Flat Rate settlements

LEGAL GUIDE TO BUYING AND SELLING REAL ESTATE IN WESTERN AUSTRALIA

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IMPORTANT: This guide contains general information about buying and selling real estate in Western Australia. Every real estate transaction is different and where necessary you should seek professional advice. The information contained in this publication is based on the law as at 1 August 2010 but the law may have changed since that date. Consult a solicitor for current advice.

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Introduction

Buying and selling real estate means making important financial decisions – decisions which affect our future and our families.

Most people buy or sell real estate at least once in a lifetime; many of us do so more frequently.

In fact, for most people, an agreement to buy or sell real estate involves thousands of dollars and is the most significant contract they will ever sign.

Real estate transactions always result in contractual relationships with others. Contractual relationships create legal rights and obligations for both sellers and buyers.

It makes sense to understand your legal rights and obligations from the outset – and *before* you commit yourself.

This Guide contains practical advice about the legalities of buying and selling real estate which we hope you will find helpful. But every transaction is different. If you need more assistance, consult a lawyer – or telephone **Flat Rate Settlements** on 9220 4430 or 1800 018 845 (outside Perth).

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Selling real estate

When selling real estate most people seek assistance from a real estate agent. You don't have to use an agent, but you may find it easier to do so. Your agent must obtain a written **authority** to sell your property before charging you a **commission**.

The authority should include your asking price for the property, the agent's commission rates and the **listing period**.

The listing period is the period for which the agent is authorised to sell your property on your behalf. If the agent introduces a buyer prepared to pay the asking price (or a lower price acceptable to you) during the listing period then you must pay your agent the agreed commission.

If you sign an **exclusive authority** you must pay a commission to your agent if your property is sold during the listing period, even if he is not responsible for introducing the buyer.

The government no longer fixes a maximum fee for agents' services. Agreement on all fees and services may be negotiated between you and your agent.

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Private Sale

You can buy and sell property privately without the assistance of an agent. Standard contract forms are available from newsagents. This guide will help you complete these forms.

If you are not familiar with real estate contracts or are unsure about any aspect of your proposed sale or purchase, we suggest you seek professional legal advice before signing anything.

Auctions

Some sellers choose to sell their property by auction. At auctions, potential buyers bid against each other to determine the sale price of the property. If you bid at an auction bear in mind the following points:

If your bid is accepted, a binding contract is formed and you will incur immediate legal obligations.

- The terms of the auction should be available in writing from the auctioneer and read prior to the auction commencing.
- Generally, the successful bidder will have to pay a cash deposit of 10% of the sale price immediately, and the balance within 30 days. **You will need to have finance approved in advance**.
- The seller doesn't have to accept the highest bid.
- Sellers may, and often do arrange for dummy bids to be made at their auctions.

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Buying real estate

If you are buying, real estate agents will be happy to show you properties in areas which will interest you.

Agents are not limited to showing you properties listed in their name and may take you to properties listed by other agents. If you buy such a property both agents will share the commission. This arrangement is known as a **conjunctional sale**.

When you buy a property through an agent the seller generally pays the commission. The agent is primarily responsible to whoever pays the commission.

Rewarding an Agent's loyalty

You can reward a hard working agent by not approaching other agents. Your chosen agent can generally arrange inspections of properties which interest you even if they are listed by other agents or advertised in the newspaper. If you decide to buy, the agent of your choice will then share the commission.

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Tips for Buyers
Questions to ask *before* you sign

Once you sign a real estate contract, you are legally committed. You should make all enquiries about the property ***before*** you sign. This checklist will help you:

- ☑ Search the certificate of title. *Contact **Landgate**.*
- ☑ Investigate any restrictions on your use or enjoyment of the land. ***See page 10.***
- ☑ Add up the costs of purchase. *Use our **online calculator**.*
- ☑ What is the zoning of the property and adjacent properties? *The zoning determines the type and density of development permitted. Don't build your quiet hideaway next to a proposed dog home!*
- ☑ Is the property connected to sewerage and underground power? *If not, will you have to pay the cost of connection?*
- ☑ Will you have to pay for fencing and retaining walls? *In some cases you may be required to contribute to the cost of existing dividing fences.*
- ☑ Are the building and any retaining walls structurally sound? *If necessary seek professional advice.*
- ☑ Can you get approval for any renovations or alterations you are planning? *There may be environmental or heritage restrictions.*

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Types of titles

Real estate in Western Australia is divided into lots or locations and registered at ***Landgate***.

The original certificate of title to your property is retained by Landgate. If requested, ***Landgate*** will issue a **duplicate certificate of title** to be held by you (the **registered proprietor**) or your mortgagee.

There are different types of titles:

- **Freehold titles** confer the most exclusive rights and are commonly associated with single-building land and agricultural land.
- **Strata titles** are associated with multi-residential developments. They divide such land into units and common property. ***See page 12.***
- **Crown leases** are long term leases granted by the Crown, such as pastoral leases. They are generally large stations in remote areas.
- **Crown land titles** relate to defined parcels of Crown land.

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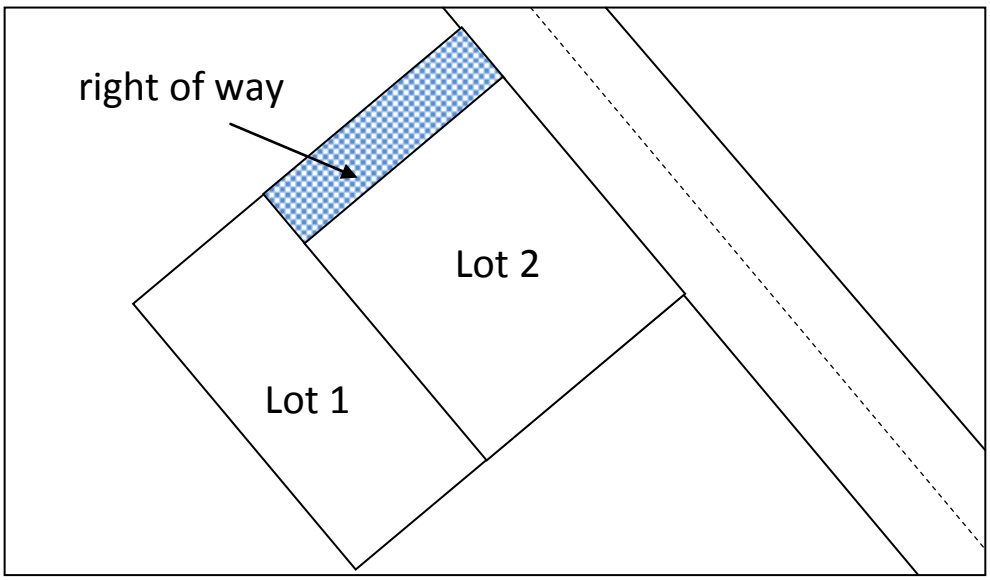
Encumbrances

In most cases, the property is sold free of encumbrances. This means that any mortgages, caveats and other encumbrances must be discharged so that the buyer receives a clear title. Exceptions to this rule may include easements, restrictive covenants, notifications and encumbrances specified in the contract.

Titles of any type may be subject to easements or restrictive covenants limiting or adding to the exclusive rights of the registered proprietor.

An **easement** is a right of way or access over all or part of the property – for example, access to the street-front for occupiers of a rear block; or allowing a utility body access to pipelines passing through the property.

Restrictive covenants limit the effective use of the land by the registered proprietor – for example, you may be required to build to certain standards or within height limitations.



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Strata Properties

If you are buying a duplex, triplex, town house, apartment or unit, it is probably the subject of a strata title. A strata title divides a building and its land into units and common property. Strata titles differ from other titles because of the need to protect the co-owners of the common property.

A proprietor of strata titled property has:

- **exclusive ownership** of part of the property – for example, the internal areas of a particular apartment
- **non-exclusive ownership** of common property shared with other proprietors – for example, gardens, passages, stairs and parking areas.

If you are buying a strata titled property, you should obtain a copy of the strata plan. This will show what areas of the property you own exclusively.

Strata companies

The registered proprietors of strata titled property are entitled to shares in the strata company (also referred to as the body corporate) which has the power to control, repair, maintain and manage the common property. The registered proprietors are charged levies by the strata company for these purposes which are usually paid quarterly.

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Points to check *before* you sign

For buyers

If you are planning to buy a strata titled property special considerations apply:

- Which parts of the property will you exclusively own and which parts will you share?
- What are the body corporate rules? *There may be restrictions on age, numbers of people allowed to live in the property, when you can do your washing, the keeping of pets and what alterations and additions you can make.*
- How much will you have to pay for strata levies and what do they cover? *Rates and taxes are usually not included in strata levies.*

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Rural Properties

A farm represents not only your home but your financial future. In most cases, we strongly recommend that you obtain independent legal advice before signing a contract – whether you are buying or selling. It's unfair to expect your agent to take responsibility for the legal ramifications of your contract.

Points to check *before* you sign

If you are buying

- Is the name in which you are buying the correct one for your business and family? *Once your offer is accepted, it may cost you thousands of dollars in transfer duty to nominate an alternative buyer – for example a partnership, family company or trust.*
- Are there any land clearing or land care restrictions or obligations? *Check with the state and local government.*
- Will you have to contribute to the cost of fencing, electricity, telecommunication services, land care, or drainage?
- If the property is a pastoral lease, what conditions will apply?
- Are there any salt affected areas, chemical residue or potential land degradation problems?

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If you are selling

- If you are selling your farm on terms make sure the contract is correctly worded. If you're financing the purchase, make sure your loan is secure. Lax wording could cost you thousands of dollars in lost interest – or worse. *You should always have terms contracts checked by your lawyer* ***before*** *you sign.*

- Is your settlement scheduled to suit the farm's operations? *Don't be forced off your property with crops still unharvested.*

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Sub-divisions

Sub-division is a complex process and can take months to complete. It involves splitting an existing property into smaller lots and obtaining new certificates of title for each lot.

If you are buying real estate in a new sub-division there are some important points you need to be aware of:

- You will be unable to have your name legally registered on a title (become the owner) until the sub-division is given final approval by Landgate.
- The property you are buying should be identified by reference to a surveyor's diagram or good scale drawing showing exactly where your lot is.
- Special conditions or restrictive covenants may apply to the new sub-division. For example, there may be restrictions on the type of building permitted. ***See page 10***.
- Some sub-divisions will not have all essential services connected to the new lots.
- The settlement date will usually be within 30 days of ***Landgate*** issuing a new certificate of title for your lot.

Make sure you are aware of what services will be provided as part of the sub-division and what will not – for example, water, power, road works, curbing.

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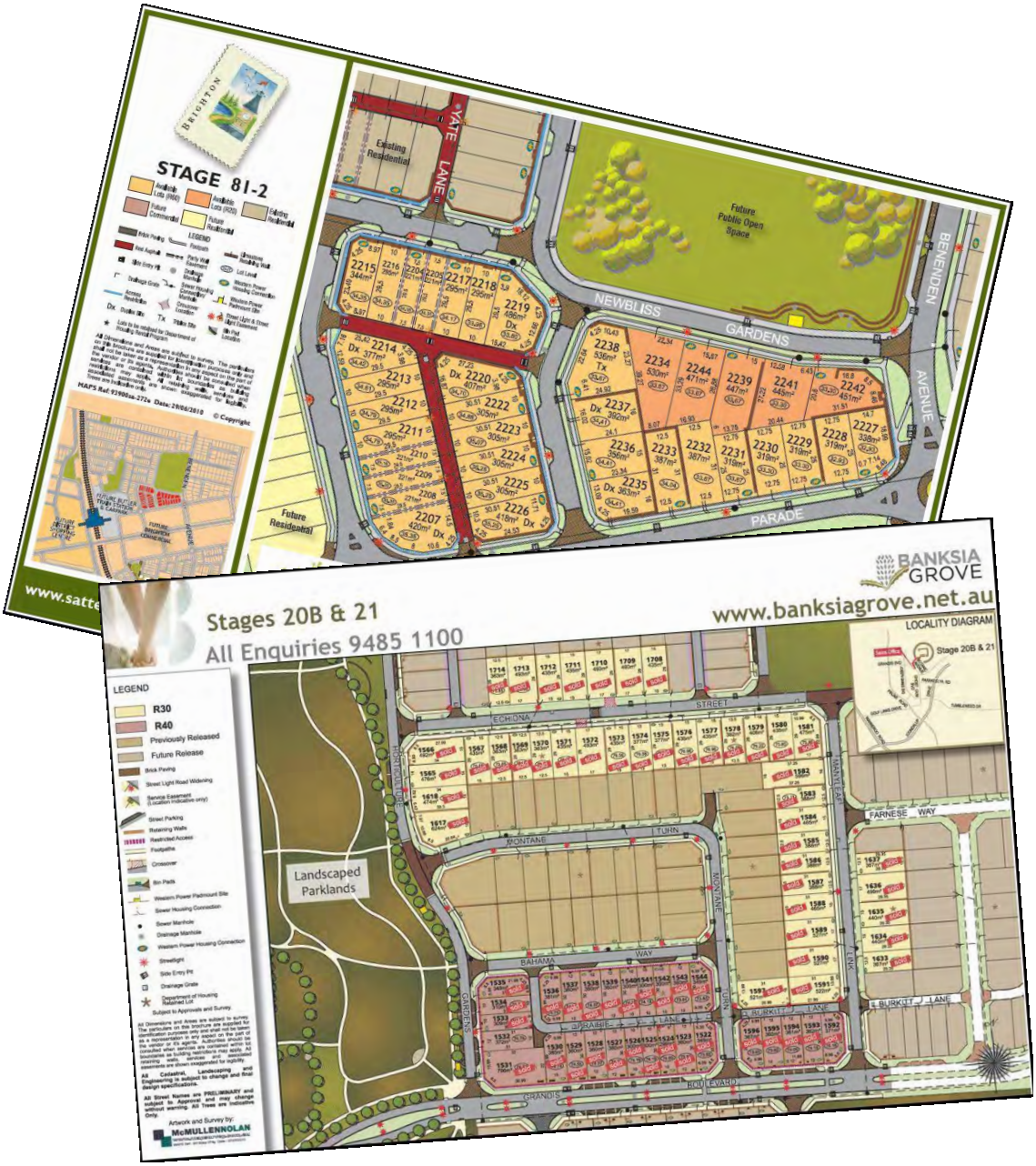
The REIWA contract (*see page 17*) sets out the seller's obligations and provides up to 2 years for the seller to complete the sub-division process. It is important to enquire what stage the sub-division is at and when it is likely to be ready to settle. *Don't get locked into a contract for the purchase of a block of land you can't do anything with for 2 years.*



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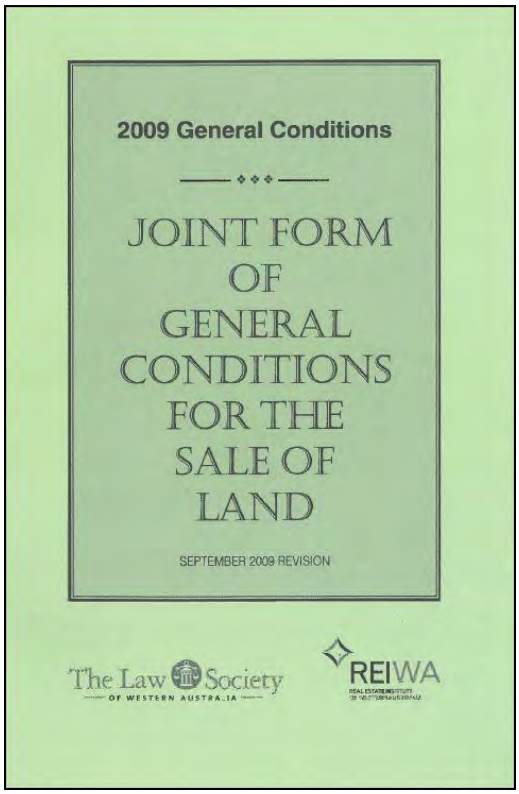
Understanding the REIWA contract

Agreements for the sale and purchase of real estate must be in writing. In Western Australia a standard form published by the ***Real Estate Institute of Western Australia Inc*.** is often used for buying and selling real estate. The document is known as the **REIWA contract**.

The REIWA contract is in two parts. The **2009 revision** comprises:

- a two page document headed **Contract for Sale of Land or Strata Title by Offer and Acceptance** ("offer and acceptance"); and
- a booklet called **Joint form of General Conditions for the Sale of Land** ("General Conditions").



If you are dealing with an agent he will supply copies of the REIWA contract. If you are not dealing with an agent you can obtain copies of the contract from REIWA or from newsagents. You can write in the details yourself, but if you are not conversant with the contract you should get legal advice.

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The offer and acceptance

Contracts for the sale and purchase of real estate require an offer by one party and an acceptance by the other. The buyer usually makes a written **offer** to the seller. The buyer may withdraw the offer at any time before receiving notice of the seller's acceptance.

No cooling-off period
There is no cooling-off period in the REIWA contract. You can negotiate terms beforehand, but you can't change your mind after you've signed unless the other party agrees. You are bound by the contract from the time it is made.

If the seller **accepts** the buyer's offer and notifies the buyer, a **contract** is formed. Both parties are then bound by the terms of the contract (which are set out in the offer and acceptance and the General Conditions) and must honour their respective contractual obligations.

The references to offer and acceptance and General Conditions on the following pages are references to the 2009 revision of the REIWA contract. They do not necessarily apply to all contracts. The REIWA contract is revised every few years and the 2011 and 2002 Revisions are also in common use.

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REIWA
REAL ESTATE INSTITUTE OF WESTERN AUSTRALIA

CONTRACT FOR SALE OF LAND OR STRATA TITLE BY OFFER AND ACCEPTANCE

06/09 810
APPROVED BY
THE REAL ESTATE INSTITUTE OF WESTERN AUSTRALIA (INC.)
COPYRIGHT © REIWA 2009
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TO:

A

As Agent for the Seller / Buyer

THE BUYER (FULL NAME AND ADDRESS) ..... B .....

.....

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C

OFFERS TO PURCHASE (as joint tenants/tenants in common specifying the undivided shares) the Land and Property Chattels set out in the Schedule ("the Property") with vacant possession unless stated otherwise in the Special Conditions at the Purchase Price on the terms set out in the Schedule, the Conditions and the Special Conditions.

SCHEDULE

D

The Property at:

.....

Lot ..... Deposited/Survey/Strata/Diagram/Plan .....Whole/Part Vol .....Folio .....

A deposit of $.....of which $.....is paid now and $..... to be paid within ..... days of acceptance

E

to be held by .....
("the Deposit Holder"). The balance of the Purchase Price to be paid on the Settlement Date.

Purchase Price .....

Settlement Date .....

Property Chattels including .....

.....

FINANCE CLAUSE IS APPLICABLE	FINANCE CLAUSE IS NOT APPLICABLE
LENDER	Signature of the Buyer if Finance Clause IS NOT applicable
LATEST TIME: 4pm on:	.....
AMOUNT OF LOAN:	.....
SIGNATURE OF BUYER	
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SPECIAL CONDITIONS

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NOTE: IF THIS DOCUMENT IS ON SEPARATE PAGES OR IS TO BE FAXED THEN ALL PARTIES SHOULD SIGN ALL PAGES.

A The Agent's name

The name of the seller's agent (if any) is written at the top of the contract.

B Who is the Buyer?

It is important to state the buyer's name correctly. Once the offer is accepted it may cost thousands of dollars in additional transfer duty to nominate an alternative buyer. Avoid terms like "and/or nominee." If you are unsure, consult a lawyer.

C Joint tenants or tenants in common?

Two or more buyers must decide whether to own the property as joint tenants or tenants in common. If you buy as joint tenants and one owner dies, the other will automatically become the sole owner of the property. If you own the property as tenants in common each owner's interest will survive his death and form part of his estate for distribution according to his Will. Husbands and wives usually buy as joint tenants, business partners as tenants in common.

D Description of the property

Make sure the property is correctly described. Street addresses are often used, but it is preferable to write lot numbers and title particulars in the contract.

E Purchase price

The purchase price is the total amount that the buyer must pay for the property. The buyer must pay transfer duty assessed according to the purchase price. *Use our **online calculator**.* If GST is applicable, both parties should seek professional advice.

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F Deposit

The seller and buyer must agree how and when the purchase price is to be paid. In most contracts the buyer pays a nominal deposit on signing, a more substantial amount (up to 10%) after the seller's acceptance or approval of finance and the balance at settlement. If you don't pay on time you will be in breach of contract.

There is no legal obligation to pay "a 10% deposit" or any other amount but sellers may be reluctant to accept an offer without a reasonable deposit. Unless the parties agree otherwise the deposit is held on trust by a stakeholder (usually the agent) until settlement.

G Counter-offers

Sellers sometimes counter offer a buyer's offer by initialling and changing the purchase price on the contract. A counter-offer is a rejection of the original offer and is not binding on the buyer unless the buyer then accepts the counter-offer.

Buyers often accept counter-offers by initialling the seller's alterations on the original contract. Be sure to insert the date alongside your initials.

H Settlement date

If no settlement date is stated in the contract then settlement will be determined by the General Conditions. Choose a realistic settlement date to give you and your bank plenty of time to get ready. If settlement is delayed you may be liable to pay penalty interest. See clause 4 of the General Conditions.

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I Subject to finance

If you need approval of finance before committing yourself to a purchase, you should make a "subject to finance" offer.

Provided you comply strictly with the finance conditions in your contract you will be able to withdraw from the contract without penalty if you can't obtain finance. The finance conditions are difficult to follow. The buyer must do his best to obtain finance on the terms stated in the contract and on or before the latest day for approval:

- if finance is approved, advise the seller or his agent in writing;
- if finance is not approved or is rejected, notify the seller or his agent accordingly.

If you don't comply with these conditions the seller may, without warning, terminate the contract. You can't avoid your contractual obligations by not applying for finance or by asking your bank to withdraw finance approval.

Make sure that the finance conditions are clear. Vague expressions such as "bank finance" might mean any bank can oblige you to apply to a number of banks for finance. Specify the name of your preferred lender, the amount of the loan, and the maximum interest rate that you are prepared to pay.

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J Cash offers

If you cross out the finance clause the offer is a cash offer and the finance conditions don't apply. If you make a cash offer you will be bound by the contract as soon as the seller accepts your offer. Make sure you have the cash.

K Additional conditions

You can add special conditions to the contract. It is important to express yourself clearly. If in doubt seek professional assistance. Badly worded additional conditions are a major cause of disputes. Use the words "subject to" in additional conditions only where you don't intend to buy the property unless the "subject to" condition is fully satisfied.

Many buyers add a condition requiring a timber pest inspection. If you are concerned about termites you should choose your words carefully. Words like "no current infestation" do not guarantee an absence of damage caused by previous termite activity.

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CONDITIONS

1. SUBJECT TO FINANCE

If the Buyer signs the "Finance Clause is not Applicable" box in the Schedule then this clause 1 does not apply to the Contract.

If any information is completed in or the Buyer signs the "Finance Clause is Applicable" box in the Schedule then this clause 1 applies to the Contract.

1.1 Buyer's Obligation to Apply for Finance and Give Notice to the Seller

(a) The Buyer must:

(1) immediately after the Contract Date make an application for Finance Approval to the Lender using, if required by the Lender, the Property as security; and

(2) use all best endeavours in good faith to obtain Finance Approval.

(b) If the Buyer does not comply with clause 1.1(a) or 1.1(c)(1) then the Contract will not come to an end under clause 1.2 and the Buyer may not terminate the Contract under clause 1.3. The rights of the Seller under this Clause 1.1 will not be affected if the Buyer does not comply with Clause 1.1.

(c) The Buyer must immediately give to the Seller or Seller Agent:

(1) an Approval Notice if the Buyer obtains Finance Approval; or

(2) a Non Approval Notice if Finance Approval is rejected at any time while the Contract is in force and effect.

1.2 No Finance Approval by the Latest Time: Non Approval Notice Given

This Contract will come to an end without further action by either Party if on or before the Latest Time:

(a) written Finance Approval has not been obtained; and

(b) the Buyer gives a Non Approval Notice to the Seller or Seller Agent.

1.3 No Finance Approval by the Latest Time: No Notice Given

If by the Latest Time:

(a) the Buyer has not given an Approval Notice to the Seller or Seller Agent; and

(b) the Buyer has not given a Non Approval Notice to the Seller or Seller Agent;

then this Contract will be in full force and effect unless and until either the Seller gives written Notice of termination to the Buyer or the Buyer terminates this Contract by giving a Non-Approval Notice to the Seller or Seller Agent.

1.4 Finance Approval: Approval Notice Given

If by the Latest Time, or if clause 1.5 applies, before the Contract is terminated:

(a) written Finance Approval has been obtained; and

(b) the Buyer has given an Approval Notice to the Seller or Seller Agent;

then this Clause 1 is satisfied and this Contract is in full force and effect.

1.5 Notice Not Given by Latest Time: Seller's Right to Terminate

If by the Latest Time the Buyer has not given an Approval Notice or a Non Approval Notice to the Seller or Seller Agent then at any time until an Approval Notice is given, the Seller may terminate this Contract by written Notice to the Buyer.

1.6 Buyer Must Keep Seller Informed: Evidence

(a) If requested in writing by the Seller or Seller Agent the Buyer must advise the Seller or Seller Agent of:

(1) the progress of the Finance Application; and

(2) provide evidence in writing of the making of a Finance Application, in accordance with clause 1.1(a) and of any loan offer made, or any rejection; and

(3) if applicable the reasons for the Buyer not accepting any loan offer.

(b) If the Buyer does not comply with the request within 2 Business Days then the Buyer authorises the Seller or Seller Agent to obtain from the Lender the information referred to in 1.6(a).

1.7 Right To Terminate

If a Party has the right to terminate under this Clause 1, then:

(a) termination must be effected by written Notice to the other Party;

(b) Clauses 23 and 24 of the 2009 General Conditions do not apply to the right to terminate;

(c) upon termination the Deposit and any other monies paid by the Buyer must be repaid to the Buyer;

(d) upon termination neither Party will have any action or claim against the other for breach of this Contract, except for a breach of clause 1.1 by the Buyer.

1.8 Waiver

The Buyer may waive this Clause 1 by giving written Notice to the Seller or Seller Agent at any time before the Latest Time, or if clause 1.5 applies, before the Contract is terminated. If waived this clause is deemed satisfied.

1.9 Definitions

In this Clause:

Amount of Loan means either the amount referred to in the Schedule or any lesser amount of finance referred to in the Finance Application. If the amount referred to in the Schedule is blank, then the amount will be an amount equivalent to the Purchase Price.

Approval Notice means a Notice in writing given by the Buyer or the Lender to the Seller, or Seller Agent to the effect that Finance Approval has been obtained.

Finance Application means an application made by or on behalf of the Buyer to the Lender to lend any monies payable under the Contract.

Finance Approval means:

(a) a written approval by the Lender of the Finance Application or a written offer to lend or a written notification of an intention to offer to lend made by the Lender; and

(b) for the Amount of Loan; and

(c) which is unconditional or subject to terms and conditions:

(1) which are the Lender's usual terms and conditions for finance of a nature similar to that applied for by the Buyer; or

(2) which the Buyer has accepted by written communication to the Lender, but a condition which is in the sole control of the Buyer to satisfy will be treated as having been accepted for the purposes of this definition; or

(3) which, if the condition is other than as referred to in paragraphs (1) and (2) above includes:

(i) an acceptable valuation of any property;

(ii) attaining a particular loan to value ratio;

(iii) the sale of another property; or

(iv) the obtaining of mortgage insurance;

and has in fact been satisfied.

Latest Time means:

(a) the time and date referred to in the Schedule; or

(b) if no date is nominated in the Schedule, then 15 Business Days after the Contract Date.

Lender means:

(a) the lender or mortgage broker nominated in the Schedule; or

(b) if the Buyer makes a finance application to, or if no lender is nominated in the Schedule then, any bank, building society, credit union or other institution which makes loans and in each case is carrying on business in Western Australia or a mortgage broker carrying on business in Western Australia.

Non Approval Notice means a Notice in writing given by the Buyer or the Lender to the Seller, or Seller Agent to the effect that Finance Approval has been rejected or has not been obtained.

2. Acceptance of this offer will be sufficiently communicated to the Buyer if verbal or written notification is given by the Seller or Seller's Agent to the Buyer that the acceptance has been signed by the Seller.
3. The 2009 General Conditions are incorporated into this Contract so far as they are not varied by or inconsistent with the Conditions or Special Conditions of this Contract.
4. If GST is applicable to this transaction then the relevant GST provision should be outlined in the Special Conditions or in an attached GST Annexure, which forms part of this Contract.

BUYER [If a corporation, then the Buyer executes this Contract pursuant to s.127 of the Corporations Act.]

	Witness	Date
.....	.....	...../...../.....
.....	.....	...../...../.....

THE SELLER (FULL NAME AND ADDRESS) ACCEPTS the Buyer's offer .....

.....

.....

[If a corporation, then the Seller executes this Contract pursuant to s.127 of the Corporations Act.]

	Witness	Date
.....	.....	...../...../.....
.....	.....	...../...../.....

L

JOINT FORM A true copy of this document has been received by each of the Parties - together with a copy of the 2009 General Conditions.

....

M

STRATA DISCLOSURES

If the Property is a Strata Lot, then the Buyer acknowledges having received the Form 28 Disclosure Statement before signing this Contract.

....

CONVEYANCER The Parties nominate their Representative below to act on their behalf and consent to Notices being served to that Representative's facsimile number.

	BUYER'S REPRESENTATIVE	SELLER'S REPRESENTATIVE
Name	.....	.....
Signature	.....	.....

N

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L General conditions

The General Conditions detail the buyer's and seller's obligations under the contract. The General Conditions also set out the procedures to be followed if one party is in default of the contract. You should obtain and read the General Conditions before you sign the contract and seek further advice if you are unsure of anything.

M Strata disclosure

For strata titled properties, the seller must give the buyer a completed strata disclosure statement. This statement includes information relating to the strata levies, body corporate rules and strata company voting rights associated with the property.

N Nominating a settlement representative

Write the name of your preferred solicitor or settlement agent at the bottom of the contract. It is always wise to let your solicitor or settlement agent know you have nominated them. *See page 29*.

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Settlement

At settlement the buyer becomes the registered proprietor of the property and the seller receives the money due to him from the sale.

Choosing a settlement representative

Choose your settlement representative carefully. You have the right to nominate the solicitor or settlement agent of your choice.

You have the right to nominate the solicitor or settlement agent of your choice. The settlement industry is very competitive and you can save money by shopping around – some solicitors charge less than settlement agents.

Real estate agents who have financial links with settlement agencies often recommend them "because it's convenient" or cheaper. It is prudent, just as convenient and no more expensive to be independently represented.

Settlement agents' fees are regulated by law on a sliding scale based on selling prices. For more information about settlement fees, see the ***Department of Commerce*** website.

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RCD's and hard-wired smoke alarms

As of 9 August 2009 the *Electricity Regulations 1947 (WA)* (**Regulations**) require sellers of residential properties built after 1 January 2000 to install at least 2 residual current devices (**RCD's**) in the premises before the sale is completed.

As of 1 October 2009 it is compulsory that mains powered smoke alarms are installed in residential properties prior to sale.

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If you are the seller

*Your **settlement representative** should:*

- ☑ check your contract
- ☑ liaise with your bank (or other financier) to attend settlement and discharge any mortgage
- ☑ obtain the signed transfer from the buyer and arrange for you to sign it
- ☑ arrange for the certificate of title to be handed over at settlement (if applicable)
- ☑ adjust all rates, taxes and strata levies and prepare a statement for you showing the amount due to you from the sale
- ☑ attend settlement on your behalf
- ☑ attend to payment of any rates and taxes (if applicable)
- ☑ make sure all monies due to you from the sale are paid to you in accordance with your instructions.

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***You** should:*

- ☑ make sure all conditions of your contract have been complied with
- ☑ arrange for the real estate agent to give the keys to the property to the buyer on the date of possession or, if you occupy the premises as your principal place of residence, at noon on the day following settlement
- ☑ cancel your insurance on the property no sooner than the day after the buyer takes possession or settlement (whichever occurs first)
- ☑ cancel the electricity and gas services. Any amount for electricity or gas consumed by you up to the date of possession or settlement is your responsibility and will not be apportioned at settlement.
- ☑ cancel your telephone, internet, pay television and any other telecommunications services or transfer them to your new residence
- ☑ ensure you install at least 2 RCD's and 2 mains powered smoke alarms in the premises

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If you are the buyer

*Your **settlement representative** should:*

- ☑ check your contract
- ☑ search the certificate of title
- ☑ prepare a transfer of land and arrange for you to sign it
- ☑ collect transfer duty and Landgate registration fees from you and arrange for the transfer to be endorsed
- ☑ liaise with your bank (or other financier) to attend settlement with your mortgage
- ☑ adjust all rates, taxes and strata levies and prepare a statement for you showing the amount you will need to pay to complete your purchase
- ☑ advise the local authority, water authority, **Office of State Revenue** and any strata company to record you as the owner of the property
- ☑ arrange and attend settlement on your behalf and ensure all the documents are lodged at Landgate after settlement

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***You** should:*

- ☑ make sure all conditions of your contract have been complied with
- ☑ obtain a statement from the seller certifying that RCD's and smoke alarms are installed in accordance with the Regulations
- ☑ arrange for the real estate agent to give you the keys to the property on the date of possession
- ☑ ensure the property is adequately insured from date of possession or on settlement (whichever occurs first)
- ☑ have the electricity service and any gas service transferred into your name from the date of possession. Any outstanding electricity or gas account is the seller's responsibility and will not be apportioned at settlement
- ☑ arrange for any telephone, internet, pay television and other telecommunications services you require to be installed or to transfer your existing services to the property
- ☑ inspect the property a few days before the settlement date.

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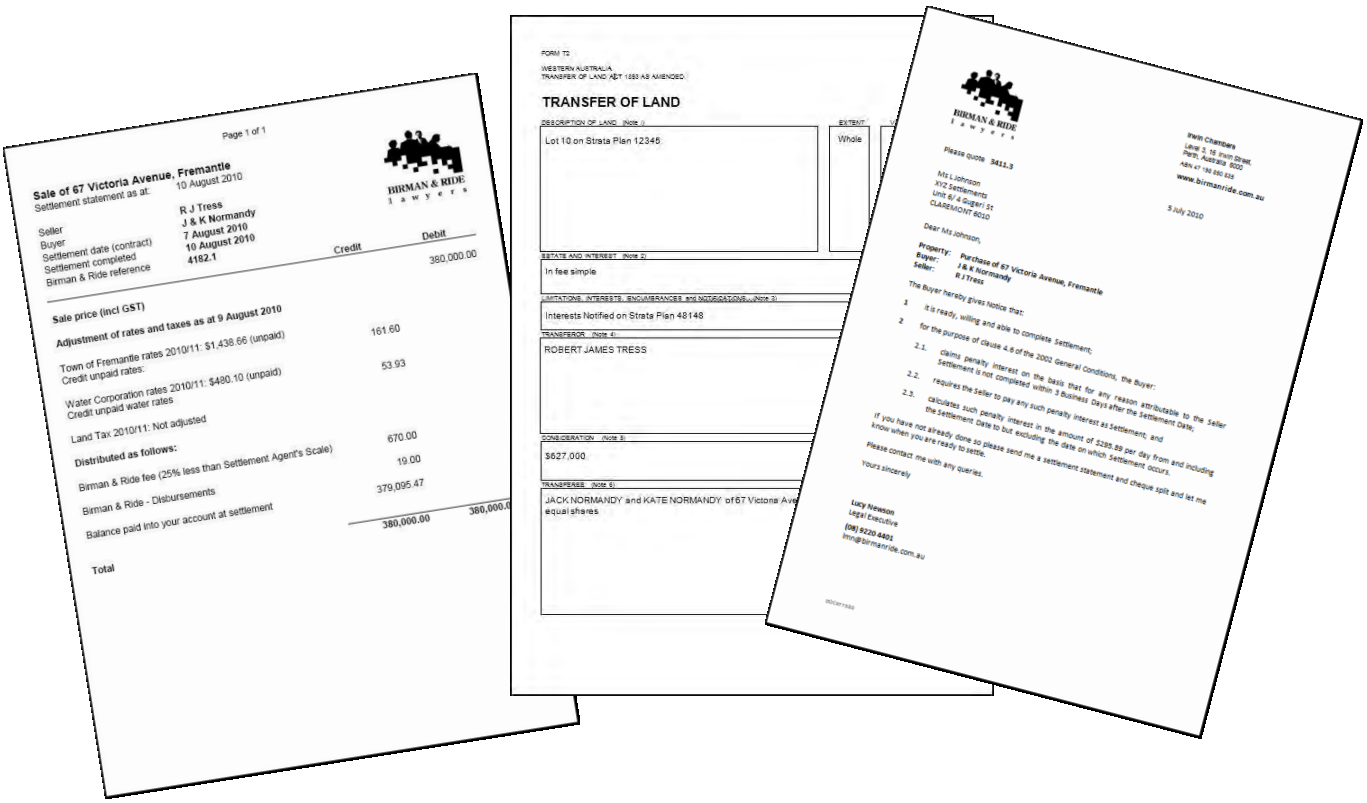
Delay in settlement

If settlement of the contract is delayed by either party for more than three business days, even if the delay is caused by a bank or settlement representative, penalty interest at the rate of 9% per annum on the purchase price (less the deposit) may be claimed by the innocent party. You don't need a default notice to claim penalty interest but you must be ready, willing and able to settle when you claim interest. See clause 4 of the General Conditions.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BIRMAN & RIDE lawyers

Sale of 67 Victoria Avenue, Fremantle
Settlement statement as at: 10 August 2010

		Credit	Debit
Seller	R J Tress		
Buyer	J & K Normandy		
Settlement date (contract)	7 August 2010		
Settlement completed	10 August 2010		
Birman & Ride reference	4192.1		
Sale price (incl GST)			380,000.00
Adjustment of rates and taxes as at 9 August 2010			
Town of Fremantle rates 2010/11: $1,438.66 (unpaid) Credit unpaid rates:		161.60	
Water Corporation rates 2010/11: $480.10 (unpaid) Credit unpaid water rates		53.93	
Land Tax 2010/11: Not adjusted			
Distributed as follows:			
Birman & Ride fee (25% less than Settlement Agent's Scale)		670.00	
Birman & Ride - Disbursements		19.00	
Balance paid into your account at settlement		379,095.47	
Total		**380,000.00**	**380,000.0**

FORM T2
WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

TRANSFER OF LAND

DESCRIPTION OF LAND (Note 1)	EXTENT
Lot 10 on Strata Plan 12345	Whole

ESTATE AND INTEREST (Note 2)
In fee simple

LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS (Note 3)
Interests Notified on Strata Plan 48148

TRANSFEROR (Note 4)
ROBERT JAMES TRESS

CONSIDERATION (Note 5)
$627,000

TRANSFEREE (Note 6)
JACK NORMANDY and KATE NORMANDY of 67 Victoria Ave
equal shares

BIRMAN & RIDE lawyers

Please quote 3411.3

Ms Lishnson
XYZ Settlements
Unit 6/ 4 Gugeri St
CLAREMONT 6010

Irwin Chambers
Level 3, 16 Irwin Street
Perth, Australia 6000
ABN 47 166 650 535
www.birmanride.com.au

5 July 2010

Dear Ms Johnson,

Property: Purchase of 67 Victoria Avenue, Fremantle
Buyer: J & K Normandy
Seller: R J Tress

The Buyer hereby gives Notice that:

1. it is ready, willing and able to complete Settlement;
2. for the purpose of clause 4.6 of the 2003 General Conditions, the Buyer:
   2.1. claims penalty interest on the basis that for any reason attributable to the Seller Settlement is not completed within 3 Business Days after the Settlement Date;
   2.2. requires the Seller to pay any such penalty interest as Settlement; and
   2.3. calculates such penalty interest in the amount of $295.89 per day from and including the Settlement Date to but excluding the date on which Settlement occurs.

If you have not already done so please send me a settlement statement and cheque split and let me know when you are ready to settle.

Please contact me with any queries.

Yours sincerely

Lucy Newson
Legal Executive
(08) 9220 4401
lmn@birmanride.com.au

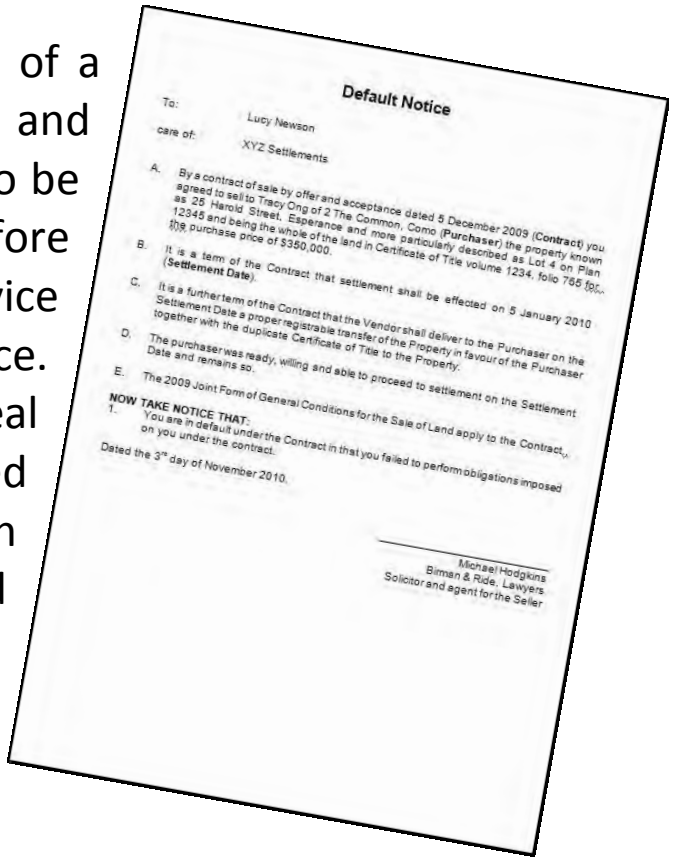
Default and remedies for breach of contract

If you don't comply with your obligations under the contract you will be in breach of contract. The other party will have remedies which may be enforced against you. In most cases a **default notice** must be issued before such remedies are available.

Default notice

Most remedies cannot be enforced unless you serve a notice on the other party specifying the default you complain of and giving at least 10 business days for the default to be remedied. *See clauses 23 and 24 of the General Conditions.*

The procedure for the issue of a default notice is complicated and must be followed correctly to be effective. It is therefore important to get legal advice before issuing a default notice. Settlement agents and real estate agents are not qualified to give professional advice in these circumstances and cannot issue default notices on your behalf.



Default Notice

To: Lucy Newson

care of: XYZ Settlements

A. By a contract of sale by offer and acceptance dated 5 December 2009 (**Contract**) you agreed to sell to Tracy Ong of 2 The Common, Como (**Purchaser**) the property known as 25 Harold Street, Esperance and more particularly described as Lot 4 on Plan 12345 and being the whole of the land in Certificate of Title volume 1234, folio 765 for the purchase price of $350,000.

B. It is a term of the Contract that settlement shall be effected on 5 January 2010 (**Settlement Date**).

C. It is a further term of the Contract that the Vendor shall deliver to the Purchaser on the Settlement Date a proper registrable transfer of the Property in favour of the Purchaser together with the duplicate Certificate of Title to the Property.

D. The purchaser was ready, willing and able to proceed to settlement on the Settlement Date and remains so.

E. The 2009 Joint Form of General Conditions for the Sale of Land apply to the Contract.

NOW TAKE NOTICE THAT:

1. You are in default under the Contract in that you failed to perform obligations imposed on you under the contract.

Dated the 3rd day of November 2010.

Michael Hodgkins
Birman & Ride, Lawyers
Solicitor and agent for the Seller

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Terminating the contract

You may only **terminate** the contract in certain circumstances. You should not take this step without legal advice because wrongful termination may have serious adverse consequences. *See clauses 23 and 24 of the General Conditions and clause 1 of the offer and acceptance.*

If you are the buyer

If you are the buyer and you default in complying with your obligations under the contract, the seller may:

- hold you to your obligations under the contract
- terminate the contract
- keep your deposit
- sue you for any loss he suffers on the resale of the property, including agent's fees and incidental expenses.

If you are the seller

If you are the seller and you default in complying with your obligations under the contract, the buyer may:

- hold you to your obligations under the contract
- terminate the contract
- recover all monies paid
- sue you for any loss or damage he suffers.

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More Information

- **Real Estate Institute of Western Australia Inc**
- **Department of Commerce – Settlement industry**
- **Department of Commerce – Real Estate industry**
- **Office of State Revenue**

Contact us

This guide may not contain all the information you need. If in doubt obtain legal advice *before* you sign a contract. Birman & Ride offer free information about buying and selling real estate:

9220 4430

1800 018 845 (outside Perth)

If you have any queries or concerns about your real estate transaction, arrange an ***initial consultation***.

Feedback

We plan to produce future editions of this guide. If you have suggestions for additions or improvements, please email **settlements@birmanride.com.au**.

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