



Choosing a settlement agent

A property settlement agent or solicitor ensures all the conditions of the sale of property contract are fulfilled.

This fact sheet provides general information about choosing a settlement agent or solicitor along with their respective roles in a property transaction.

Scope of this publication

This publication provides general information and explains the law in simple language. It is no substitute for the legislation. You should get expert or legal advice about your particular situation.

Property settlement

Settlement is the important final stage in the sale of a property, requiring all the general and special conditions of the Contract for Sale of Land or Strata Title by Offer and Acceptance to be satisfied. At settlement, the balance of the purchase price for the property is paid and the legal title to the property is transferred from the seller to the buyer.

A settlement agent or conveyancer

A professional who facilitates the transfer of property or 'settlement' is called a settlement agent (conveyancer). Settlement agents are required to hold a current licence and a triennial certificate under the *Settlement Agents Act 1981* (the Act). They must have professional indemnity insurance, maintain an annually audited trust account and participate in the Compulsory Professional Development Program each year.

A solicitor undertaking a settlement

A solicitor with a current practice certificate is able to undertake settlement for clients without being licensed under the Act. Solicitors are governed by Legal Profession Conduct Rules 2010 and the *Legal Profession Act 2008*. Their conduct is overseen by the Legal Practice. All solicitors must have professional indemnity insurance.

Role of a settlement agent or solicitor

Generally, buyers and sellers of property will engage a settlement agent or solicitor to conduct settlement on their behalf, although it is possible for buyers and sellers to conduct their own settlement. When carrying

out a typical property settlement, a settlement agent or solicitor follows up the performance of general and special conditions relating to the contract of sale. Some of these tasks include:

- searching land titles and checking any restrictions on the use or transfer of the property which are identified on the title;
- arranging, where required, for any restrictions on the title of the property to be removed;
- enquiring with local councils and with government departments about rates, taxes and water consumption to determine details of the sewer connection, any outstanding orders and building licences and the amounts to be paid by the seller and the buyer;
- notifying the relevant authorities about the change of ownership;
- preparing settlement statements and a number of legal documents and forms;
- obtaining payment from the client of any fees and duty payable on documents involved in the transaction and arranging for the payment of transfer duty (previously known as 'stamp duty') and other fees to the relevant government agencies;
- attending settlement to exchange documents and monies to facilitate the legal transfer of the property; and
- notifying the relevant authorities when settlement occurs.

During the process of arranging settlement, it is sometimes necessary for a buyer or a seller to obtain legal advice. Settlement agents are not permitted to provide legal advice and must recommend that their clients consult a solicitor when the circumstances require.

It is advisable for buyers to think about choosing a settlement agent when they start looking at properties. A settlement agent or solicitor can advise you of the right questions to ask when viewing a property as a thorough property inspection can reveal any issues with the property that should be addressed in the contract. As a buyer it is important that you are aware of all relevant facts about a property you intend to buy.

A settlement agent or solicitor can assist you in drafting special conditions to be included in the Contract for Sale of Land or Strata Title by Offer and Acceptance.

Special conditions can include:

- building inspection reports;
- termite inspection reports;
- good working order clauses;
- pool inspections;
- bore/reticulation inspections; and
- repairs you wish the seller to undertake prior to settlement.

A settlement agent or solicitor can also advise you of the total cost of buying or selling a home. This is particularly important for buyers who need to ensure their application for finance, together with their own funds, will be sufficient to cover the purchase price, transfer duty and all costs.

Finding a settlement agent

It is advisable to shop around when selecting a settlement agent. You can consult the Yellow Pages or seek recommendations from family and friends. It is recommended that you choose your own settlement agent or lawyer, who is not also providing conveyancing services to the other party. Make sure the settlement agent you choose is licensed with Consumer Protection.

Settlement agents are able to determine what fee to charge their client for their services. You should request your proposed settlement agent give you a quote before deciding on which settlement agent to use. In any event, the settlement agent must provide you with a written disclosure of the maximum amount that they will charge you, before you officially appoint them to act on your behalf.

Check if your settlement agent is licensed online at www.commerce.wa.gov.au/consumer-protection/consumer-protection-licence-and-registration-search or contact Consumer Protection on 1300 304 054.

Regulation of settlement agents

Settlement agents are governed by the *Settlement Agents Act 1981* (the Act) and the Settlement Agents' Code of Conduct 2016 (the Code of Conduct) made under the Act. The Act provides for the licensing of real estate and business settlement agents and specifies the scope of legal work that can be performed by settlement agents.

The Commissioner for Consumer Protection, through the Consumer Protection Division of the Department of Mines, Industry Regulation and Safety, administers the Act and the Code of Conduct and is responsible for maintaining industry standards.

To protect the public and to ensure confidence in the settlement industry, the legislation requires settlement agents to:

- satisfy that they are suitable, experienced and sufficiently qualified to hold or maintain a licence;
- place clients' settlement money into a trust account with an authorised financial institution. The trust account is audited annually and monitored by Consumer Protection;
- contribute to a fidelity guarantee account;
- obtain professional indemnity and fidelity insurance to protect the public in case of error, fraud or criminal conduct; and
- observe rules contained in the Code of Conduct, including avoiding conflict, acting efficiently and honestly, and always advancing the best interests of the client.

Fees

Settlement agents' fees are not regulated.

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 service.

General office disbursement costs may include charges related to telephone calls, facsimiles, photocopying, postage and stationery and courier costs.

There may be additional costs paid by the settlement agent on your behalf:

- Duty chargeable under the *Duties Act 2008*;
- Any other tax, duty, fee, levy or charge under a written law – includes fees for searching land titles and records;
- Fees paid to financial institutions on your behalf; and
- Any commissions paid to an agent, developer or any other third party on your behalf.

Transfer duty (previously known as 'stamp duty') can be a significant cost in addition to the purchase price. It is advisable to calculate the duty on a property so you can make sure you have sufficient funds to pay it prior to settlement. If you are a first home buyer you may be eligible for a reduced duty rate. Further information is available on the State Revenue division at www.finance.wa.gov.au

Appointment of a settlement agent

Once you have decided on a settlement agent, and you have been provided you a written quote (costs disclosure) setting out the maximum amount they will be charging for their services, you will be asked to complete and sign the Appointment of a Settlement Agent form. This is a contract between you and your settlement agent, authorising the settlement agent to act for you and to carry out certain functions on your behalf. Your settlement agent must give you this form.

Make sure you take the time to read and understand any forms presented to you for signing.

You have the right to select a settlement agent of your choice and you may change your settlement agent at any time if you believe this is necessary. However, your first appointed settlement agent may be entitled to a fee based on any work undertaken.

When reading and completing the Appointment of a Settlement Agent form, it is recommended that you:

1. Read the form carefully as it contains important information about your rights when appointing a settlement agent.
2. Consider the options which are highlighted with an asterisk on the Appointment of a Settlement Agent form and delete the options which do not represent your wishes.

Note that the options should not have been pre-selected for you.

One of the most important options to consider is whether you will agree to the settlement agent acting for you and the other party. A settlement agent cannot act for both parties unless both parties consent to this appointment in writing.

Where a settlement agent acts for both parties, there is a potential for a conflict of interest to occur. If any issues arise with the contract for the sale of the property or during the settlement process, and the interests of the seller and the buyer differ, the settlement agent will not be able to represent both clients properly. In that case they must cease to act for you and request you to appoint another settlement agent.

Therefore, it may be in your best interests to appoint a settlement agent to act only on your behalf. If you require your settlement agent to act only for you, you need to ensure you delete the option on the form that allows them to act for both parties.

Return the completed Appointment of a Settlement Agent form to your settlement agent as soon as possible to ensure the settlement process can begin. The settlement agent must also sign the form accepting the appointment to act and return a copy to you.

Disclosure of interest

Settlement agents must ensure that they look after their client's best interest in a transaction.

Settlement agents are required by law to inform you if they have any business or financial dealings with another party to your transaction. When a personal, business or financial relationship exists, the settlement agent must provide you with a Disclosure of Interest before you sign the Appointment of a Settlement Agent form.

The Disclosure of Interest identifies the type of interest involved and contains information about your rights when appointing a settlement agent.

Specifically, your settlement agent must give you a Disclosure of Interest if your settlement agent has a:

- Personal interest in the transaction. For example, the settlement agent has a personal interest in the transaction if they are the seller or the buyer of the property or have links to the seller or the buyer of the property.
- Business association with another person/ persons involved in the transaction. For example, the settlement agent receives frequent referrals of business from the real estate agent, sales representative or developer who is selling the property.
- Financial association with another person/persons involved in the transaction. For example, the real estate agent who sold the property or the financial institution providing the loan for the property has shares in or owns the settlement agency.

Before signing the Disclosure of Interest, consider that the relationship being disclosed could give rise to a conflict of interest which may affect the service provided to you.

In situations such as these you may choose to appoint another settlement agent or solicitor if you wish.

Settlement complaints

If you have any questions or concerns about the handling of your settlement, consider discussing the matter with your settlement agent. If you are unable to resolve the matter, you may wish to contact the Consumer Protection Advice Line on 1300 304 054 (for the cost of a local call from anywhere in the state).

Consumer Protection has the power to investigate complaints and depending on the circumstances and evidence presented, can take disciplinary proceedings against settlement agents.

A complaint form and an information sheet to assist you with completing your complaint form are available from the Consumer Protection website at www.dmirs.wa.gov.au/consumerprotection by calling 1300 304 054 or attending Level 2, 140 William Street, Perth.

Complaints about settlement agents may also be lodged in writing with Consumer Protection by posting to:

Consumer Protection
Locked Bag 14
Cloisters Square WA 6850
Fax: 6251 1401
Email: consumer@dmirs.wa.gov.au

Further information

Other publications produced by Consumer Protection that could assist you include:

- Property settlement
- Buying a home through an agent
- Buying vacant land
- Real estate auctions
- Real estate fees: negotiating with an agent
- Sale by offer and acceptance
- Timber pest inspections and reports: a guide for homebuyers
- You and your property manager

These publications can be downloaded from the Consumer Protection website at:
www.dmirs.wa.gov.au/consumerprotection

General information about settlement agents can be obtained from:

- The Australian Institute of Conveyancers (WA Division)
Phone: 9361 1166 (8.30 am – 5.00 pm)
Fax: 9361 1188
Email: admin@aicwa.com.au
- The Independent Settlement Agents Association
Phone: 9317 2862
Fax: 9317 2837
Email: shearh2o@iinet.net.au

Information relating to the use of solicitors can be obtained from:

- The Law Society of WA
Phone: 9324 8600
Fax: 9324 8699
Email: info@lawsociety.wa.asn.au
- The Legal Practice Board
Phone: 6211 3600
Fax: 9325 2743
Email: general@lpbwa.com
- Legal Profession Complaints Committee
Phone: 9461 2299
Fax: 9461 2265
Email: lpcc@lpbwa.com

Department of Mines, Industry Regulation and Safety

Consumer Protection:

1300 304 054

Consumer Protection
Gordon Stephenson House
Level 2, 140 William Street
Western Australia 6000
Website: www.dmirs.wa.gov.au
Email: consumer@dmirs.wa.gov.au

Regional Offices

Goldfields/Esperance	(08) 9026 3250
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

Quality of service feedback line: 1800 304 059

Translating and Interpreting Service (TIS) 13 14 50

This publication is available in other formats
on request to assist people with special needs.

