



# Buyer's Agent Fact Sheet



## Choosing a buyer's agent when buying residential property

While you are probably familiar with real estate agents who represent a seller in a real estate transaction, you may not be so familiar with real estate agents who represent a buyer. Where a prospective buyer engages a real estate agent to help them find and buy a suitable property, these agents may be known as buyer's agents. This guide is intended for buyers of residential property (whether for their own use or for rental purposes), who wish to engage a buyer's agent.

If a person carries on a business or holds themselves out as a real estate agent under the *Real Estate and Business Agents Act 1978* (the REBA Act) they **must be a licensed**

**real estate agent holding a current triennial certificate.** A licensed real estate agent may employ registered sales representatives to assist with real estate transactions.

In this guide, we use the term '**buyer's agent**' to refer to a licensed real estate agent or their registered sales representative who undertakes real estate transactions while representing a buyer for the purchase of a property. The **buyer's agent** acts on your behalf and in your best interests when purchasing a property. Your buyer's agent may search, evaluate and/or negotiate the purchase of a property on your behalf.

There are circumstances where a person may provide real estate services to a buyer without needing to be licensed or registered, eg gathering a list of properties but not engaging in negotiation. We will refer to those people as 'property finders'.

You may also come across terms such as buyer advocates, property finders or property advisors. You will only be protected under the REBA Act if the service provider is a licenced agent or registered sales representative performing real estate transactions. You also have certain protections under the *Australian Consumer Law (ACL)* when you buy goods and services.

However, by using a licensed/registered person, you have the benefit of your own advocate in property negotiation, as well as recourse to the Fidelity Guarantee Account (under the REBA Act), in the event of defalcation by that agent.

It is important you consider the services you need, as this will inform you about whether you should employ a buyer's agent or a property finder, and what protections are available to you.

### Real estate agents

Real estate agents are often simply called agents. However, they may also be known as the seller's agent or listing agent when representing the seller in a real estate transaction or a buyer's agent when acting for the buyer.



## You may wish to engage a buyer's agent because:

- you do not have time to look for a property and need another party to find a property for you;
- you would like an objective third party to act in your best interests by negotiating a deal on a property you have found;
- you have limited knowledge of desirable areas or particular features a property should have;
- you are not aware of market value; or,
- you do not live in the area.

Before appointing a buyer's agent it is important to evaluate your needs. It is up to you to decide which aspects of buying a property you are willing to take on and which you would like a buyer's agent to do for you.

The number and type of services you appoint an agent to undertake as your buyer's agent will determine the fees you pay. A buyer's agent may offer you the following services:

- conduct research in order to prepare a list of properties that fit your criteria and arrange for you to view them;
- advise on the merits of individual properties;
- discuss market values;
- bid for you at auction;
- conduct enquiries and searches with relevant authorities to determine if any issues affect the use and enjoyment of the property;
- engage in negotiation on your behalf;
- assist with the wording of special conditions in offer and acceptance contracts;
- explain the terms and conditions in the seller's contract and advise if they are in your best interests (a buyer's agent cannot provide you with legal advice unless they are a lawyer);
- arrange building and pest inspections and other services;
- monitor the settlement process;
- liaise with selling agents, contractors and settlement agents; and
- oversee final inspections.

If you are an investor, you may also need advice about other matters, such as the desired rent, whether the property will attract tenants, and any capital expenses or repairs that will need to be carried out in order to attract tenants at the desired rent. It is important to note that under the *Corporations Act 2001* the buyer's agent cannot provide you with financial advice unless they hold an Australian Financial Services licence.

# Various options available to you when purchasing a property

## 1. Represent yourself

Representing yourself means you are responsible for the tasks associated with buying a property, including sourcing a property, researching information that may affect the property and negotiating the purchase price including terms and conditions used in the sales contract.

In most cases, there will be a real estate agent or their sales representative involved in the sale of the home you want to buy. You will need to negotiate the purchase price directly with the agent who must represent the seller's best interests, not your interests as a buyer. Similarly, if you want to buy a property from a private seller, you will need to deal directly with the seller. You will also need to monitor the settlement process, along with the seller's agent.

## 2. Appoint a property finder

You may employ a property finder if you only want someone to gather a list of properties according to your criteria; however, if they are unlicensed or unregistered under the REBA Act, they are limited in any other real estate related duties they can perform for you. If you later decide you wish to involve them in matters such as negotiating the purchase, they cannot do so without breaching the REBA Act.

A person participating in real estate transactions, such as negotiating, documenting and conveying counter-offers, or holding deposits, needs to be licensed or registered under the REBA Act.

## 3. Appoint a buyer's agent for a particular task

You don't have to appoint a buyer's agent to handle all aspects of a real estate transaction. You may wish to locate the property yourself and then use a buyer's agent to represent you in the negotiations, bid on your behalf in an auction or make contact with the owner directly. Alternatively, you may wish to appoint a buyer's agent to find a property for you and then negotiate the purchase on your own.

It is important to discuss the specific services you are looking for in a buyer's agent and ensure these are marked clearly in the contract as well as the fee payable for each service.

## 4. Appoint a buyer's agent to locate a property and negotiate on your behalf

You can appoint a buyer's agent to handle all aspects of purchasing a home. When doing this, you should consider what you want in a property and give the prospective agent a list of requirements including location, price, access to transport and facilities, and the size and style of property you would like.

Once you have decided upon a property, the buyer's agent will negotiate the purchase with the seller or selling agent on your behalf or bid for you if it is to be auctioned. The buyer's agent can also explain to you the meaning of common conditions included in a sales contract or refer you to legal advice where appropriate.



*An advantage of using a buyer's agent to negotiate on your behalf is that you do not have to deal directly with the seller's agent if you don't want to, thereby reducing the likelihood of direct pressure sales tactics that may be used by the selling agent.*



## How to choose a buyer's agent

The first step is to check that the buyer's agent is licensed or registered as required by the REBA Act, by calling Consumer Protection's licensing branch on 1300 30 40 64 during office hours or visiting the Department's website on [www.commerce.wa.gov.au/CP/LicenceSearch](http://www.commerce.wa.gov.au/CP/LicenceSearch)

### Next, it is recommended you ask a number of questions of the buyer's agent:

- What are your skills and experience as a buyer's agent?
- What is your fee?
- How is your fee determined?
- What services are included in your fee?
- Are there any additional fees/charges?
- Do you need my authority to incur additional fees/charges?
- How frequently will you provide me with a list of suitable properties?
- How thoroughly do you evaluate properties on the list? What research do you undertake before recommending a property to me?
- How does the negotiation process work?
- What strategies will you employ to achieve the best possible outcome for me?
- Are you a member of a relevant industry body, such as the Real Estate Institute of WA (REIWA) or the Real Estate Buyers' Agents Association of Australia?
- Can you provide references from former clients?
- Do you have Professional Indemnity insurance?
- Do you have a conflict of interest? In other words, are you the selling agent for a property that you think I might be interested in purchasing?
- What happens if I locate a property myself or inherit a property during the period of our contract?

### Fee structures:

It is useful to compare the fees and services of several buyers' agents before making your decision, in much the same way as you would get several quotes before hiring a tradesperson. You should ask the buyer's agent to outline the services they offer, at what cost, in writing.

The fee structure may include:

- an engagement or activation fee;
- a standard fee for particular services, such as bidding at auction; and/or
- a variable fee, such as a percentage of the purchase price.

If you accept a contract in which the buyer agent's fee is a percentage of the purchase price it will cost the agent part of their fee to negotiate a lower price for you. Some buyers' agents may negotiate a set or fixed fee in advance instead, so there is no disincentive to negotiating a lower price.

If the service fee is expressed as an hourly/weekly rate, the maximum amount to be received by the agent must also be included. The Consumer Protection publication, *Real estate fees – negotiating with an agent*, may assist you in negotiating a contract that meets your needs.

Under the ACL, the agent must provide a single price. It should be noted that the total amount quoted by the agent is taken to be inclusive of GST unless they have clearly stated that the GST will be additional. If the GST is stated separately, a total including GST must also be provided.

## Other costs that may be included in your buyer's agent's contract

You may also be asked to pay for costs that arise from researching a property, such as acquiring a copy of the strata plan or records from the local council. Your contract should mention if your buyer's agent intends to charge you for these types of costs and you should only be charged for the actual cost incurred.

If a licensed real estate agent or registered sales representative is selling a property you are interested in, they should be able to provide you with a free or low-cost copy of the Certificate of Title (CoT). The CoT

is a record of all current information relevant to a parcel of land, and contains details such as easements, that may affect an owner's use and enjoyment of the land.

A Property Interest (PI) report currently provides up to 57 interests, restrictions or responsibilities not listed on the CoT that may also affect your use of the land. You may also be able to obtain a PI report from the seller's agent.

If you cannot get a free or low-cost CoT or PI report, you may

wish to ask your buyer's agent to source it for you, either at the cost specified in your contract, or at the actual cost charged by Landgate, or alternatively, buy it directly from Landgate yourself.

Before you sign an offer, you should be aware of any encumbrances or restrictions that may affect your ability to use the land, as that may affect the price you are willing to pay. Viewing the CoT and PI report for a property is one of the easiest ways for you to be fully informed about your prospective purchase.

### Conjunctional agents

While searching for a property you may come across someone offering their services as a 'conjunctional agent' (they may also be known as a 'buyer manager' or similar).

A conjunctional agent, with the agreement of the seller's agent, becomes a sub-agent of the seller. A conjunctional agent introduces buyers to a seller's property or makes an offer on a buyer's behalf to the seller's agent. The two agents agree that if the conjunctional agent introduces a buyer to a seller's property and the buyer purchases the property, then both agents share the commission paid by the seller.

You as a buyer do not have to use a conjunctional agent. You should be aware that if you use a conjunctional agent, they are required by law to act in the seller's best interests, not yours, as the seller pays their commission. This means you should consider what information you provide to a conjunctional agent, as the sub-agent must relay all relevant information to the seller and that could lead to you paying a higher buying price. If you are not paying an agent you must assume that the agent is working in the best interest of the seller.

If you employ a buyer's agent, they should not enter into a conjunctional arrangement with the listing agent for a property you wish to purchase, as that can give rise to a conflict of interest.



## Entering into a contract with a buyer's agent

If you choose to engage a buyer's agent, you need to enter into a written contract with them in the same way a seller signs an agreement with their agent. By law, agents are required to have a written agreement that has been signed by you before they are authorised to act on your behalf. This agreement is usually known as a Written Authority, an Appointment to Act or an Authority to Act.

The contract you sign to authorise a buyer's agent to act on your behalf is a legally binding contract. This means that both you and the buyer's agent are obligated to fulfil the requirements of the contract.

REIWA has developed a standard contract to appoint a buyer's agent for their members but individual agents may have their own contract.

As the terms and conditions of contracts may vary, when choosing a buyer's agent you should read each contract carefully to ensure you fully understand the terms and conditions of the Written Authority.

The terms and conditions of a buyer's agent's contract are not set by law. This means you are free to negotiate the clauses, including fees, before you sign anything.

For more information on written authorities, please refer to the Consumer Protection publication *Real estate fees – negotiating with an agent*.

*By law, agents are required to have a written agreement that has been signed by you before they are authorised to act on your behalf.*

Some questions to consider when negotiating a contract with a buyer's agent include:

- Does the Written Authority clearly state the services the agent is going to provide?
- Does the fee need to be paid before or after settlement?
- What happens if you decide to stop looking for a property to buy?
- What happens if you purchase a property without using some/all of their services?
- What are the restrictions of the Written Authority? Is the agreement exclusive to the buyer's agent for a set period of time? This set period of time is called the 'authority period' and may affect any decisions you make with regard to buying a property. See the case study next for more information.



# CASE STUDY

The following case study illustrates how the terms of the contract between a buyer and a buyer's agent can lead to a dispute between the two parties.

Francine decided she wanted to buy a property and engaged a buyer's agent. After discussing the agent's services and fee schedule, Francine signed a contract that authorised the agent to act on her behalf. The authority period was for six months and required the buyer's agent to:

- provide Francine with a list of properties for consideration at a price of approximately \$500,000 – \$550,000;
- provide general advice; and
- research and negotiate the contract for any property that Francine selected.

The contract also included details of fees payable to the buyer's agent:

- an inclusive 'activation fee' of \$550\*;
- associated costs for searches and reports (such as from a quantity surveyor, a valuation, building inspection, Certificate of Title, Landgate's PI report);
- notification that settlement agent fees were in addition to the buyer agent's costs; and
- a 'buying fee' to be paid if during the authority period Francine purchased a property or got another person or entity to buy a property or otherwise became a legal or beneficial owner of a property.

## Further information

If a dispute arises between you and your buyer's agent, you can contact Consumer Protection for assistance. In addition, if you suffer financial loss or loss of property by reason of any defalcation by the buyer's agent, you may be eligible for compensation from the Fidelity Guarantee Account.

You can contact the Department on **1300 30 40 54** (8.30am – 5.00pm weekdays) for the cost of a local call (from a land-line). For information about making a complaint, please see the Department's advice at [www.commerce.wa.gov.au/cp/complaints](http://www.commerce.wa.gov.au/cp/complaints)

A dispute arose between the parties, because during the authority period, Francine found a property independent of the buyer's agent, through a friend who knew of an owner selling their property privately. The property was just what Francine was looking for and she subsequently purchased the property.

The buyer's agent claimed a buying fee from Francine because the transaction was within the authority period. Francine did not agree with this as she found the property and negotiated the deal, not the buyer's agent.

This is why you should read the contract carefully before signing it. This dispute could have been avoided if Francine had included a clause in the contract stating that no 'buying fee' would be paid if she located and settled a property independently. (Please note: if you intend to change any clauses, you may need to seek legal advice to ensure the clause is worded in a manner that is legally correct and unambiguous.)

**\* May not be representative of current prices**



# Relationship between buyer, seller and agents

## CHOOSING A BUYER'S AGENT

A person decides that they would like to buy a property (the **buyer**). The buyer appoints a **buyer's agent** (a licensed real estate agent) to help them find a property and to represent them during the buying process.

## FINDING A PROPERTY

The **buyer's agent** prepares list of suitable property and organises viewings for the buyer.

## CHOOSING A LISTING AGENT

A property **owner** or **seller** decides to sell their property (may be referred to as the **vendor**). They appoint a **listing agent** (a licensed real estate agent) to represent their interests in selling their property.

## SELLING A PROPERTY

The **listing agent** arranges advertising, property viewings and home opens for the seller.

## OFFER AND ACCEPTANCE

The **buyer's agent** liaises directly with the listing agent or private seller on behalf of the buyer. They can:

- assist with the wording of special conditions in the Offer and Acceptance;
- arrange building and pest inspections; and
- negotiate the sales price for the buyer.

The **listing agent** (on behalf of the seller) or the **private seller** liaises directly with the buyer's agent. They can:

- assist with the wording of special conditions in the Offer and Acceptance;
- arrange building and pest inspections; and
- negotiate the sales price for the seller.

A **conjunctional agent** is a licensed real estate agent or sales representative who is a sub-agent of the seller. They have an agreement with the seller's listing agent that if they introduce the buyer who successfully purchases the property, the commission paid by the seller will be split. See Conjunctional agents for more information.

A **private seller** may deal directly with a buyer's agent and arrange their own advertising, property viewings, home opens and negotiation of contract.

## SETTLEMENT

The **buyer's agent** monitors the settlement process and the transfer of the title deeds into the buyer's name.

The **listing agent/private seller** monitors the settlement process and the transfer of the title from the seller's name to the buyer's name.

## NEW OWNER

This guide is provided by the Department of Commerce to help consumers understand the law and important issues concerning a buyer's agent and does not provide a definitive list of situations where the law applies.

The intention of this guide is to explain the law in simple language and it should not be used as a substitute for legal advice or the relevant legislation.