- Keep a diary to record all day-to-day happenings, including any discussions with the builder, weather and the progress of construction.
- Keep copies of any letters and notices that relate to the construction of your house.
- Take photographs of the construction at regular intervals.

If you are unsure about checking that the construction is proceeding to plan, you can employ an independent building consultant or architect to monitor the construction on your behalf.

### Practical completion

Practical completion means that the building work is at a stage where the house can be reasonably capable of being used for its intended purpose.

# Casestudy

## Devil in the details

Bob and Judy were building their first home with a highly recommended project builder. The couple decided that the design of their house would be similar to the design of a display home they had recently inspected.

Before signing a contract with the builder, the couple did a lot of research on the features that they wanted to include in their home. Their research included trips to a number of hardware stores and display centres and discussions with friends and family who had recently built their own homes. Bob's friends were so impressed with his newly acquired knowledge about the building project that they nicknamed him 'Bob the Builder.'

Bob and Judy were familiar with the types and prices of floor, wall and decorative border tiles that they were interested in buying. The couple also did a thorough audit of the number and position of power points they required in their new house. Bob and Judy even discussed their future plans for children and knew exactly what sort of hot water system they needed. Friends rolled their eyes at dinner parties as the big topic of conversation became debating the pros and cons of a concrete or a brick paved driveway.

Once the building contract was presented to the couple, Bob and Judy were able to include all their requirements into the contract. During construction, the builder asked Bob and Judy to choose the spa for their ensuite bathroom. The couple took the plans to a spa specialist and soon realised that the spa they wanted would not fit into the space allowed on the plan.

Judy rang their builder's representative, Anna, to discuss the problem. Anna carefully explained to Judy that varying the contract at this stage would involve significant costs. Anna explained their options and the worst-case scenario was changing the size of other rooms, some of which had already been built and changing the plumbing.

Judy discussed the situation with Bob. The couple decided that they would get the spa they wanted, but the shower recess in the ensuite bathroom would have to be removed. The couple also decided to place a shower rose above the spa to compensate for the shower being removed.

They immediately faxed their request to Anna, who provided them with the builder's cost variation for the couple to sign. Bob and Judy were disappointed that they had overlooked this aspect of the design in their research phase and were also disappointed that the changes were costly, but the couple recognised that the changes were necessary.

When the builder is satisfied that the house is ready for inspection, you will receive a notice of 'practical completion'.

It is recommended that you take care when inspecting the house with the builder to satisfy yourself that the builder has reached the practical completion stage. You should be reasonable, but not rushed into signing your acceptance that the house has been practically completed.

It is important that you do not overlook any major defects. It may be a good idea to employ an independent and reputable building consultant to assist you with this inspection.

Once you have moved in to your house, it may be difficult to prove that a defect was caused by the builder. In addition, once you've moved in, it may be difficult and disruptive for workmen to rectify any problems.

By law the builder is liable to make good, without additional cost, defects in the building work notified in writing within a minimum of four months from practical completion. Check your contract for the exact period of notification of defects.

**BEWARE! Making changes after the building contract has been signed is generally costly**



However, regardless of the value of the building work and where the building work is performed in Western Australia, there is another safeguard in terms of the builder's legal responsibility for faulty and unsatisfactory work. Where any problems occur due to faulty workmanship or materials during six years from practical completion, you should contact the builder to rectify them.

If a dispute occurs about who is responsible to rectify a fault, you can take the matter to the Building and Energy for determination (read on for more information).

### Handover

Usually about five days after the date of practical completion, you should be ready to collect the keys to your house and make final payment. At handover, you should receive a copy of all relevant warranties and certificates arising from the contract. Make sure you have obtained the builder's written authority to take possession of the property.

## Disputes

Sometimes, things can go wrong during building. If you are concerned about any delays, workmanship or other issues:

- raise your concerns with the builder or builder's representative as soon as possible and make a note of the details of any discussions;
- outline your concerns to the builder in writing (keep copies so you have proof) and outline what you would like the builder to do to remedy the situation;
- consider arranging for a lawyer to communicate with the builder on your behalf; and
- take photographs of the work that causes you some concern and obtain expert advice.

If you are unable to resolve the problem with the builder, you can lodge a complaint with Building and Energy. There is a fee involved in lodging a complaint.

When lodging a complaint with the Building and Energy, you should:

- read the *Building Complaint Resolution - a guide for consumers*;
- give notice of the proposed complaint to the builder;
- provide the address of the building work that is the subject of the complaint;
- indicate the problem, any relevant background and what you would like the builder to do to remedy the situation;

## Shop around for a lender before you enter into a building contract

- provide your contact details;
- provide a copy of any letters you sent to the builder (or builder's representative); and
- sign and date the letter of complaint.

Staff from Building and Energy can give you general advice about the procedure involved for lodging a complaint. However, staff cannot give you advice about the merits of your claim.

## Owner-building What is an owner-builder?

If you are not a registered builder and decide to construct or oversee the building of your own house, you can apply for an owner-builder licence.

There are many rules, risks and responsibilities when you decide to construct your own house as an owner-builder, rather than employing a registered builder. One of the major risks as an owner-builder is the possibility that, without the relevant industry contacts and project management skills, your project could run over time and over budget. You should weigh up these risks carefully against any potential savings expected.

The following information is provided as general information only.

Before starting any building work, you may want to discuss your particular circumstances and requirements with a lawyer who is experienced in building matters.

## Getting finance

As an owner-builder, you may find it difficult to obtain a home loan. If you require finance for the project, it is important that you arrange for a loan before the building process has commenced.

You should organise your loan in such a way that cash is available to pay the tradespeople you employ as payments fall due.

# Construction

Owner-builders are required to ensure that the construction meets the necessary building and associated laws, including:

- the standards and conditions imposed by local governments;
- compliance with the legislation governing building control; and
- compliance with laws involving provision of a safe working environment for tradespeople.

Once you have a sketch design of your house (and you should ensure that you have not breached any copyright), it will be necessary to:

- research the building and construction materials you require;
- assess the approximate cost and timing of construction;
- ensure your final plans are drawn up by an architect or drafting service;
- purchase a block of land that is compatible with your plans;
- consider the employment of suitable tradespeople and timing of trades and materials to ensure that your project progresses according to your projected schedule.

You will also need to obtain the necessary approvals from the local authority and the Water Corporation. You cannot apply for an owner-builder licence if you have received an owner-builder licence within the last six years of your current application.

Before applying for a building permit to build on your own land, where the work is valued over \$20,000, an application for owner-builder approval must be obtained from the Building Services Board. The application requires you to demonstrate that you have sufficient knowledge of the duties and responsibilities of an owner-builder.

As an owner-builder, you are not required to take out home indemnity insurance before applying for a building licence. However, you must take out home indemnity insurance if you sell the house within seven years of obtaining the building licence. The home indemnity insurance will protect the new

## FOR MORE INFORMATION

ABOUT BUILDING CONTROL IN WESTERN AUSTRALIA:

- visit the Building and Energy website: [www.wa.gov.au/organisation/energy-policy-wa](http://www.wa.gov.au/organisation/energy-policy-wa)

home owner should you (as the owner-builder) die, disappear or become insolvent.

If you sell the house within seven years of obtaining the building licence, as an owner-builder you are responsible for claims regarding defects from faulty workmanship or materials for the remainder of that period.

Other information

Owner-builders may be interested in considering the benefits of energy efficient housing and energy efficient appliances.

# Choosing tradespeople

When constructing a house for yourself, you will need to select and manage suitable tradespeople.

Some of the ways you may consider choosing tradespeople include:

- getting recommendations from family and friends;
- driving around and chatting to builders working in the area; and
- finding out whether there are any associations of tradespeople and asking the association for recommendations.

You will need to ensure that some tradespeople, such as electricians, painters and plumbers, are appropriately licensed or registered to undertake work in these areas.

## FOR MORE INFORMATION

ABOUT THE LICENSING OF ELECTRICIANS AND GAS FITTERS:

- contact Building and Energy:
  - Address: Level 1, 303 Sevenoaks Street (entrance Grose Ave), Cannington
  - Email: [be.energy@dmirs.wa.gov.au](mailto:be.energy@dmirs.wa.gov.au)
  - Licensing enquiries: call 6251 2000 or email: [energylicensing@dmirs.wa.gov.au](mailto:energylicensing@dmirs.wa.gov.au)
  - Website: [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

## FOR MORE INFORMATION

ABOUT LODGING A COMPLAINT WITH THE BUILDING AND ENERGY:

- call Building and Energy on 1300 489 099 or visit their website [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)



Always specify and ensure that the tradespeople understand the scope of the work you want done and obtain accurate written quotes from a range of tradespeople before employing someone.

Make sure you have all necessary insurances when employing tradespeople, and consider obtaining additional insurance to cover acts such as vandalism, public accidents, theft and damage caused by fire or storms.

### Electricians and gas fitters

In Western Australia, electrical work can only be done by an electrician who has been licensed by the Electrical Licensing Board. Electrical work must be performed in accordance with the appropriate Australian standards.

Similarly, gasfitting work must be carried out in accordance with the Australian standards, by a person with an appropriate gasfitting permit (or Certificate of Competency). The Department grants permits to gas fitters with the necessary skills and technical knowledge. Gasfitting work includes connecting a domestic oven to the gas supply and installing gas bayonets in houses.

### Painters

Anyone contracting for painting or wallpaper hanging work valued in excess of \$1,000 must be registered with the Building and Energy as a painting contractor. The register of painters is available to search on the Building and Energy website.

### Plumbers

In Western Australia, plumbing work for houses can only be done by a plumber who has been licensed by the Plumbers Licensing Board. Licences are granted to carry out water supply, sanitary and/or drainage plumbing work. This work is guaranteed by law for six years. The Board recommends a licensed plumber be used in all cases of plumbing in houses to protect the health and safety of families and the community.

All licensed plumbing contractors and their tradespersons are required by the Board to show customers their licence identification card. The card shows what type of work the plumber is licensed to carry out. For information on employing a licensed

plumber visit Building services and plumbing licensing enquiries. Phone: 1300 489 099  
Email: plumbers@dmirs.wa.gov.au

## Entering into contracts

Trades entering into contracts with owner-builders for home building or associated work valued between \$7,500 and \$500,000 must comply with the *Home Building Contracts Act 1991*. The Act requires that the tradesperson (builder) must give a Notice to the Home Owner setting out the provisions of the Act and cannot demand a deposit greater than 6.5 per cent of the contract value.

Contact the Building Commission for a copy of *The Home Building Contracts Act* fact sheet by calling 1300 489 099 or visit [www.commerce.wa.gov.au/building-commission](http://www.commerce.wa.gov.au/building-commission)

## Disputes

Managing tradespeople is a significant role for many owner-builders. Before deciding to become an owner-builder, you should consider this aspect very carefully. Consider taking a course or employing a consultancy firm that can take you through all aspects of the owner-building process, including the management of disputes<sup>2</sup>.

The Building and Energy provides a dispute resolution service and may be able to assist.

## Financial assistance

First home owner-builders may be eligible for the \$10,000 First Home Owner Grant.

### Home indemnity insurance

If the house is sold within seven years of obtaining a building licence, an owner-builder must take out indemnity insurance from an approved insurer for the remainder of the seven year period. A list of approved insurers is available from Consumer Protection. Owner-builders must also provide the purchaser with a valid certificate of insurance

### FOR MORE INFORMATION

ABOUT HOME INDEMNITY INSURANCE FOR OWNER-BUILDERS:

- turn to page 54, 55 and 56 of this Guide.

### FOR MORE INFORMATION

ABOUT ENERGY EFFICIENT HOUSING:

- [www.wa.gov.au/organisation/energy-policy-wa](http://www.wa.gov.au/organisation/energy-policy-wa)

### FOR MORE INFORMATION

ABOUT THE TAX IMPLICATIONS OF YOUR PARTICULAR BUILDING PROJECT:

- contact a suitably qualified accountant; or
- ring the Australian Taxation Office on 13 28 61 (within Australia).

<sup>2</sup> Owner-builders should also familiarise themselves with the provisions of the *Home Building Contracts Act 1991* and the *Building Services (Registration) Act 2011* and/or seek legal advice.

BEFORE entering into a contract to sell.

If an owner-builder is unable to get the required home indemnity insurance, the property cannot be sold within seven years of obtaining the owner-builder's licence.

Owner-builders who fail to take out indemnity insurance and/or fail to provide the insurance certificate to the purchaser before selling the property within seven years of obtaining a building licence are liable to be prosecuted and may face a fine of up to \$10,000.

## Alternative houses to consider when building

### Kit Homes

You may consider building a 'kit home' on your block of land. Kit homes involve delivery of the frame and other components to your building site for construction. The kits are designed to be built by a registered builder or an owner-builder.

Before placing an order for a kit home, owner-builders should ensure that:

- they are able to obtain finance to build a kit home;
- all relevant land enquiries (as described on pages 43–44) are made; and
- the relevant local authority will permit the construction of a kit home.

Kit homes may drastically reduce the amount of construction time. However, you may be limited in the design of the kit home. Kit homes usually include a set of working drawings for lodgement with the relevant local authority.

These types of houses are popular in the northwest

## There are many rules, risks and responsibilities when you owner-build

of Western Australia and also in the hills area.

### Speculative built homes

One form of 'established' house, which is usually free standing, is the builder's 'spec' (short for speculative built) or 'display' home. Buying a spec home means that the house and fittings are all brand new and likely to be in good condition, although the design is already determined.

If there are any defects with a spec home that have resulted from faulty workmanship or materials during six years from practical completion, you should contact the builder to rectify the problem.

### FOR MORE INFORMATION

#### ABOUT THE REGISTRATION OF PAINTERS:

- contact Building and Energy by:
  - calling 1300 489 099;
  - visiting Level 1, 303 Sevenoaks Street (entrance Grose Ave) Cannington; or
  - visiting the website: [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

### FOR MORE INFORMATION

#### ABOUT APPROVED INSURERS:

- call Consumer Protection on 1300 304 054.



**FOR MORE INFORMATION**

## ABOUT THE LICENSING OF PLUMBERS:

- contact Building services and plumbing licensing enquiries:
  - Phone: 1300 489 099
  - Email: [plumbers@dmirs.wa.gov.au](mailto:plumbers@dmirs.wa.gov.au)
  - Website: [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

**FOR MORE INFORMATION**

## ABOUT THE FIRST HOME OWNER GRANT:

- contact the Department of Finance:
  - [www.wa.gov.au/organisation/departments-of-finance/fhog](http://www.wa.gov.au/organisation/departments-of-finance/fhog)

## Casestudy

**The benefits of using a licensed plumber**

Juanita and Gary decided to personally supervise the building of their two-storey home. They confirmed that the plumber they were thinking of using was properly licensed using the Building and Energy website (above).

When their home was finished, they had hardly unpacked when they noticed that the second floor had an unpleasant smell. It turned out that the smell was due to a vent on the drain for the second storey bathroom being too close to a window.

Juanita and Gary tried to get the plumber to come back and move the vent, but he could not be contacted. Juanita and Gary lodged a complaint with the Building and Energy. After an investigation by a Board inspector, the plumber was directed to move the vent, which was done to the customer's satisfaction.

## Casestudy

**Building a house on solid foundations**

Damien mentioned to his family and friends that he was thinking about building a house as an owner-builder and received lots of encouragement. Damien was sure he could manage the process and he could turn to family and friends for advice and assistance, where necessary.

Damien needed to get a loan and applied to a local building society, which required a cost breakdown. Damien provided the necessary paperwork to the lender.

In order to get a building permit from the local authority, Damien firstly applied to the Building Commission for owner-builder approval.

Without an established network in the building industry, Damien found it very difficult to find tradespeople and to assess the competency of their work. About two thirds of the way through the building work, Damien found that he had underestimated the costs of the project and was running out of money.

Damien wondered whether he should cut his losses and sell the uncompleted house and land. He asked a local real estate agent, Rick, for a market appraisal of his uncompleted house.

Rick explained to Damien that he needed to get home indemnity insurance before the house could be offered for sale and that Damien would be very lucky to find an insurer who would provide cover for an incomplete home.

Rick also provided an estimate about how much Damien could expect to receive if he sold the land only. Damien had many outstanding invoices from tradesmen and he still needed to pay the building society for the money that he had already borrowed.

It was with much sadness that Damien arranged for demolition of the uncompleted house and he then sold the vacant land through Rick.

# SPECIAL FEATURES

# 4

This section:

- looks specifically at housing options for over 55s; and
- provides all homeowners or prospective homebuyers with product information to make home living safer.

# Housing choices for over 55s

There are many housing options for the over 55 age group. At this time in your life, you may be considering a lifestyle change, and/or you may want to find a house that better suits your present and future needs.

Before you think about your housing options, you may consider the following checklist:

- Q.** Can your current house meet your present or expected future lifestyle?
- Is your house and/or garden too big to maintain?
  - Are there too many stairs in your current house?
  - Is it becoming difficult to use facilities in your house, including the bathroom or toilet?
  - Can you comfortably move around your house if you develop or have a disability and need a wheelchair or walking aid?
  - Do you currently have, or require, access to public transport?
  - Can your current house be reasonably modified to better meet your needs and avoid the need to move?
- Q.** Do you want a more mobile lifestyle and need a smaller home 'base'?
- Q.** Do you have sufficient contact with other people in your neighbourhood or community?
- Q.** Would you like access to personal care, nursing care and/or 24-hour call buttons for medical and emergency assistance?
- Q.** Is this a good time for you to consider a big lifestyle change? For example, if you have recently lost a partner, have you given yourself enough time to grieve?

Read on for more information about the types of housing options for over 55s.

## Retirement villages

A retirement village provides accommodation and other amenities and services to a person who is over 55 years of age and his/her partner. Usually, entry into a retirement village involves:

- signing a residential tenancy agreement, or some other lease or licence;

- buying shares in the ownership of the village;
- 'buying' a unit, subject to the administering body having the right or option to repurchase the unit; or
- 'buying' the unit, where there are restrictions about the sale of the unit.

Before entering a village, you will be asked to sign a residence contract and you will be required to pay a one-off or up front payment, which may include the cost of buying the unit (as well as ongoing village operating costs). The entry payment is required to be held in a trust account until you take up residency in the village.<sup>3</sup>

More information about the residence contract is at page 61 of this Guide.

You may also be asked to sign a separate service agreement (or these provisions may be included in the residence contract), which details the types of services you will receive and the amount of ongoing fees.

## Research tip #1:

### FIND OUT WHAT LAWS APPLY TO THE VILLAGE

Various laws in Western Australia govern retirement village living. The laws that usually apply to retirement villages include the *Retirement Villages Act 1992*, relevant regulations and the latest Code of Fair Practice for Retirement Villages (The Retirement Villages Code).

The following tips give you some ideas about what to consider when thinking about moving into a retirement village.

## The laws

Some of the purposes of the above-mentioned laws are outlined below.

- Retirement village representatives are required to provide people with certain information to help them choose between different villages and to help them understand their rights and obligations before entering a village.
- The laws set out rules about the operation of villages, which includes giving residents the opportunity to participate in the future planning and budgeting of the village.
- The laws seek to provide some security of tenure for residents of a village by, among other things, requiring any subsequent owner of the village to honour the existing residence contracts

<sup>3</sup>

Assumes that the village is covered by the Retirement Villages Act 1992.

and limiting the circumstances under which a residence contract can be terminated.

- Villages are required to be involved in a process whereby disputes can be resolved in a relatively informal and inexpensive way.

Don't assume the village you're thinking about entering is automatically covered by the laws, even if the words 'retirement village' appear in its title. You could ask the retirement village you are considering to confirm in writing that it is bound by the requirements of the *Retirement Villages Act 1992*.

Please note that the information provided in this publication in relation to retirement villages assumes the village is covered by the *Retirement Villages Act 1992*.

## Research tip #2:

### FIND OUT ABOUT VARIOUS VILLAGES

As retirement villages vary greatly in the types of accommodation and services provided, it is a good idea to make a list of the features you want in a village, both now and in the future, and how much you can afford to pay.

## Sources of information

There are a number of sources of information about retirement villages in Western Australia, some of which are outlined below.

- The **Retirement Living Council** of the Property Council of Australia is the leadership group designed to spearhead national policy development, advocacy and public affairs for the sector.

The Retirement Living Council has launched an accreditation scheme that provides a professional quality assurance framework for villages. It is geared towards continual improvement and assists operators and villages to be more accountable and responsive to residents. The scheme is not compulsory.

You can contact the Retirement Living Council for information about member villages or about its accreditation scheme by calling **9426 1200** or visit: [www.retirementliving.org.au](http://www.retirementliving.org.au)

- **Aged & Community Services Australia (ACSA)** is the leading peak body supporting church, charitable and community-based Not-for-profit organisations that provide accommodation and care services for older Australians. You can obtain information by calling **9244 8233**.

- The **Western Australian Retirement Villages Residents Association (WARVRA)** is a residents association and can provide information to people thinking about moving into a retirement village. You can contact WARVRA by calling **0448 812 888**.

## Research tip #3:

### CHECK OUT THE VILLAGE LIFESTYLE

It is a good idea to visit a number of different villages before deciding on the village that's right for you.

## Research tip #4:

### MAKE SURE YOU RECEIVE REQUIRED INFORMATION

## Conducting visits

When you make your visits to different villages:

- inspect the unit being offered, including security, outdoor lighting, width of hallways, heating and air-conditioning;
- take a walk around the village grounds and inspect the amenities;
- consider the location of the village and whether it is close to friends, family and transport; and
- ask the existing residents about life in the village and how well the village is managed.

## Information you are required to receive

To help you decide whether to sign a residence contract with a particular retirement village, you must receive (at least ten working days before a residence contract is signed):

- a pre-contractual statement Form 1, that provides accurate information about matters such as the fees and charges payable by you to enter and reside in the village, existing and future amenities and services in the village;
- a copy of the residence rules of the village, which may include limitations on visitors, pets, use of common areas and amenities, parking or gardening;
- a copy of the Retirement Villages Code; and
- a notice that informs you about your rights, including the necessity for residence contracts to

be in writing and that a cooling off period applies (see page 62).

The Retirement Villages Code requires that you also receive (at least ten working days before a residence contract or a service contract is signed):

- financial information about the village, depending on whether the village is operating or under construction;
- information about the costs and process of terminating the provision of services; and
- a copy of the by-laws of the relevant strata company and an authority to inspect any record or document held by the strata company, if the village is strata titled.

## Research tip #5:

### ASK QUESTIONS

Some questions to ask

After you've read the information you are required to receive, here are some questions that you should ensure you know the answers to, before making any decisions about which village is right for you.

- What sort of compensation (if any) will you receive for any additions or improvements you make to your unit?
- What type of transport is available and is nursing and/or medical care close by?
- Is the complex close enough for family and friends to visit?
- Who is responsible to insure the unit/complex and what will happen if the village is damaged or destroyed?
- Who is responsible to pay for repair or refurbishment of the unit?

## The law and fees

You should be aware that the laws about retirement villages do not limit the type or amount of fees and charges. But the laws do require that you receive information before you sign a residence contract about all ongoing village operating costs payable by the residents of a village and the basis for determining any future variation of these costs.

The Retirement Villages Code also requires that the residence contract provides you with information about your rights to a refund of the entry payment if you want to leave the village, including:

- the method or calculation used to determine the refund and when it is to be paid;

- any fees or commissions to be paid by you to the village operator; and
- any other costs or charges that may be deducted from your refund entitlement.

## Research tip #6:

### CONSIDER ALL FEES AND CHARGES

## The residence contract

The residence contract is usually a very lengthy document. However, as the residence contract will affect your future lifestyle and conditions, it is suggested that you read all the terms of the contract thoroughly before you consider signing the agreement.

It is recommended that you get legal advice from a lawyer who is familiar with retirement village law to ensure that your interests are protected. It is also important to check that any verbal agreements or claims made by salespeople are written into the contract. You should also obtain independent advice from a licensed financial planner on the financial consequences and affordability of moving into the village you are considering.

The residence contract should cover things like:

- the basis upon which you are legally entitled to occupy the property (for example, whether you are leasing or buying the premises);
- the length of time you can reside in the village;
- the circumstances where you can be transferred or relocated to other accommodation in the village, such as low or high level care, and the financial arrangements that would apply;
- the types of amenities and services you will receive, and any restrictions on access to, or the use of these amenities and services;
- details about the payment of entry costs and ongoing fees and charges, including the method by which increases in these fees and charges are calculated;
- details of any fees you must pay if you decide to leave the village, including on-going fees if your unit is not immediately resold, re-leased or reoccupied;
- details of any contribution you must make to a village reserve fund to meet the cost of improvements and maintenance to the village, including details of the method of calculating your contribution;

- who is responsible for maintenance and replacement of fixtures and fittings;
- your right to a refund, if any, on termination of the residence contract and how this is calculated; and
- where the village is under construction, plans showing the location, floor plan and facilities allocated to you.

## Changing your mind

If you sign a residence contract, and you change your mind within seven working days of the date of the contract, you can have the contract terminated. This cooling off period does not apply if you have moved into the village before the seven-day period has expired.

If you are not given all the required information (see research tip four on page 60) at least ten days before you sign a residence contract, you get more time to consider if the village is really right for you. In this situation, you would have 17 working days from the time you actually receive the required information to withdraw from the contract.

If you decide to withdraw from the contract within the cooling off period, you must write and tell all other parties to the contract and any other interested parties (such as your bank or real estate agent) that you have withdrawn from the contract.

If the cooling off period has expired and you want to terminate the agreement, you may (among other things) be required to forfeit all or a part of the entry payment. Before you sign a contract, check the residence contract for details about the financial consequences if you change your mind AFTER the cooling off period has expired.

## Units for over 55s

Under the *Strata Titles Act 1985*, some strata titled schemes may be restricted to occupation by retired persons and their partners. A 'retired person' is defined as someone who is 55 years and over or someone retired from full-time employment. Such units may not be subject to the provisions of the *Retirement Villages Act 1992*.

### FOR MORE INFORMATION

#### ABOUT RETIREMENT VILLAGES:

- Call the Seniors Housing Advisory Centre on 1300 367 057 for free independent information on the operation of retirement villages; or
- Visit our website: [www.commerce.wa.gov.au/consumer-protection/about-seniors-housing-advisory-centre](http://www.commerce.wa.gov.au/consumer-protection/about-seniors-housing-advisory-centre)

## Don't assume a village is automatically covered by the law

For further information about purchasing units in such schemes, see pages 24–25 of this Guide.

## Hostels and nursing homes

Hostels generally provide low-level care to residents and more care is available at nursing homes.

Many of these care facilities are regulated by the Federal Government and entry is based on your care needs, as determined by an Aged Care Assessment Team (ACAT). There may be fees involved in entering a hostel or nursing home and there is often a waiting list for places.





## Lifestyle communities

Lifestyle communities generally offer units for sale to people 45 years and over. The *Retirement Villages Act 1992* may not apply to these communities, even though the average age of residents may be over 55.

Use the tips on pages 59–61 to help you determine whether these communities can satisfy your requirements before you sign any contract.

## Other information for over 55s

### Concessions

You may be eligible for various concessions in relation to the costs of maintaining a home from a range of Government departments.

### Services

Commonwealth Respite and Carelink Centres provide an information service to help put older Australians, people with disabilities and those who care for them in touch with a wide range of community, aged and disability services.

## Caravan and park home living

Some people, especially those who are retired, are choosing to sell their houses and live in a caravan or park home in a residential park long term. The decision to live in residential park is often influenced by a desire to travel in retirement, live in natural settings, move into more manageable and/or affordable housing, and live close to amenities such as shopping centres, hospitals and beaches.

The legal rights and responsibilities of park owners and people living in a caravan park for longer than three months are set out in the *Residential Parks (Long-stay Tenants) Act 2006* (the Parks Act).

Under the Parks Act residents can either:

- rent a caravan park or park home and a site; or
- rent a site only to place their own caravan or park home on.

The Parks Act does not apply to those on holiday and employees or agents of the park.

To help you decide whether to move in to a park, prospective tenants must be given several specific disclosure documents before signing an agreement. These documents should help prospective tenants to make an informed decision about whether to enter into an agreement.

Prospective tenants should be aware that park living may not be a permanent living arrangement. While initial agreements may be made for any length of time over three months, your circumstances, or the circumstances of the park operator, may change and either of you may want to end the agreement early. You should also be aware that you may need to move at your own expense and the cost of relocating a caravan or park home is likely to be high.

The *Caravan Parks and Camping Grounds Act 1995* also applies and sets standards that must be met by the park owner and all residents.

### FOR MORE INFORMATION

#### ABOUT HOSTELS AND NURSING HOMES:

- call the Aged and Community Care Information Line on 1800 200 422 or visit its website at: [www.myagedcare.gov.au](http://www.myagedcare.gov.au)

### FOR MORE INFORMATION

#### ABOUT SERVICES AVAILABLE:

- for concessions call the WA Seniors Card Centre on 1800 671 233
- contact the Commonwealth Respite and Carelink Centres on 1800 052 222.

## Beware... make sure the cooling-off period applies



# Casestudy

## Finding a new home...and lifestyle

Myra and Earl were enjoying their retirement, but getting around was not as easy as it used to be for the couple. Earl was recently in hospital for a knee reconstruction and Myra had osteoporosis.

Myra and Earl both loved their place in Spearwood—it had been their home for 45 years. But tasks such as maintaining the big garden and cleaning the house were becoming very difficult. The couple found themselves talking about moving into a retirement village more and more over the years.

As Myra and Earl warmed to the idea of moving, they discussed their plan with family and friends. The couple did a lot of homework about the types of units available and they talked about which units would best suit their needs. They got lots of papers from the various villages to read and consider.

One of their daughters arranged for the trusted family lawyer Lena to look over the various contracts. Lena explained in practical terms the legal differences between the villages. Myra had her heart set on a particular village, until Lena explained that the couple would not own the unit. They would only lease or rent the unit from the administering body.

Myra and Earl didn't rush their decision. After talking to Lena, the couple visited a few villages and had a chat with some of the residents. They found residents from one of the villages they visited really fun and easy to talk with. The village had lots of common areas where the residents could get together and the shops were just down the road. The village also ran a weekly bus service for residents to get a haircut, manicure or attend a larger shopping complex.

Myra and Earl had to be careful about the costs involved. Sadly, when they looked closely at the fees being charged for that village, it was well beyond their means. But they kept visiting other villages.

Finally, they found a village where they could own their easy-care unit, they understood the entry fees they were required to pay and that certain fees applied if they left the village. The ongoing fees were also well within their means. They found the residents were friendly and happy with the way the village was being managed.

Myra and Earl signed the residence contract and after the five day cooling-off period had ended, they began packing with great excitement about their future.

## FOR MORE INFORMATION

ABOUT LONG-STAY TENANCIES IN CARAVAN PARKS:

- call Consumer Protection on 1300 304 054 and ask for a copy of *Park Living*; or
- visit [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

## Safety in the home

When buying or building, it is a good idea to consider simple, yet potentially life saving features that may protect you and your family when living in your home.



## Swimming pools and spas

### Skimmer box protection

Skimmer boxes can often be found at the side of a fibreglass swimming pool or spa and may look like a potty or seat to a small child. If a child sits down on a skimmer box, the immense suction of the pool's filter pump forms an instant seal between a child's bottom and the edge of the skimmer box resulting in horrific, and sometimes fatal, injuries.

In October 1988, the Commissioner for Consumer Protection introduced a Product Safety Order to ensure that all newly installed pools and spas have safe skimmer boxes. However, skimmer boxes installed prior to 1988 may be unsafe.

A few simple checks, explained below, can be made to help ensure a pool or spa is safe.

- Check that your skimmer box has a device (such as an affixing bar, lid or other fitting), which prevents the skimmer box being sat on.
  - If the skimmer box has a safety skirt, make sure it is in place and is not loose or damaged. The safety skirt is a vertical barrier, moulded into the fibreglass that is permanently fixed to the skimmer box.
  - If the skimmer box has a lid, make sure the lid is securely fixed in place and is only removable with the use of a tool.

## Fencing

The Royal Life Saving's Drowning Report 2001 states 'drowning remains the major cause of preventable death in children under five years of age.' Between 1997 and 2001, the report indicates that nine children drowned in this age group in Western Australia. Of the nine deaths that occurred in 2001 in the under five age group, two thirds occurred in home swimming pools.

There are laws in Western Australia about the fencing of swimming pools to prevent, as far as possible, further cases of drowning.

### Fencing Law

For the purpose of fencing laws, a 'swimming pool' is a place or premises for the purpose of swimming, wading or like activities on private property, containing water that is more than 300 millimetres deep. Spas, wading and bathing pools that hold more than 300 millimetres of water are considered to be swimming pools.

Construction of barrier fencing surrounding swimming pools is governed by the Building Regulations 1989 and enforced by local government. The fencing laws generally involve restricting access to swimming pools from either outside the property or from within buildings on the property.

By December 2006, all swimming pools installed before July 1992 must have either:

- all doors and windows to the pool area complying with AS 1926.1; or
- isolation fencing that complies with AS 1926.1.

If you are sold a property that has a swimming pool installed before July 1992 that does not comply with either of the above standards, you will have three months from the date of the transfer of title to comply with the requirements.

Contact the relevant local authority for more information about the fencing requirements in your area.

### FOR MORE INFORMATION

#### ABOUT SKIMMER BOXES:

- call Consumer Protection on 1300 304 054 and ask for the product safety pamphlet, *Skimmer boxes*; or
- visit our website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au); or
- do a word search for 'skimmer boxes' on [www.productsafety.gov.au](http://www.productsafety.gov.au)

## Q&A's

**Q I've just inspected a house with a swimming pool. What sort of things should I consider before I put in an offer to purchase?**

**A** If the swimming pool does not comply with legal fencing requirements, you may incur unexpected costs. You could do the following:

- Include a condition on the Offer and Acceptance that the owner is responsible to provide either:
  - doors and windows to the swimming pool that comply with AS 1926.1; or
  - isolation fencing that complies with AS 1926.
- Ring the relevant local authority for information about the specific requirements for fencing of swimming pools and whether any levies on rates apply to pool owners for inspections to be carried out.

**Q Now that I've bought/built a house, I want to put in a swimming pool. Where can I get information about what is required?**

- A** Ring the relevant local authority for information about the specific requirements for swimming pools, including:
- the requirements for safety barriers, including its height, distance from any nearby climbable objects and specific requirements for gates or fences;
  - the impact of any garage close to the proposed location of the swimming pool;
  - the cost of a building licence; and
  - the amount of any levies on rates for pool owners so that pool inspections can be carried out.

Publications about safety barriers are available from Building and Energy.

### FOR MORE INFORMATION

ABOUT RCDS:

- call Building and Energy on 6251 1900; or
- visit the website:  
[www.commerce.wa.gov.au/building-and-energy/rcd-rules](http://www.commerce.wa.gov.au/building-and-energy/rcd-rules)

When buying or building, consider potentially life saving features to protect you and your family while living in your home

## Residual current devices

A Residual Current Device (RCD) is a special device that is intended to prevent people from receiving serious or fatal electric shocks. The RCD quickly removes electricity from a circuit or appliance when it detects a low level of leakage current to earth.

From August 2009, two RCDs must be fitted to protect all power point and lighting circuits in all homes before the land title is transferred.

All RCDs have a test button which should be pressed every three months. This simulates an earth leakage and indicates whether the RCD is working properly.

The fencing laws generally involve restricting access to swimming pools from either outside the property or from within the buildings on the property

## Curtain and blind cords

Curtain and blind cords can be a real danger to children. Children can get caught in the cords and be strangled. This can happen if cords are too long, if the cords end in a loop or if furniture, such as a cot, bookcase, chair or shelves, is placed too close to the window.

Check all the blinds and curtains in your house and follow these simple tips to permanently remove any hazards.

- Where possible, cut any long cords to get rid of the loop and tie off the ends with a knot or install tassels.
- Replace cords with a curtain or blind wand.
- If the blind needs a continuous cord to operate and cannot be cut, use a tie-down or tension device to pull the cord tight and then secure it to the wall or floor.

### FOR MORE INFORMATION

ABOUT CURTAIN AND BLIND CORDS:

- call Consumer Protection on 1300 304 054 and ask for the product safety pamphlet, *Curtain and blind cords*; or
- visit our website: [www.commerce.wa.gov.au/consumer-protection/blind-and-curtain-cord-safety](http://www.commerce.wa.gov.au/consumer-protection/blind-and-curtain-cord-safety)

## Smoke alarms

The Department of Fire and Emergency Services (DFES) notes that in a fire, toxic smoke, rather than heat and flames, is the most immediate threat to life. As many fires occur at night, when people are asleep, the smoke can 'lull people into a deeper sleep from which they often don't wake.'

From 1 July 1997, the installation of smoke alarms became mandatory for all new residential buildings (or residential building extensions) within Western Australia.

In October 2009 new laws came into effect requiring homes built before 1997 to have mains powered smoke alarms installed when they are sold or rented to new tenants. Mains powered smoke alarms must be installed by a licensed electrical contractor. All rental properties are required to have mains powered smoke alarms installed.

It is the seller's responsibility to have smoke alarms fitted to the property before settlement. The seller should be aware of this requirement, but you should check that alarms are installed prior to settlement.

Tips for choosing and installing smoke alarms

- The number of smoke alarms you need will depend on the size and layout of your home.
- Choose smoke alarms that carry the Australian Standards mark.
- Smoke alarms must be wired into the household electrical mains by a licensed electrician.
- Smoke alarms should be regularly cleaned and tested according to the manufacturer's instructions.
- Approved battery-powered smoke alarms must be fitted where mains powered ones cannot (a common issue in multi-story buildings).
- Both kinds must be replaced at least once every ten years – the year of installation should appear under the cover.

### FOR MORE INFORMATION

ABOUT SMOKE ALARMS:

- visit DFES website at [www.dfes.wa.gov.au](http://www.dfes.wa.gov.au)

### FOR MORE INFORMATION

ABOUT PRODUCT SAFETY:

- call Consumer Protection on 1300 304 054
- visit our website at [www.commerce.wa.gov.au/publications/product-safety-consumerspublications](http://www.commerce.wa.gov.au/publications/product-safety-consumerspublications)

## Bushfire ready

New bushfire planning reforms for development in designated bushfire prone areas has been introduced and the BCA bushfire construction requirements apply to certain classes of residential buildings located in designated bush fire prone areas.

Industry and homeowners and those who wish to upgrade existing homes for better protection from bushfires need to be aware of the regulated construction requirements and building standards. More information can be found on the Department of Commerce website in our bushfire prone areas Frequently asked questions.

# Safety checklist

Consider the following additional safety products. For relevant purchases, check that the products meet Australian safety standards.

	<p>GENERAL LIVING AREAS</p> <ul style="list-style-type: none"> <li>Home and contents insurance</li> <li>Electric socket covers</li> <li>Barriers and lighting over stairways</li> <li>Heater guards</li> <li>Laminated (shatterproof) glass for glass doors (with safety stickers)</li> </ul>
	<p>KITCHEN</p> <ul style="list-style-type: none"> <li>Fire extinguisher or blanket</li> <li>Stove guards (keep pots from tipping)</li> </ul>
	<p>BEDROOMS</p> <ul style="list-style-type: none"> <li>For safety tips on bunk beds, read the <i>Bunk beds</i> brochure in the <i>Safety for kids in the home</i> series</li> <li>Cots comply with the Australian Standard AS 2172 or folding cots comply with the voluntary standard AS/NZS 2195:1999</li> </ul>
	<p>BATHROOMS/TOILET</p> <ul style="list-style-type: none"> <li>For homes built before 1998, have a device installed to control hot water delivery in personal hygiene areas to 50°C</li> <li>For homes built after 1998, make sure the device has not been disconnected or have the device fitted to personal hygiene areas</li> <li>Grab rails</li> <li>Non-slip adhesive stickers and mats for baths and wet areas</li> <li>Shower screens are made from safety glass</li> <li>A lockable cabinet for medicines, cleaning fluids and hazardous objects, including scissors, razors and hair dryers</li> </ul>
	<p>PLAY AREAS</p> <ul style="list-style-type: none"> <li>Safety pads on trampolines in a bright colour to completely cover the springs, hooks and the frame</li> <li>Safe toys made by known brands with no sharp points or parts that could break off and cause choking</li> </ul>

# List of contacts

## COSTS OR ASSISTANCE TO BUILD OR BUY

### Department of Finance, Office of State Revenue

Website: [www.finance.wa.gov.au](http://www.finance.wa.gov.au)

### Department of Planning, Lands and Heritage

Website: [www.dplh.wa.gov.au](http://www.dplh.wa.gov.au)

## BUYING OR BUILDING

### BORROWING MONEY OR PAYING OFF A PROPERTY

#### Consumer Credit Legal Service

[www.cclswa.org.au](http://www.cclswa.org.au)

#### Financial Counsellors Association of WA

[www.financialcounsellors.org](http://www.financialcounsellors.org)

#### Citizens Advice Bureau

[www.cabwa.com.au](http://www.cabwa.com.au)

#### Keystart

[www.keystart.com.au](http://www.keystart.com.au)

#### Australian Securities and Investments Commission

[www.moneysmart.gov.au](http://www.moneysmart.gov.au)

#### Australian Financial Complaints Authority

[www.afca.org.au](http://www.afca.org.au)

## LICENSING OR REGISTRATION BODIES FOR BUYING OR BUILDING

### Consumer Protection

Licensing enquiries for real estate and settlement agents

Level 2 (reception) Gordon Stephenson House  
140 William Street PERTH WA 6000  
Ph: 9282 0839

Website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

### Building Commission

Level 1, 303 Sevenoaks Street (entrance Grose Ave)  
CANNINGTON WA 6107  
Ph: 1300 489 099

Website: [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

### Electrical Licensing Board

Ph: 6251 2000

Fax: 6251 1902

Email: [energylicensing@dmirs.wa.gov.au](mailto:energylicensing@dmirs.wa.gov.au)

Website: [www.commerce.wa.gov.au/building-and-energy](http://www.commerce.wa.gov.au/building-and-energy)

### Plumbers Licensing Board

Level 1, 303 Sevenoaks Street (entrance Grose Ave)  
CANNINGTON WA 6107

Ph: 1300 249 223

Email: [plumbers.admin@dmirs.wa.gov.au](mailto:plumbers.admin@dmirs.wa.gov.au)

Website: [www.commerce.wa.gov.au/building-and-energy/plumbers-0](http://www.commerce.wa.gov.au/building-and-energy/plumbers-0)

### Home Buyers Assistance Account

Assistance with buying an established house through a real estate agent

140 William Street

PERTH WA 6000

Ph: 1300 304 054

Website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

### Product Safety (Consumer Protection)

Ph: 1300 304 054

Website: [www.commerce.wa.gov.au/productsafety](http://www.commerce.wa.gov.au/productsafety)

## INDUSTRY ASSOCIATIONS

### - BUYING A PROPERTY

#### Real Estate Institute of Western Australia (REIWA)

[www.reiwa.com.au](http://www.reiwa.com.au)

#### Law Society of Western Australia

[www.lawsocietywa.asn.au](http://www.lawsocietywa.asn.au)

## BUILDING CONTACTS

### Australian Taxation Office

[www.ato.gov.au](http://www.ato.gov.au)

### State Administrative Tribunal

[www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au)

## BUILDING INDUSTRY ASSOCIATIONS

### Housing Industry Association (HIA)

[www.hia.com.au](http://www.hia.com.au)

### Master Builders Association

[www.mbawa.com](http://www.mbawa.com)

## **HOUSING FOR THE OVER 55 AGE GROUP**

### **Department of Mines, Industry Regulation and Safety**

#### **Seniors Housing Advisory Centre**

140 William Street

PERTH WA 6000

Ph: 1300 367 057

Email: [seniorshousing@dmirs.wa.gov.au](mailto:seniorshousing@dmirs.wa.gov.au)

Website: [www.dmirs.wa.gov.au](http://www.dmirs.wa.gov.au)

### **WA Retirement Village Residents Association**

[www.warvra.org.au](http://www.warvra.org.au)

### **Aged & Community Services WA Incorporated**

[www.acswa.com.au](http://www.acswa.com.au)

### **Seniors Telephone Information Service**

[www.seniorcard.wa.gov.au](http://www.seniorcard.wa.gov.au)

### **Aged and Community Care Information Line**

Information about home and community care

Ph: 1800 200 422

(TTY National Relay Service – ask for 1800 200 422)

### **My aged care - Respite care**

[www.myagedcare.gov.au](http://www.myagedcare.gov.au)

## **PRODUCT SAFETY**

### **Consumer Protection**

Ph: 1300 304 054

Website: [www.commerce.wa.gov.au/productsafety](http://www.commerce.wa.gov.au/productsafety)

### **Kidsafe WA**

[www.kidsafewa.com.au](http://www.kidsafewa.com.au)



Government of Western Australia

## **Department of Mines, Industry Regulation and Safety**

### **Consumer Protection**

**Contact Centre 1300 304 054**  
(for the cost of a local call statewide)

8.30am – 4.30pm Mon, Tue, Wed and Fri

9.00am – 4.30pm Thurs

Gordon Stephenson House

Level 2/140 William Street

Perth Western Australia 6000

Administration: (08) 6251 1400

National Relay Service: 13 36 77

### **Online**

Website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

Email: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

### **Mailing address**

Locked Bag 100

East Perth WA 6892

### **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

South-West (08) 9722 2888



National Relay Service: 13 36 77

Translating and Interpreting Service (TIS) 13 14 50

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