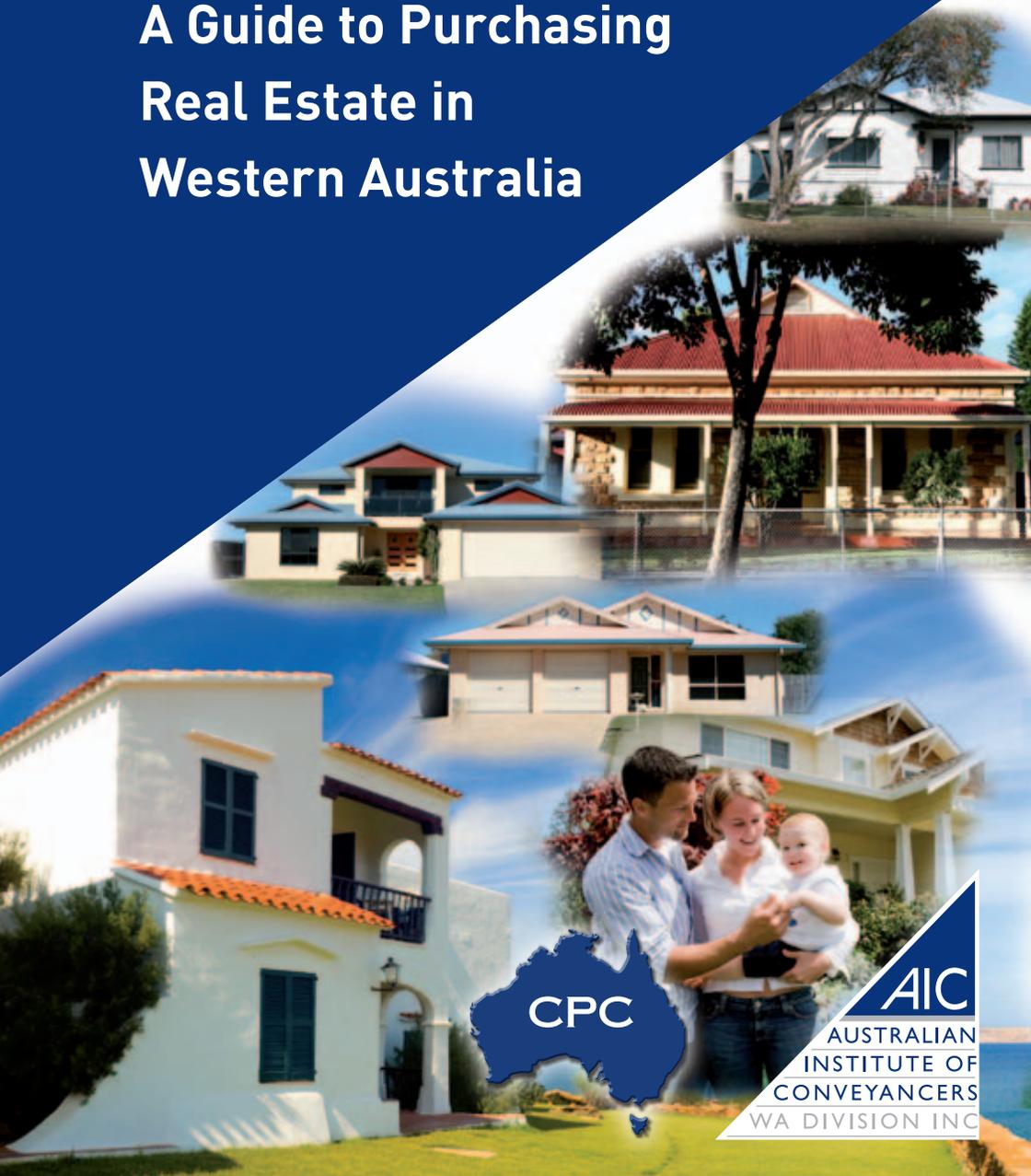


# A Guide to Purchasing Real Estate in Western Australia



**AIC**  
AUSTRALIAN  
INSTITUTE OF  
CONVEYANCERS  
WA DIVISION INC

# The Purpose of this Booklet

**This booklet will be a valuable resource to anyone contemplating the purchase of Real Property in Western Australia.**

The booklet will provide an insight into which of the particular Real Estate professionals will attend to any one part of the process and what government and local authorities

need to be involved and the benefits of that involvement.

It also provides a guide of time frames required for each of the processes and the time required to ensure a seamless and enjoyable settlement process and therefore a trouble free transition to home ownership.

## Disclaimer

This booklet has been prepared by the Australian Institute of Conveyancers WA Division Inc. (AICWA). It is a guide and information source only. Every effort has been made to ensure accuracy and completeness, however, no guarantee is given nor responsibility taken by either the authors or AICWA for any errors or omissions from the booklet. Neither the authors nor AICWA accept any liability for any

loss or damage incurred arising from the use of or reliance upon the information contained in or incorporated by reference in this booklet.

**IMPORTANT:** The information in this booklet is not a suitable substitute for legal or other professional advice. In all matters, users should seek advice from a licensed Settlement Agent.



# Contents

Buying Real Property in Western Australia .....	1	Deposit Guarantees .....	24
Certified Practising Conveyancer.....	2	Title Insurance .....	26
Do Your Research .....	4	What name do I put on my Contract?.....	28
Lets Look Closer at Financing .....	6	Can a Trust Own Land? .....	28
Affordability .....	7	Purchasing as Agent.....	29
Mortgage Insurance .....	8	Land Tenancy - Joint Tenants or Tenants in Common .....	31
Finance Broker .....	9	The Offer and Acceptance .....	32
Banks and other Financial Institutions .....	10	Lets look at Special Conditions .....	33
What is the First Home Owners Grant?.....	11	Clauses on your Contract.....	34
What Concessions are available? ..	12	Title Search.....	35
The Real Estate Agent.....	13	Settlement.....	35
Buyers Agent.....	14	Landgate .....	36
Property Appraisals and the Licensed Valuer.....	14	Checklist of Who to Contact.....	37
Investing in Property for Profit.....	15	Checklist.....	38 - 39
Tips on Buying an Investment Property .....	16	Final Inspection Checklist .....	40
Different Types of Ownership .....	17	Frequently Asked Questions.....	41
Strata Company .....	19	Definitions.....	42 - 50
The Strata Manager .....	21		



# Buying Real Property in Western Australia

**Whether you are a First Home Buyer, a subsequent buyer or a property investor seeking to add another property to your portfolio, the key to the process is a confident attitude, positive outlook and a comfortable approach to the task at hand.**

This Guide is an ideal first step. It provides a useful checklist and explains which particular professional in the Real Estate industry will attend to each integral part of the buying and settlement process. Nominating a Certified Practising Conveyancer to assist with the process is also a key to your success.

It is important to understand the roles of Local Government Authorities, Landgate (formerly the Department of Land or Titles Office), the Office of State Revenue and that of your Financial Institution. It can be reassuring to have an understanding of the different forms of ownership of land such as Green Title and Strata Titles.

This Booklet will provide you with the knowledge you need about other essential services that are available to you. Reputable private institutions and companies providing Title Insurance, Household Insurance, Strata Insurance, Deposit Guarantees, Home Loan Facilities, Timber Pest Reports and Building Inspections can all be recommended by your Certified Practising Conveyancer.

# Certified Practising Conveyancer

## “Make Them Your Best Friend”

**First and foremost you should contact your Certified Practising Conveyancer (CPC), who will be:**

- A Member of the Australian Institute of Conveyancers WA Division Inc. (AICWA)
- Licensed under the Settlement Agents Act 1981
- Have at least 3 years experience as a practising Conveyancer
- Accredited as a Certified Practising Conveyancer by the Australian Institute of Conveyancers WA Division (Inc).

Your CPC is one of the very few property professionals whom you appoint to act solely on your behalf.

This is very reassuring. They can recommend other professionals to you and examine any special conditions contained on your contract or even prepare the entire contract with you.

Your CPC can and only with your knowledge and consent, act for both parties to a contract. They must adhere to strict conditions in these instances and provide full disclosure to you, their client.

On your invitation, your CPC can also recommend other professionals within the Real Estate industry whose services you may require; as well as provide information regarding concessions, building inspections, insurance, deposit guarantees and other services that are available to you.

*Think Property... Think CPC*





# We've done the **digging** for you

How much do you know about that property you want to buy? Can it be subdivided? Is it on a contaminated site? Is it Heritage Listed? Can you clear vegetation? A Landgate **Property Interest Report** will provide you with essential information about a property, allowing you to make an informed decision **before** you buy.

To put the **power** in your hands,  
**order online today.**

[landgate.wa.gov.au](http://landgate.wa.gov.au)



**Landgate**

# Do Your Research

**Before you even look at particular properties have a clear understanding of what is going to be required of you and choose your Certified Practising Conveyancer early in the process so that any issues or queries can be discussed with a professional before you commit to your investment.**

Check the timeline that needs to be met and catered for accurately. Often, too little time is allowed for each part of the settlement process and this can be a costly mistake. Buying property can be a very exciting adventure and it is understandable you may want to take ownership as soon as possible however, be realistic and allow sufficient time to ensure each part of the process is undertaken correctly. This will ensure that the settlement process

is a seamless, cost effective transition and enjoyable experience.

Research your requirements first. This may involve the financial aspect of the purchase, the initial deposit, how much this should be and when should it be paid. Ask yourself - Do I need to borrow funds and how much do I need? When will the funds be available? What needs to be completed to ensure these funds are available on time? What concessions or grants are available and how do I apply for them? How much are the fees and when do they need to be paid?

Your CPC deals with all these questions on a daily basis and is always willing to assist you. They have the expertise to ensure your settlement is an enjoyable and relaxed experience.



**CPC HOT TIP:**

When house hunting ask plenty of questions and be aware if the answers are not provided. Always avoid problems by consulting your Certified Practising Conveyancer to provide a current title search and ensure the real estate agent is a member of the Real Estate Institute of Western Australia (REIWA).



# Houspect Building Inspections

## - Buy, Build and Invest with Confidence

Before spending hard-earned money on purchasing property, it's imperative to have a professional building inspection conducted to ensure the home is in reasonable shape. Pre-purchase inspection reports can help uncover potential problems which may not be immediately obvious, thus saving purchasers from exorbitant hidden expenses in the long term. Building inspections are common practice when purchasing an existing home,



but they can also be important for new constructions, renovation and commercial properties. Inspections may help to facilitate problem solving and building disputes, with the inspector acting as a neutral, unbiased third party.

**Conflict of Interest** – Because professional building inspectors should not provide repairs or service estimates, you can rest assured there will be no conflict of interest when it comes to the accurate reporting of potential issues. Building inspectors should be, by necessity, a thoroughly neutral party whose job is only to find and reveal things which may cause problems in the future.

**Dispelling Common Myths** –First and foremost, a professional building inspection is intended to help potential buyers and homeowners uncover major faults, not to find every minor cosmetic issue. The roof and overall structure will be scrutinised in order to uncover any cause for major concern. The building inspection report should ultimately state whether the property is structurally sound and free of significant or major defects.

**Choosing a Professional Building Inspection Company** – To ensure a smooth and simple process, it's wise to choose a reputable and experienced building inspector. The NSW government suggests choosing a building inspection company that utilises licensed registered builders. Ideally, a licensed registered builder will also be a member of the Master Builders Association or the Housing Industry Association. Also, look for an inspection company who are fully covered with professional indemnity and public liability insurance. They should be able to ensure the report is compliant with the Australian Standard (AS 4349.1) for Building Inspections, as well.

By choosing a reputable and experienced building inspection business, you're guarding the largest and most important investment you'll make.

08 9228 3999

info.wa@houspect.com.au  
www.houspect.com.au



## Lets Look Closer at Financing

**It is recommended that you check your financial abilities early, research how much you can borrow and select your finance provider prior to looking for your new property.**

This aspect of the buying process is quite often not considered prior to making an offer on a property.

Making your offer first, then applying for finance is a sequence of events that puts unnecessary pressure on you and it can often prove to be a costly mistake. Have your Finance Broker or Banker check the concession and grants that you

may be entitled to. This will help you establish what you can afford.

Your CPC can help you understand the commonly used “subject to finance” clause contained on the Offer and Acceptance Contract. It is essential you make yourself aware of the requirements and implications of those conditions.

Your CPC can also assist and provide you with information on any concessions and grants available and can recommend a bank or finance broker depending on your requirements.



Mortgage Loan Agreement

**APPROVED**

# Affordability

**Consider how much you can afford at the time of your purchase and remember that what you plan in the future can affect the amount you can afford during the life of your mortgage.**

Investigate how much you can borrow, what your repayments will be and what percentage of your income those costs will represent. Consider the differences between fixed rates or variable rates or would a combination of both suit your needs.

Researching your finances early and applying for a pre-approval of your loan can prove to be a very positive approach when making an offer to purchase. These enquiries

can help you arrive at what you can comfortably afford before making an offer.

While it is not essential to obtain pre-approval before looking for your dream home or investment property, a pre-approval can make you aware of your limitations pricewise and provides assurance in your ability to purchase. It can also provide the Seller with an incentive to accept your offer with confidence.

Your CPC can assist you with the selection of a professional competent home loan provider if you require and would be more than happy to give you advice as to what concessions or rebates are available.



**CPC HOT TIP:**

Pre-approvals generally have a life of three to six months. A Pre-approval does not guarantee finance approval. It is a tool used to confirm that you meet the lending criteria, prior to making your offer to purchase.

# Mortgage Insurance

**Lenders Mortgage Insurance (LMI) is a commonly used tool to assist with finance to the Home Buyer.**

Lenders Mortgage Insurance is a once-off insurance premium that covers the Lender in the event the Borrower defaults on his or her obligations under the mortgage and which results in the Lender suffering financial loss from the sale of the property held as security.

Lenders Mortgage Insurance has enabled Lenders to make loans in excess of lending ratios that would normally govern home loan lending; that is say 80% of the valuation of the property offered as security.

With the added protection of mortgage insurance the lender is often able to lend in excess of 90% of the valuation of the security, with reasonable rates of interest. LMI can provide the Buyer with an opportunity of owning a home with a relatively small deposit.

The premium for Lenders Mortgage Insurance cover is paid by the borrower and premiums are usually calculated on a sliding scale depending on the loan to valuation ratio. The higher the ratio the higher the premium.



## NOTICE OF FORECLOSURE

### Legal Notice

You are in default under a deed of Trust

This is to inform the following:

... a real estate agent and she has found a buyer for the property with a purchase price of \$... (its current market value). This offer will not be enough to pay off the first and second loans on the property. It is a good offer and the buyer is willing to pay for their... first and second existing lenders on the property to agree to cooperate with my real estate agent. If you speak with my real estate agent, please let them know that you are interested in our business.

**Your Certified Practising Conveyancer is ideally placed to recommend a highly competent finance broker to any prospective property buyer who may be requiring finance.**

Your recommended Finance Broker should be:

- A licensed Finance Broker under the Finance Brokers Control Act 1975
- A member of at least one of the Finance Industry Institutes in Australia
- Be experienced in the provision of finance solutions in your locality

Your chosen finance broker will be able to provide competent and professional advice on all the aspects of loan facilities available to you and advise you of the maximum loan you may service. Their role is to act in your best interest, help you research and determine how much

you can borrow and obtain loan pre-approval, preferably before you begin house hunting.

Your broker is usually paid by the lending institution you choose to obtain your finance through, although some may charge an upfront fee for their professional services.

It is recommended that you consult your Finance Broker prior to looking for your new home. It is easier to match the price of your purchase with the funds available, rather than be disappointed if you cannot obtain the finance required for that "dream home".

Remember there are costs over and above the purchase price so consult with your CPC and check the extra amount required and if any concessions are available.

Your Finance Broker and Certified Practising Conveyancer will work hand in hand throughout the process until settlement is effected.

## Banks and Other Financial Institutions

**Banks, Building Societies, Credit Unions and other financial institutions provide financial assistance and other facilities for potential buyers. They assist with applications for finance to enable buyers to purchase their property. They may also provide financial planning advice.**

The lending officer or relationship manager is employed by the lending institution you are dealing with and should be experienced in property lending. They will offer advice that relates to their own lending institution

and lending criteria. Your chosen lending institution can arrange pre-approval for intending borrowers and it is recommended that pre-approval be sought before you start searching for your property to ensure that you choose the right property that is affordable to you.

You should ensure that you consult with your CPC to assist you in calculating anticipated costs which can be covered in your finance application.



# What is the First Home Owners Grant?

**It is the aim of both the State and Federal Governments to assist Buyers in purchasing or building their first home. Both Governments do this through the First Home Owners Grant (FHOG).**

The amount of the grant varies from time to time due to the economic forces that prevail during any given period.

Essentially, to be eligible for this grant, the Buyer must be:-

- A natural person (not a body corporate);
- Over 18 years of age;
- An Australian Citizen or Permanent Resident at the commencement date of the transaction;
- Occupy the home as their principal place of residence for at least a six month period, commencing within 12 months of settlement or completion of the home;

If you have previously received the grant or owned residential property anywhere in Australia prior to 1 July 2000, or purchased and occupied residential property anywhere in Australia on or after July 2000, then you are ineligible for the grant.

Any type of home purchase qualifies for the grant including houses, units, duplexes, flats or villas.

Your CPC can give you advice regarding eligibility and the application process.



**CPC HOT TIP:**

Every person with an interest in the home (part owner/spouse) must be included in the application for the grant.

## What other Concessions are available?

**At differing times and with ever changing economic environments, there is a varying range of incentives, concessions and grants available to homebuyers.**

These often take the form of grants, duty rebates, incentive payments and the like. Buyers should seek out the availability of any such benefits that they may be entitled to and those that will assist with the purchase of a new home.

Your Certified Practising Conveyancer is very knowledgeable in this area. They can advise you on how to avail yourself of those grants or concessions and importantly how to integrate them into the settlement process.

Remember, your CPC may be the only professional in the purchase process that is actually working solely for your benefit. Even the most helpful Real Estate Agent or Finance Broker works for those who pay their fees i.e. the seller or financier.



The AICWA recommends that you appoint your Conveyancing Professional before you begin to look at real estate or sign a contract; an AICWA member can provide hints and tips to ensure that the process of settlement is as smooth as possible for you.

**AIC**  
AUSTRALIAN  
INSTITUTE OF  
CONVEYANCERS  
WA DIVISION INC

# The Real Estate Agent

**In most cases, when looking to purchase property, there will be a Real Estate Agent or Real Estate Sales Consultant involved. The Sales Consultant works for the Real Estate Agent.**

Remember to check when dealing with a Real Estate Agent that they are:

- Licensed as a Real Estate Agent in WA.
- A member of the Real Estate Institute of WA (REIWA)
- Are well respected in the local area and has a good knowledge of the area in which you wish to purchase.

Remember, the Real Estate Agent is engaged by the Sellers to sell their property and whilst they must have a duty of care to you as a Buyer, they must always act in the best interests of the Seller.

When dealing with a Real Estate Agent ask precise questions and take notes of the information the Agent gives you.

Retain copies of all written material and documents such as advertising material, fact sheets, and inspection details and wherever possible try to obtain information about the property in writing and retain all such written material.

Your CPC may be able to make recommendations as to a reputable Real Estate Agent in your area.



**CPC HOT TIP:**

Should the Real Estate Agent not be able to answer any of your questions at the time of asking, request that they provide this specific information within a reasonable timeframe.

## “Buyers” Agent

**This term applies when a *Buyer* engages a Real Estate Agent to act on their behalf when buying property. In this case the *Buyer* will pay an agreed commission to the Agent for their services and that Agent will act solely in the interests of the *Buyer*.**

In these instances the buyer provides the Real Estate Agent with certain criteria he/she has for the property they wish to purchase. The Buyers’ Agent does all the research and usually narrows the properties down to a few. The Agent will then show the buyer those appropriate properties and if successful will negotiate the

contract with the Sellers Real Estate Agent on the buyers behalf.

The Buyers’ Agent must always act in the best interests of the buyer. This can be reassuring to buyers, particularly interstate or international investors who are not familiar with the real estate market in WA.

If you wish to engage the services of a Buyer’s Agent you should ensure that the Real Estate Agent is a Licensed Real Estate Agent in WA and a member of the Real Estate Institute of WA (REIWA). REIWA is the peak body representing Real Estate Agents in WA.

## Property Appraisals and the Licensed Valuer

**There are occasions when it is prudent for a buyer to appoint a Licensed Valuer to assist them in their determination of the value of a property.**

A property appraisal from a Real Estate Agent may provide a good idea of the value of the property and may prove to be a useful tool during your research process however a more measured formal valuation by a Licensed Valuer may be required for the purpose of assisting with your finance application. A Valuation undertaken by a Licensed Valuer is often the only kind accepted by your financial institution.

In Western Australia the qualified Valuer of your choice should be:

- Licensed under the Land Valuers Licensing Act 1978
- A member of the Property Institute of Australia.
- Experienced and knowledgeable about the suburb or area in which you intend to purchase.

Your Certified Practising Conveyancer can point you in the right direction when seeking the services of a Licensed Practising Valuer, another property professional who, when employed by you, works entirely for you.

# Investing in Property for Profit

**Creating wealth through investments in property is a well established and well used practice by investors of all ages. Often investors purchase income-producing property before purchasing their own owner-occupied residential property.**

Many knowledgeable investors realise positive capital growth and good rent return from investment properties. They use this knowledge and experience to acquire their own “dream home” using the equity in their investments and tax benefits and along the way gaining good relationships with trusted professionals.

With WA’s rental market being influenced by low vacancy rates and rapidly increasing populations, the purchase of an investment property could be very worthwhile for the

younger investor. Often they need a “leg up” to purchase their first home in a more desirable suburb that was initially out of their reach. After a little bit of patience and purchasing the right property they can achieve positive results.

Researching rental values, demand and capital growth potential can improve the chance of success. Once they have achieved their first purchase they can build up equity to purchase a second investment or a more up market property for themselves to occupy.

All potential investors should seek advice from professionals that work exclusively for them and are experts in their field. Professionals such as your Accountant, Financial Planner and your Certified Practising Conveyancer.



**CPC HOT TIP:**

Owning an investment property does not necessarily affect a first home buyer’s ability to apply for the first home owners grant at a later date.

# Tips on Buying an Investment Property

## Consider:

- Suburb reputations, proximity to cities, waterways, transport, schools, shops, cafés and entertainment areas.
- Size of the home, how many bedrooms and bathrooms.
- Tenant suitability, potential rent, family home or an executive residence.
- Location in relation to access for periodical inspections and property management.
- Location to any preferred property manager.

## With an investment property you should also consider:

- Capital growth potential, development prospects, future infrastructure.
- Strong rental demand - the stronger the better.
- Low maintenance costs - means greater net income.
- Resale prospects.
- Tax Implications/ Benefits.
- Capital Gains.



# Different Types Of Ownership

## “Green Title”

The most common form of ownership of property, the term Green Title is given to the traditional block of land which generally has no common areas, is not affected by owners of adjoining property and may include a freestanding dwelling. The term also refers to the sketch on the certificate of title that traditionally used to be shaded green.

## “Strata Title”

A Strata Title is a Certificate of Title for a lot and a share in common property in a scheme. Units, Townhouses, Villas, Duplexes, Triplexes and Quadruplexes are all Strata Titled properties and another common form of land ownership.

Multiple unit development is becoming increasingly popular and is governed by the Strata Titles Act which came into existence in 1966. The Strata Titles Act has seen several major changes since then and is now known as the Strata Titles Act 1985.

The Strata Titles Act makes it possible to subdivide buildings and as such provides for ownership of cubic

space and therefore lots above and below each other.

Any property that forms part of a whole lot sharing common areas with other properties, may be subject to the Strata Titles Act.

This form of home ownership is proving very popular and provides many advantages and varying possibilities that were virtually impossible without the Strata Titles Act, not the least the opportunity for inner city living.

It is, unfortunately not unheard of, for Buyers to purchase Strata Titled property and not be aware of what they are actually purchasing. In most cases, it is very obvious that you are buying a Strata Titled property, for example a multi unit development. But this is not always so. Duplexes and triplexes, particularly those situated on corner lots which front separate streets can sometimes be difficult to recognise as a strata development.

It is now also possible to create Survey-Strata Plans that involve vacant residential lots that can appear very similar to a conventional residential subdivision.



**CHU**

Strata Insurance

# Community living insurance made easy!

**For all your survey strata needs for  
Common Property and Lot Insurance contact  
CHU The Strata Specialists on 08 9466 8600**

**A Strata Company comes into existence or being once a strata plan is registered at Landgate. Regardless of the number of lots comprising the strata plan, a strata company is made up of all the owners of the lots comprising the strata plan (also called a strata scheme). Each owner is a unit holder in the Strata Company.**

The Strata Company's obligations are to manage the common property, (if any exists) for the benefit of all owners, hold meetings as required under the Strata Titles Act 1985 and is also required to enforce any by-laws, carry out the duties and obligations required of them such as maintaining any joint insurance cover of the buildings and common property.

There is a common misconception that smaller strata plans, such as duplexes and triplexes, do not involve or constitute a Strata

Company when in fact every owner of a strata titled property (by virtue of their ownership) is a member or unit holder and therefore forms the Strata Company.

Each registered proprietor enjoys an undivided share in the common property of the Strata Company that is equal to the unit entitlement as indicated on the Strata Plan.

The Strata Company (Owners of the Strata Plan) can appoint an independent company ie ABC Strata Management Services, to undertake the duties and obligations required of the owners of the strata scheme.

Your CPC is experienced and knowledgeable in these areas and is more than willing to answer any queries you have about Strata Titled properties.



Strata Community Australia WA is the leader in the Strata Title Community in Western Australia and is committed to the ongoing support of members by:

- Providing Education & Professional Development
- Promoting professionalism and a Code of Ethics
- Providing clear and relevant information to government, community and members.

This is driven by our core values of honesty, integrity and excellence.

### **What is Strata?**

Strata is a form of property ownership created by blocks of apartments, townhouses and various other forms of development with shared areas and facilities.

It allows individual ownership of part of property which is called a 'lot' which is generally an apartment or townhouse combined with shared ownership of the remainder known as common property. This can include foyers, driveways, gardens and pools.

The legal entity which manages these properties are called the Strata Company in WA and varies in other states, sometimes called Owners Corporation, Body Corporate or Community Association.

### **What does this mean for you?**

When you buy a strata property you also 'own' part of the common property. This means you need to financially contribute to the maintenance and up keep of all common property areas.

Strata living can create great communities, sharing common areas in a more cost effective and sustainable way of living.

### **Strata Community Australia WA**

*Please visit our website for more information*

**[www.wa.stratacommunity.org.au](http://www.wa.stratacommunity.org.au)**

**E: [admin.wa@stratacommunity.org.au](mailto:admin.wa@stratacommunity.org.au)**



# The Strata Manager

**The role of the Strata Manager is essential in the protection and promotion of the interest of the registered proprietors of lots within the strata scheme and indeed the residents of the scheme whether owners or tenants.**

A Strata Company Manager is appointed by the Strata Company (or the Council of Owners) in return for a prescribed and agreed fee. With the acceptance of an authority to act as Strata Manager they accept the responsibility of the day to day running and the essential and timely management of the affairs of the Strata Company. They support the Council of Owners by way of administration of the Strata Company.

The appointment of a proficient and professional Strata Manager

will provide a knowledgeable experienced secretarial, financial and advisory service along with ability to source and contract specialist service providers such as pool cleaners, gardeners and other trades persons that are required to upkeep the complex.

Encourage any Strata Company you may be involved in to appoint a manager whom is a member of and accredited by the Strata Community Australia WA (SCA WA). As such the appointed Strata Manager will provide the added assurance of experience, and will be the holder of a professional indemnity insurance policy and is undergoing continuing professional development provided by the professions peak representative body.





**General Stationery**

**Fees Charts**

**Newsletters**

**Reports**

**Magazines**

**Design & Artwork**

## **Contact**

Please call Jarrod on  
9227 6794 or 0403 044 299.

Alternatively, email [jarrod@fineline.com.au](mailto:jarrod@fineline.com.au)  
to take that first step to making your print  
experience less stressful, simpler and  
more cost effective.

**fineline**  
**Print & Copy Service**

11 Bramall Street East Perth WA 6004 Tel (08) 9227 6794 Fax: (08) 9227 7036 Email: [sales@fineline.com.au](mailto:sales@fineline.com.au)

# Get yourself moving with a Deposit Power Guarantee



## **A Deposit Power Guarantee is the ideal substitute to a cash deposit when buying property.**

A Deposit Power Guarantee:

- Acts as a substitute for the cash deposit between signing contracts and settlement.
- Can be used for all or part of the 10% deposit on residential property.
- Perfect for either private treaty or auction purchases.
- Is ideal when your own funds are tied up or when you can't meet the 10% cash deposit requirement to secure the property.
- Is quick, easy and cost effective to arrange.

Deposit Power has assisted more than 750,000 Australian's purchase property since 1989. To find out more call the Deposit Power Helpline on 1800 678 979 or visit [depositpower.com.au](http://depositpower.com.au)

Guarantor: Deposit Power Guarantee is issued by CBL Insurance Ltd.  
Deposit Power Pty Ltd ABN 49 160 226 442 as Authorised Manager for CBL Insurance Ltd.  
Deposit Power® is a registered Trademark of CBL Insurance Ltd



# Deposit Guarantees

**Having cash available to pay a standard 10% deposit on a property can be a common issue for property investors, first home buyers and for people buying and selling simultaneously. What is not commonly known, however, is how many homebuyers can find a way around this situation.**

A Deposit Guarantees (also commonly known as Deposit Bonds) is a substitute for a cash deposit when purchasing residential property. For a buyer, the key benefit of using a Deposit Guarantees is that they won't need to pay the cash deposit on a property until settlement occurs.

If a buyer defaults on the contract, the seller can call upon the Deposit Guarantees issuer to pay the deposit amount, no differently to that of any cash deposit.

Deposit Guarantees can be used by investors, first home buyers, people upgrading or downgrading their homes and for extended settlement contracts (i.e. off the plan or vacant land purchases). Deposit Guarantees can be particularly useful for people buying and selling simultaneously — providing a quick, easy to arrange

solution while their cash is tied up in their existing property.

When considering using a Deposit Guarantee, buyers should ensure that the issuer is a reputable company and has the financial ability to honour its obligations under the guarantee.

Deposit Guarantees can usually be approved within 24 hours, which might also speed up the sale process. Depending on their individual circumstances, buyers sometimes find it quicker or more cost effective to provide a Deposit Guarantee rather than cash as a deposit, making the process of buying a home or investment property a little easier.

*Deposit Power is Australia's leading provider of Deposit Guarantees, having established the deposit guarantee market in Australia in 1989. To date Deposit Power has helped over 750,000 people to purchase property.*





When purchasing a home,  
your title or ownership is not guaranteed absolutely...

- fraud or forgery
- outstanding rates and taxes on the property
- forced removal or relocation of an encroaching structure
- structures built by previous owner without the required Council permits or which do not comply with those permits
- someone claiming ownership of a part or all of the land

...are all unknown or undetected risks that could exist prior to the date of your settlement and cause you significant financial losses. Get peace of mind with title insurance – a unique insurance that helps protect you against such losses, including legal defence costs and expenses.

For a **small one-time fee**, the policy helps cover risks that even the most diligent professional cannot protect against. The combination of title insurance with your conveyancer's advice, provides the most comprehensive cover available to protect your legal ownership.

Visit the claims section of [www.stewartau.com](http://www.stewartau.com) to read how title insurance resolved some real-life title issues and saved owners thousands of dollars or contact your local Business Development Manager today on 1800 300 440.



*Your risk management partner in property transactions*

1800 300 440 [www.stewartau.com](http://www.stewartau.com)

# Title Insurance

**Title insurance is a specialised type of insurance which provides protection to home buyers and existing owners of residential property (including strata properties and vacant land) against certain hidden and unknown risks which may exist at the time of purchase.**

Such risks include:

- demolition or upgrading orders issued by Council in relation to structures illegally built on the property by a previous owner or in relation to illegal alterations to your strata unit for which you are now liable to comply with
- Any adverse matters that would have been revealed in an up to date survey report
- Forced removal of a structure illegally built by a previous owner over an adjoining boundary (excluding boundary walls and boundary fences)
- Non-compliance with zoning and planning laws and conditions
- Non-compliance with easements and covenants which burden your land
- Non-compliance with By-Laws or other obligations which are registered on your title
- Complete loss of legal ownership due to a fraudulent sale or mortgage of your property

Title insurance does not replace the role of a professional conveyancer. In most cases, these kinds of issues are not disclosed by a seller or strata manager and records kept by public authorities can be incomplete or out of date. The combination of title insurance with a conveyancer's professional advice will provide the most comprehensive protection against risks which may affect your legal ownership of your house, strata unit or vacant block.

Unlike other types of insurance, premiums for title insurance are paid once only when your settlement is completed. Once your premium is paid, you are protected against risks covered by the title insurance policy forever. The amount covered by the title insurance policy is the purchase price of the property with a 200% inflation allowance for increases in the value of the property over time.

Stewart Title Limited is a title insurance company with an office in Western Australia. For more information about title insurance visit [www.stewartau.com](http://www.stewartau.com)

The logo for Stewart Title Limited features the word "stewart" in a large, lowercase, sans-serif font. To the right of "stewart" is a registered trademark symbol (®). Below "stewart" is the phrase "title limited" in a smaller, lowercase, sans-serif font. A thin grey line starts from the left edge of the page, extends horizontally, then turns vertically down to the left edge of the word "title", and finally turns horizontally to the right, ending with an arrowhead pointing towards the word "title".

**E**ven in the simplest property transaction, problems and disputes can arise. At **MGB Legal**, we understand the issues and are able to provide advice and assistance to help you resolve the matters quickly and practically.

**MGB Legal** is a Perth based law firm with many years of experience in providing services in relation to a number of areas of law including property disputes and issues arising in relation to settlement matters together with commercial based litigation and criminal law.

Feel free to contact us for practical and cost effective solutions to your legal problems.

**Property Law:** Conveyancing issues and disputes; property development such as subdivisions, strata titling, off the plan sales contracts or planning and development issues.

We can even assist you with your leasing requirements.

**Commercial and Corporate Law:** Contract advice and/or preparation; corporate governance, compliance and advice; matters in relation to associations, franchising or trusts including the preparation of trust deeds and general commercial law advice.

**Wills and Estates:** Drafting of Wills and Estate Plans and Enduring Powers of Attorney; advice on validity of Wills and Inheritance Act and other claims; Probate and administration applications.

**Litigation:** Civil litigation; State Administrative Tribunal applications.

**Criminal Law:** Court representation in the Magistrates Court, District Court or Supreme Court; Extraordinary Driver's Licences; driving offences; serious drug and violence offences.



**We look forward to assisting with your legal issues**

**CONTACT US**

Level 1  
32 Edward Street  
PERTH WA 6000

Tel : +61 8 6104 0555  
Fax: +61 8 6104 0599  
[www.mgblegal.com.au](http://www.mgblegal.com.au)

## What name do I put on my Contract?

**It is important to know prior to completing an Offer and Acceptance Contract, the name in which you intend to purchase property.**

Being unsure or even making an innocent error can prove to be a costly mistake as any changes made to the name of the buyer can incur additional Transfer Duty (Stamp Duty).

If you intend to purchase on behalf of a trust, family trust, superannuation fund or even in the name of you and your spouse, you should seek advice from your Accountant as to which entity is best for you.

Your CPC can give you expert advice on the options available to you in the event an offer has already been signed and accepted. Certain changes to buyers names may be allowed under the substituted purchaser provisions however there are certain limitations and specific conditions that must be adhered to.

It is essential that you consult your CPC for guidance in this area. They can assist you with your queries and advise you as to whether or not you need advice from your Accountant or whether a substituted purchaser arrangement is right for you.

## Can a Trust Own Land?

**Only natural persons or a body corporate (Company) can be shown as registered proprietors on a Certificate of Title, however other entities such as Trusts, Superannuation Funds, Family Trusts and Discretionary Trusts can purchase land by way of a Trustee arrangement.**

It is a complex arrangement and as such should be considered with care and only after seeking expert advice from the professionals like your Accountant.

Predominately natural persons make up the bulk of the registered proprietors in Western Australia.

A Body Corporate can and very often do hold land in their own right and often holds land as trustees for the beneficiaries of trusts such as superannuation trusts, family trusts and discretionary trusts.

Your Certified Practising Conveyancer can in conjunction with your Accountant ensure the correct identity is described on the Offer and Acceptance Contract making certain registration is completed in the most beneficial way avoiding any innocent but potentially costly errors.

## Purchasing as “Agent” (on behalf of a third person)

**It is possible to enter into a contract to purchase property without having to personally execute the sales contract. This is not an unusual occurrence if, for example, one partner who wishes to hold an undivided share is not available at the time of completing an offer to purchase.**

It is imperative that you contact your Certified Practising Conveyancer for guidance if contemplating purchase of property in these circumstances to

ensure the Offer and Acceptance Contract is worded correctly and to avoid the possibility of incurring double Transfer (Stamp) Duty.

Certain things must be in place before you purchase property on behalf of a third person and without the right advice the implications of doing so could be quite serious.

Your CPC is an expert in these areas and will be more than willing to guide you through the process.



**CPC HOT TIP:**

Although the ultimate Buyer/s do not necessarily have to sign the Offer and Acceptance Contract, they will be required to execute all subsequent documents including the Transfer of Land document and all other essential paperwork prepared by your Certified Practising Conveyancer.



# MURFETT LEGAL

PROFESSIONALISM. UNDERSTANDING. RESULTS.

## Seek professional, friendly legal advice so you can make an informed decision

- Business / Commercial Law
- Business Structures
- Business Succession
- Business Turnaround
- Contract Advice
- Debt Collection
- Employment Law
- Estate Planning
- Franchising
- Hospitality Law
- Insolvency
- Intellectual Property
- Leasing
- Liquor Licensing
- Litigation
- Property Law Advice
- Restructuring
- Settlements
- Sports and Entertainment Law
- Strategy and Negotiation
- Superannuation
- Taxation
- Trusts
- Wills

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

**Whilst the actual wording “Joint Tenants” or “Tenants in Common” may seem a little insignificant, the Tenancy of the proprietors is in fact of great importance and needs proper consideration as it will affect how the land will be held, and subsequently distributed in the event of the death of a co-proprietor.**

Two or more persons can own land in differing tenancies or shares in a property and that interest or share will be evidenced on the Certificate of Title as Joint Tenants, Tenants in Common or a combination of both.

- JOINT TENANTS refers to the proprietorship of land by two or more persons in equal undivided shares. Each proprietor has the same interest and holds the land jointly. Importantly Joint Tenancy provides for “survivorship” which ensures that on the death of one joint tenant that tenants share or interest passes equally to the remaining tenant or joint tenants regardless of the deceased proprietors last will and testament.

- With TENANTS IN COMMON, the proprietorship is still in undivided shares but each proprietors’ share does not need to be equal, ie 70/30, 60/40. Each share or part share can be disposed of separately to the other shares and on the death of a tenant in common, that tenants share in the property is not transferred by survivorship but distributed in accordance with the deceased proprietors last will and testament.

It is vitally important that when entering into a contract to purchase land that the buyer fully understands how they wish to purchase the land in relation to other parties to the transaction. An error with the description of share holding may prove costly to rectify.

Discuss this matter with your Certified Practising Conveyancer who will listen to your requirements and ensure all processes are correctly adhered to.

# The Offer and Acceptance

**A “Contract for Sale of Land by Offer and Acceptance” is the form most commonly used for the sale and purchase of real property in Western Australia.**

The Offer and Acceptance comes in two parts:

- 1) The Offer and Acceptance form that requires the buyer to complete with the details of the buyer’s offer and contains any special conditions required by the buyer and provides for the seller’s acceptance of the offer. It also includes the legal description of land.
- 2) The “Joint Form of General Conditions for the Sale of Land” which describes the conditions that apply to the contract as they are exactly written except as these conditions are excluded, varied or amended by the special conditions contained on the Offer and Acceptance Contract.

The contract provides for special conditions particular to an offer; these can include a finance clause, the requirement for a building inspection or pest inspection report or any other special requirement particular to your unique purchase; for example, a chattel to be included in the purchase should be noted on the Contract as to remain with the property at settlement. The contract will also detail the purchase price, the amount of deposit and settlement date as well as providing for the acceptance of the offer by the seller.

This is a legally binding contract and unlike other States has no “cooling off” period. It is therefore strongly recommended that you become very familiar with the content of the offer before you sign it.

Your Certified Practising Conveyancer can be of enormous assistance at this time. Remember that whilst the Real Estate Agent has a duty of care to you, he/she works for the seller.

# Lets Look at Special Conditions

**Every property is different, every seller has different standards and every buyer has different expectations. Therefore when a special condition to ensure the carrying out of any special requirements is required it must be prepared correctly.**

This applies to conditions including, but not limited to:

- Structural Integrity/Building Inspections.
- Pest Inspection Reports.
- Subject to sale clauses and 48 hours clauses.
- Electrical inspections.
- Swimming pool compliance.
- Home Owner Indemnity Insurance.
- Good working order clauses.
- Repairs in a workmanlike manner.
- First home owners grants.

These conditions, to name but a few, require due care and diligence when being constructed and should include:

- What has to be done?
- Who is going to do it?
- Who is going to pay for it?
- When is it going to be completed?
- What happens if its not completed?
- What happens if defects are detected?
- Who is going to rectify and pay for rectification?
- What brings the Contract to an end?
- How are all these occurrences communicated?

Remember that whilst the Real Estate Agent will give you some guidance he/she acts for the seller so consult your CPC for assistance with special conditions and requirements.

# Clauses on your Contract

**Every property is different, yet often the same standards specific conditions are applied to every Contract.**

Consider what special clauses apply to your own individual requirements, and consult your Certified Practising Conveyancer for assistance in drafting these clauses.

These clauses are valuable when determining whether a property is as you expect it to be and will differ with every transaction. For example, if you are purchasing a property with a pool you may want an inspection carried out by a qualified pool inspector, or, if you are purchasing the property for redevelopment of the land you will want to ensure the local council will allow you to do so. These examples require special conditions to be provided for on the Contract to allow you to undertake these investigations.

Your CPC can also recommend other important clauses that should be considered such as inspections on the structural integrity of the building, pest inspections, electrical, strata records. They can also provide guidance as to what checks you may require depending on the age, condition, type of construction, locality and any other requirements that may be particular to the property.

It is important to remember that sufficient time should be allowed to obtain reports or carry out inspections AND furthermore, sufficient time allowed to consider the content of such reports or inspections.

Ensure you have a professional on your side during the whole of this important process. Contact your CPC to discuss these matters prior to making any offer to purchase.



# Title Search

**A Certificate of Title is a record of all current information relevant to a parcel of land and includes current ownership details, legal description of the land and any registered notifications, interests or encumbrances.**

Carrying out a Title search is essential in making a decision to purchase a property to ascertain whether there is anything that could restrict your right or enjoyment of the

property; for example, ownership rights, any registered easements or title restrictions that may affect the property, their merits and or disadvantages.

Prior to making any offer, you should ensure a copy of the Certificate of Title is provided to check the details, or contact your Certified Practising Conveyancer to arrange for a current and up to date search to be carried out.

# Settlement

**Actual settlement of the property is the final stage of the buying process. This is when your Certified Practising Conveyancer brings all the components of the whole purchase process together after all the checks and balances have been dealt with, and after keeping you fully aware and informed.**

Having already assisted your lending institution being ready and available for settlement with the required funds and having undertaken the necessary adjustment of rates and taxes your CPC will then attend actual settlement on your behalf.

The final process takes place on the settlement date nominated on the Contract (any expected delays should be discussed with your CPC) at which time they will ensure any existing mortgages or registered debts to the Seller are repaid and the property can be transferred debt free.

Your CPC will ensure all other parties to the transaction are present at settlement with the required documentation and duplicate Certificate of Title and will only effect settlement when he/she is totally confident that all documentation is in order and ready for registration at Landgate (Department of Land).

**The registration of land titles to freehold land in Western Australia is governed by the Transfer of Land Act 1893 as amended. The Transfer of Land Act provides a public register of land titles and is maintained by the Registrar of Titles.**

Any person with the status of registered proprietor obtains by certification of that interest, indefeasibility of title. The public registry required by the Transfer of Land Act is administered by Landgate.

The aim of your certified practising conveyancer when acting on your behalf is to secure the change of status to a certificate of title.

This change or alteration to the register is achieved by using a statutory system of documentation approved by the Registrar of Titles

and prepared to the standard required by the Transfer of Land Act.

Legal interests in land do not transfer by the act of the parties simply signing an instrument or a contract. The actual change to the register is only achieved by the official act of registration of the property and stamped instrument prepared by your certified practising conveyancer. That instrument or dealing is entered on the relative certificate of title.

As the State Authority on land and property information, Landgate offers a wide range of products and services. Whether you are seeking information on a property as a professional or private customer, you are sure to find it at Landgate – [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)

# Landgate.

Visit us  
today



The state authority for land and property information.  
Go to [landgate.wa.gov.au](http://landgate.wa.gov.au) or call 9273 7341.

# Checklist of Who to Contact

## Medical

- Doctor
- Dentist
- Optometrist
- Chiropractor
- Medicare
- Specialist
- Chemist
- Vet

## Insurance Companies

- Home Contents and Building
- Car Insurance
- Boat Insurance
- Health Insurance
- Life Insurance

## Miscellaneous

- Schools
- Library
- University
- TAFE
- Electoral Office
- Magazine Subscriptions
- Newsagent - Paper Deliveries
- Rentals - TV, Fridges, etc
- Accountant
- Taxation Department
- Employer
- Friends and Relatives

## Services

- Gas
- Electricity
- Telephone
- Mobile Phone
- Pay TV
- Internet Provider
- Australia Post -  
(Mail Redirection)

## Licensing

- Drivers License
- Car Registration
- Boat License
- Trailer License
- Fishing Licenses

## Banks

- Credit Cards
- Store Cards
- Your Bank

## Other (personal list here)

- 
- 
-

# Checklist

## The Moving House Check-list

The first step to take when planning a move is to compile a thorough checklist of all the things you have to do and think about as you get closer to the final date. This is an important means through which to keep a sense of perspective on the tasks that lie ahead and prioritise so that it's a well-organised and efficient process.

### Major Tasks:

- Find a Removalist.
- Disconnect and Reconnect. Phone, Gas and Electricity.
- Change of Address Notification Service.
- Organise Cleaners, Storage, Ute, Truck or Trailer Hire, Furniture Hire and Rubbish Removal.

## Checklist, Timeline and Reminders:

### 4 Weeks To Go...

- Organise your removalist booking.
- Ring to arrange disconnection and reconnection of phone, gas, electricity, internet and pay tv.
- Organise a Garage Sale weekend and put items for the sale in one room.
- Backup your computer hard drive, ensure that computer, printer, scanner etc can be packed securely for travel.
- Formally notify your Landlord (if renting) of the date you're vacating the premises and arrange for a property inspection to finalise the tenancy and bond.
- Arrange carpet cleaners.

# Checklist

## 3 Weeks To Go...

- Begin packing items that are rarely used. Source packing boxes, tape, newspaper and bubble wrap.
- Disassemble built-in fixtures and fittings, outdoor items such as swings, and furniture ready for transport.
- Pack the shed contents.

## 2 Weeks To Go...

- Return DVDs and library books.
- Hold your Garage Sale.

## Final Week before the Move

- Sort out keys ready for the Agent.
- Final inspection of new house.
- Clean out the fridge and freezer leaving only basics.

## Moving Day

- Before the removalist has left check all cupboards are empty.
- Clean cupboards (if required).
- Remember to put the garage door controller with the keys.
- Put any rubbish in the bin with a note to the new owner/tenant of the next bin collection date.
- Leave the home as you would expect to find it.

# Final Inspection Checklist

## Electrical/Gas

- Check all lights work both internal and external
- Check switches
- Check powerpoints
- Check appliances
  - Dishwasher
  - Hot plates
  - Oven/grill
  - Exhaust fans
  - Heaters/air conditioners
  - Reticulation controller
- Check hot water system
- Gas - check pilot light work
- Solar - check booster
- Electric - check water hot
- Check pool pumps and solar heating pump
- Check two RCD switches installed
- Check hard wire smoke alarms
- If there is a bore check pump is working

## Plumbing

- Check toilets flush
- Check drains are unclogged
- Turn on taps check for leaks and pressure
- Make sure hot water is hot
- Check reticulation sprinklers
- Check pool pumps not leaking

## Other

- Door locks
- Keys to doors, windows & sheds
- Remote control for garage
- Security system
- Instruction manuals for any appliances
- Warranty details



# Frequently Asked Questions

**Q: When should I select my Certified Practising Conveyancer?**

A: As early as possible, ideally before you start looking for a property and essentially before you sign any offer to purchase.

**Q: Should I obtain a Title Search before I sign any offer to purchase?**

A: Yes, most certainly, you need to know what restrictions, if any, are registered against the title of any property you may consider buying and how this may affect you.

**Q: Are there additional costs above the purchase price?**

A: Yes, the most significant being Transfer (Stamp) Duty payable on the Contract, your share of rates and taxes, registration fees, search fees, settlement fee and disbursements.

**Q: Who pays the finance broker?**

A: Generally the lending institution pays the finance broker to sell their loan to you although some may charge an upfront fee for their professional advice and/or services.

**Q: Is a pre-approved loan beneficial?**

A: Yes, a pre-approval provides the seller with added comfort, though your offer should still should be subject to finance as pre-approval does not constitute formal approval of finance.

**Q: Who does the Real Estate Agent work for?**

A: The Real Estate Agent has a duty of care to the Buyer however is appointed by and for the seller and as such works in the seller's best interests.

## Definitions

**“AICWA”** means the Australian Institute of Conveyancers WA Division Inc.

**“AD VALOREM”** is a **tax, duty, or fee** which varies based on the **value** of the **products, services, or property** on which it is levied.

**“AGENT”** means the agent in a relationship between two or more persons whereby one (the Agent) is authorised to act on behalf of the other (the Principal).

**“BANK CHEQUE”** means a cheque drawn by a financial institution on itself.

**“BREAK COSTS”** means cost incurred by the borrower when a fixed rate loan is paid out before the expiration of the agreed fixed rate term.

**“BUSINESS DAY”** means any day except a Saturday or Sunday or public holiday in Western Australia.

**“CAPITAL GAIN”** means the monetary gain obtained when a property is sold for more than it was purchased.

**“CAPITALISATION RATE”** Capitalisation Rate is the net operating income expressed as a percentage of the capital cost (original price or current market value) of an asset, such as investment property.

**“CAVEAT”** A registered encumbrance or notification against the Certificate of Title to a parcel of land that generally serves as a caution or warning that a third person claims some right or interest against the land.

**“CAVEATOR”** means the person who registers the caveat and claims an interest in the title.

**“CERTIFICATE OF TITLE”** means the original Title Deed retained by Landgate that specifies ownership of a defined parcel of land and contains the registered interests or claims against that ownership.

**“CHATELS”** are moveable items of property which are neither land nor permanently attached to land or a building, either directly or indirectly, through attachment to real estate.

**“CLEAR TITLE”** means a title that is free of legal claims and legal questions as to ownership of property.

**“CONJUNCTIONAL AGENT”** means a Real Estate Agent who agrees with another listing Real Estate Agent to introduce Buyers to their listed Property. The Conjunctional Agent will have an understanding to share the selling fees should the Property sell as a result of this introduction.

# Definitions

**“CONSIDERATION”** means the price paid for a property.

**“CONTRACT OF SALE”** means a written agreement relating to the sale and purchase a property.

**“CONTRACT DATE”** means the date the last person who is a party to the contract signs.

**“CONVEYANCE”** means the transfer of a property or a right in a property from one identity to another.

**“CONVEYANCER”** – a person who specialises in the business of conveying properties.

**“COVENANT”** means an agreement by deed that stipulates an event that will either be performed (positive) or not performed (negative).

**“CERTIFIED PRACTISING CONVEYANCER”** means an experienced licensed Settlement Agent who has and is currently engaged in continuing professional accreditation.

**“DEPOSIT”** means cash payment or a Deposit Bond or Guarantee under a Contract and specified as a deposit for the purchase of property.

**“DEPOSIT BOND” or “DEPOSIT GUARANTEE”** means a security for the deposit normally paid between signing a contract and settlement of the property. The provider of Deposit Bond or Guarantee acting as security that the deposit will be paid at settlement or otherwise as required by the contract

**“DISCHARGE”** means to deprive a right or obligation of its binding force. Payment discharges debt.

**“DISCHARGE OF MORTGAGE”** is a document that is used to certify that a mortgage held by a third party or bank has been repaid.

**“DUPLICATE CERTIFICATE OF TITLE”** means the duplicate copy of the original Certificate of Title held by Landgate (the Titles Office).

**“EASEMENT”** A right attached to a piece of land which allows the owner (or Government Authority) of that land to use the land of another in a particular manner, or to restrict its use to a particular extent.

**“ENCUMBRANCE”** means a registered interest such as a mortgage, lease, caveat, easement, restrictive covenant or any other title restriction.

## Definitions

**“EQUITY”** means the difference between the market value of a property and what is owed on the property.

**“EQUITY LOAN”** means a loan obtained through equity, that is a loan secured by the proportion of the value of the property you own.

**“ESTATE”** means an interest in land.

**“EXCLUSIVE AGENCY”** or **“SOLE AGENCY”** means an agency provided to only one Real Estate Agent.

**“FEE SIMPLE”** means the utmost interest a person can have in land.

**“FIRST HOME OWNER GRANT”** or **“FHOG”** means a grant provided by the government to eligible first home buyers.

**“FIRST MORTGAGE”** means a mortgage which has priority over any other mortgage.

**“FIXED MORTGAGE”** means a mortgage whose terms do not require repayment of the principal.

**“FLAT RATE OF INTEREST”** means interest calculated on a non-reducible amount of principal although the instalments include payment of interest and principal.

**“FREEHOLD”** means an estate of unlimited duration.

**“GUARANTEE”** means a contract whereby a person (Guarantor) promises another that they will carry the debt, miscarriage or default of a third person (the Debtor).

**“GUARANTOR”** means the person who agrees to be responsible for the payment of another persons debt.

**“HOLDING DEPOSIT”** means a deposit based on the goodwill of the buyer to go ahead with the purchase.

**“INCOME”** means money or earnings generally assumed to be received periodically.

**“INCOME STATEMENT”** means a statement of income and expenditure.

**“INDEFEASIBILITY”** A right or title in property that cannot be made void, defeated or cancelled by any past event, error or omission in the title.

# Definitions

**“IN ORDER FOR DEALING”** means the date when a subdivision plan has been inspected and passed by an inspector of Landgate (Land Titles Office).

**“INSTALMENT”** means money paid on a contract in excess of deposit.

**“JOINT TENANTS”** means ownership in equal undivided shares with provision of “survivorship” whereby on the death of one joint tenant, the deceased persons share passes equally to the surviving joint tenants.

**“LAND”** means any ground, whether dry or underwater including all buildings and everything attached to the land.

**“LEASE”** means a tenancy agreement in respect to property.

**“LESSEE”** means a person who possesses the right to occupy or use a property under a lease agreement.

**“LESSOR”** means one who holds the title of a property and who conveys the right to occupy or use the property to another under a lease agreement.

**“LIABILITIES”** means a person or company’s debts and obligations.

**“LOAN TO VALUATION RATIO”** or **“LVR”** means the ratio of the amount borrowed to the market value of the security offered (Property) provided or considered without the provision of any income verification by the borrower.

**“LINE OF CREDIT”** means a flexible loan usually with a specified limit usable by the borrower at their discretion.

**“LODGEMENT”** means the act of lodging registrable documents at Landgate (Land Titles Office).

**“LOT”** means a defined parcel of land.

**“LOW DOC LOAN”** means a loan provided or considered without the provision of any income verification by the borrower.

**“MARGIN SCHEME”** means the scheme described in Division 75 of the GST Act.

**“MARKET VALUE”** means the highest price estimated for which a property will be offered for sale.

**“MINOR”** means a person under the age of 18 years.

## Definitions

**“MONTHLY RESTS”** means the term used to describe loan repayments as the period of the loan progresses by the payment of regularly diminishing amounts of interest as the capital is repaid. The loan agreement will stipulate if the reducing interest is calculated on “Monthly Rests” or “Quarterly Rests”.

**“MORTGAGE”** means a form of security pledged to secure the repayment of debt usually taken over real property.

**“MORTGAGEE”** means the lender or source of funds to support a mortgage.

**“MORTGAGOR”** means the borrower usually the owner of the property serving as security to a mortgage.

**“MORTGAGE BROKER”** means a representative or an organisation that offers loans usually offering a service to the consumer but being remunerated by the lending institution.

**“NON CONFORMING LOAN”** means loans or types of loans that do not meet the normal eligibility requirements of mainstream loans.

**“NON CONFORMING USE”** means a lawful use of a property that no longer conforms to the use regulations of the zone in which it is now located.

**“OFFSET ACCOUNT”** means an account linked to a loan so that the interest earned on the account balance is applied to reduce the interest on the loan.

**“OPEN LISTING”** means a listing given to a Real Estate Agent that is not an ‘exclusive listing’ to that Agent.

**“OPTION”** means a right given for consideration to purchase property on or before a given date usually on terms previously agreed.

**“OUTGOINGS”** means all operating expenses generally meaning rates, taxes and strata levies.

**“PARCEL”** means a piece of land regardless of size, in one ownership. A piece of land from which a lot originated.

**“PERSONAL PROPERTY”** means moveable property, goods and chattels.

**“PLANNING COMMISSION”** means a statutory planning authority—the Western Australian Planning Commission.

**“PLOT RATIO”** means the ratio of the floor area of the building to the area of the lot.

# Definitions

**“POSSESSION DATE”** means the date that possession is given and taken or the date that the buyer is entitled to possession.

**“PRINCIPAL”** means the capital sum borrowed or remains owing on which interest is charged.

**“PRINCIPAL AND INTEREST LOAN”** means a loan which both principal and interest is paid, usually in regular fixed amounts.

**“PRIVATE TREATY SALE”** means a sale through an Real Estate Agent as distinct from a sale by auction.

**“PRIVATE SALE”** means a sale without the assistance of a Real Estate Agent (often assisted by a Settlement Agent).

**“PURCHASE PRICE”** means the price payable for property stipulated on the sales contract.

**“QUARTERLY RESTS”** means the calculation on the reducing balances of mortgages at quarterly intervals (every three months). The interest is calculated on the balance of the principal owing at the beginning of the quarter.

**“RATEABLE VALUE”** means the unimproved value of a property on which the rates are assessed by the local government department.

**“REAL ESTATE”** means property consisting of houses and land and everything attached thereon (including vegetation).

**“REAL ESTATE AGENT”** means a person who is licensed as an Agent under the Real Estate and Business Agent Act of Western Australia.

**“REDRAW FACILITY”** means a loan facility whereby additional payments may be made and then accessed when necessary.

**“REFINANCING”** means to extend or replace an existing loan with funds from the same lender or a different lender.

**“REIWA”** means the Real Estate Institute of Western Australia.

**“RESERVE PRICE”** means the minimum price at which a seller will agree to sell usually set for auctions.

**“RESTRICTION”** means an encumbrance which limits the use of real property in some way.

## Definitions

**“RESTRICTIVE COVENANT”** means a notation on a Title restricting the use of the land (this can be considered a burden or a benefit).

**“RESTS”** means the period for which accounts are balanced and interest charged and added to the principal sum. For example, monthly, quarterly or half yearly.

**“SECOND MORTGAGE”** means a mortgage or charge on real property registered after a prior mortgage or charge.

**“SECURITY”** means an asset that a borrower offers to a lender, the lender can take possession and sell such property (security) should the borrower not repay the loan.

**“SELLER”** means one who sells anything including real estate.

**“SETTLEMENT”** means the actual completion of a sale and purchase of property.

**“SETTLEMENT AGENT”** means a person who is licensed as a Settlement Agent under the Settlement Agents Act in Western Australia.

**“SETTLEMENT DATE”** means the date stipulated that each party to a contract must settle the transaction.

**“SPECIFIED ENCUMBRANCE”** means an encumbrance specified in a sale contract subject to which the property will be transferred.

**“STRATA COMPANY”** is a body corporate which consists of all the owners of the lots within the strata scheme. A strata company comes into effect when the strata plan is registered.

**“STANDARD VARIABLE LOAN”** means a loan with extra repayment option with an interest rate that fluctuates up and down with the market. A common loan for owner occupiers.

**“STRATA CONTRIBUTION”** or **“STRATA LEVY”** means a regular contribution made to the administration fund of a Strata Company or a special contribution made to a Strata Company for a specific purpose.

**“STRATA LOT”** means a lot that forms part of a strata scheme (development) defined by horizontal sub division of air space.

**“STRATA MANAGER”** means a person who manages strata companies on behalf of strata owners.

# Definitions

**“STRATA PLAN”** means a plan of an entire strata scheme of which strata lots form a part.

**“STIWA”** means the Strata Titles Institute of Western Australia.

**“SUBDIVISION”** means the division of a larger parcel of land into smaller lots.

**“TENANTS IN COMMON”** means ownership of land by two or more persons who hold separate defined undivided shares in a property. A tenant in common can dispose of his or her share or interest independently of the other tenants.

**“TERM”** means the length or duration of a loan or a specific portion of a loan.

**“TERMS CONTRACT”** means a sales contract where possession is given or taken prior to the buyer being entitled to a conveyance or transfer of a property.

**“TITLE”** means the ownership of a property or a document or certificate that evidences such ownership.

**“TITLE DEEDS”** means the documents, certificates and instruments conferring or evidencing the title to land.

**“TITLE SEARCH”** means an investigation or search of the Certificate of Title records to ascertain details of current information as to ownership, description of land and any registered encumbrances.

**“TRANSFeree”** means a person to whom something is transferred to (buyer).

**“TRANSFEROR”** means a person by whom something is transferred from (seller).

**“TRANSMISSION”** means the transferring of property by a person entitled to become the registered proprietor of land as a result of the death of the current registered proprietor and who deal in the property in accordance with the terms of a will or trust.

**“TRUST”** means a fiduciary relationship and an instrument thereof, which provides legal title and control of a property to the trustee for the benefit of another or a number of other persons.

**“TRUSTEE”** means one who holds title to property for the benefit of others.

**“TRUST DEED”** means a deed of conveyance by which a trust is created and the conditions under which the trust must exist are evidenced.

# Definitions

**“UNENCUMBERED”** means a property free of liabilities or restrictions.

**“VALUATION”** means a report usually provided by a licensed valuer, detailing a professional or expert opinion of the value of the property (formerly known as a sworn valuation).

**“VALUER”** means a licensed person who provides an expert opinion of the value of property.

**“VOID”** means having no legal effect.

**“VOIDABLE”** means capable of being made or declared void.

**“WARRANTY”** means a term that is not vital to the contract.

**“WITHOUT RESERVE”** means that a property will be sold usually at auction to the highest bidder without reserve.

**“ZONING”** means local government or planning authority classification of uses of land.





A Settlement Agent or Conveyancer is a professional who facilitates the transfer of property. They must be qualified to do conveyancing work and are required to be licensed under the Settlement Agents Act 1981. They must also hold professional indemnity insurance and participate in a continuing Compulsory Professional Development Program.

### AICWA Contact Details

Phone: (08) 9361 1166

Fax: (08) 9361 1188

Email: [admin@aicwa.com.au](mailto:admin@aicwa.com.au)

Web: [www.aicwa.com.au](http://www.aicwa.com.au)

Suite 30, 443 Albany Highway Victoria Park WA 6100

PO Box 626 Victoria Park WA 6979



## Further Information

For general enquiries or information about buying or selling Real Estate in Western Australia contact:

- The Australian Institute of Conveyancers (08) 93611166  
WA Division Inc. (AICWA) [www.aicwa.com.au](http://www.aicwa.com.au)
- The Real Estate Institute of WA (REIWA) (08) 9380 8222  
[www.reiwa.com.au](http://www.reiwa.com.au)
- Strata Community Australia WA (SCA WA) (08) 9381 7084  
[www.wa.stratacommunity.org.au](http://www.wa.stratacommunity.org.au)
- Department of Commerce  
- Real Estate and Settlement Advice Line 1300 304 064
- The Law Society of WA (08) 9324 8600  
[www.lawsocietywa.asn.au](http://www.lawsocietywa.asn.au)
- FHOG Office of State Revenue (08) 9262 1299  
[www.osr.wa.gov.au](http://www.osr.wa.gov.au)
- Transfer Duty - Office of State Revenue (08) 9262 1400  
[www.finance.wa.gov.au](http://www.finance.wa.gov.au)
- Landgate - Advice Officers (08) 9273 7044  
[www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)
- Deposit Power 1800 678 979
- Stewart Title 1300 300 440

**SAFETY BAY SETTLEMENTS**

**[www.safetybaysetts.com.au](http://www.safetybaysetts.com.au)**

**ph 9527 6822**

**173 Parkin Street Rockingham**

This is a publication by AICWA &  
Certified Practising Conveyancers.

