

A photograph of a man and a woman smiling and looking out of a window frame. The man is on the left, and the woman is on the right. They are both looking towards the camera. The window frame is white and has a blue stripe running vertically down the right side. The background outside the window is a bright, overcast sky.

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Potential disasters and the remedies, when buying or selling property.

It could happen to you...

 **Hooker** Settlements



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Introduction

If you are about to enter a property purchase this publication is essential reading.

Many people are not aware of the potential things that could happen when transacting to buy or sell property. This E Book outlining ten potential disasters to be aware of, with the remedies, has been designed so you can be well armed with good knowledge prior to signing off on such a large transaction.

- Are the buildings council approved?
- Is the time for finance long enough?
- Have we allowed enough time for the bank to create mortgage documents?

There are many things to consider and be informed of. LJ Hooker Settlements is an experienced organization and is aware of just about every tip and trick in the business to make your transaction and settlement an easy worry free experience.

We have been operating since 1999 and in that time completed over 35000 settlements representing some \$10 billion dollars in residential value, we have the experience and can honestly say that **nobody does it better®**

Disaster 1:

Delays in settlement can be costly!

Settlement date is the deadline for all the promises made in the contract to be completed. If all the contract terms have been satisfied, the Department of Land will, upon lodgement of the relevant documents and fee, transfer the title in the property from the seller(s) to the buyer(s).

Be careful when negotiating a settlement date with the other party. It is understandable that you may want to move as soon as possible, but it is necessary to leave enough time before the settlement date so that:

- The lender has sufficient time to approve a loan application and attend to all relevant paperwork;
- Any inspections required under the contract can be completed and the results of any reports can be considered; and
- Relevant enquiries can be made with, for example, the local authority and Government departments.

If you or your bank can't meet the settlement date nominated on the Offer & Acceptance Contract, you might have to pay penalty fees to the other party. As well as being charged penalty interest your moving plans will be disrupted and you may have to make alternative arrangements.

Get advice from your settlement agent before negotiating a settlement date.

It is recommended that you discuss the settlement date with your lender and conveyancer. As an approximate guide, a minimum of six weeks is required for settlement, but you should not rush the settlement and you should also keep in mind that settlements can sometimes become complicated, which may require extra time.

Case Study: Delay in Settlement

Nathaniel was in the process of buying his first house in Baldivis and was excited about the prospect of moving in. When putting in his offer, Nathaniel requested a settlement for two weeks time as he couldn't wait to move out of home. The seller's accepted his offer.

Nathaniel needed to arrange finance to buy the house. There was so much paperwork to organise that it took longer than Nathaniel expected before the bank approved his application for a loan.

Nathaniel then employed a settlement agent. The settlement agent got to work immediately on his file and was alarmed by the short amount of time he had to arrange the settlement. The process was made even more difficult as the bank's lending section was located in Melbourne. The settlement agent persisted with calls to the bank to highlight the urgency in processing the mortgage documents so that settlement could proceed on the date nominated by Nathaniel on the contract. However, banks have their own turn-around times and with a large work load often do not care about the agreed settlement date as they are not a party to the contract.

Nathaniel also had some special conditions on the purchase, such as getting a termite inspection report done on the property and a general building inspection was also required.

The settlement agent made enquiries with the relevant authorities about the property, made sure rates and taxes were adjusted correctly and ensured all paperwork was filled out and signed. The settlement agent was working under significant time pressure and there was little time to deal with any unexpected surprises.

The settlement date was fast approaching and it became clear that Nathaniel's bank would not be in a position to settle.

Nathaniel wondered what would happen, now that settlement would not take place on time. The settlement agent advised Nathaniel that because he was unable to settle on the day stated in the contract, he would have three business days grace before he was required to start compensating the seller. The daily amount he was required to pay was written in the General Conditions which formed part of the contract he signed to buy the house.

Nathaniel had to cancel his removalist and was unable to re-book them until he knew his bank was in a position to settle.

After repeated requests by the settlement agent, the bank was able to settle late the following week. Nathaniel had to pay compensation to the seller. This payment could have been avoided if Nathaniel had employed the settlement agent earlier and received advice about choosing a more realistic settlement date before signing the contract.



Disaster 2:

Finding out there is an unapproved structure on the property.

If it is discovered that a structure on the property does not have the relevant approval, and does not meet the building requirements, the structure may have to be pulled down which can be costly and reduce the value of the property!

Checking things you can't easily see may involve asking the property seller or real estate agent to confirm in writing if any buildings, improvements and fences on the property were constructed without the relevant approvals.

If this is disclosed before entering into a contract, and the buyer is willing to take on the property and obtain the relevant approvals, then the negotiation can take into account the defect and be reflected in the price being paid.

However if it is only discovered during the course of the settlement through enquiries made by a prudent settlement agent, it may cause costly delays and involve detailed documentation to be lodged by the seller to obtain the relevant approval.

The LJ Hooker Difference: Title Insurance Tip

Title insurance is a specialised type of insurance which provides protection to home buyers for losses associated with unapproved structures. Title insurance will provide cover to the home buyer in circumstances where the home buyer discovers after settlement that a structure on the property does not have the relevant approval and enforcement action is taken by a local Council. If an unapproved structure is discovered during the course of the settlement, cover may also be provided, subject to conditions. The premium is a "one off" payment and premiums start from \$225 plus GST and applicable taxes. Contact our office for further details.

Disaster 3:

Discovering the property has a timber pest infestation.

Timber pests can cause costly damage if allowed to go unchecked and can reduce the value of a property. Before you buy a home, it is recommended that you have a timber pest inspection report prepared to make sure the property is not infested by termites or other timber pests.

It is therefore important to include a timber pest inspection on your offer as a special condition, rather than relying on verbal agreements with the seller, making the terms clear and verifiable.

The special condition should state that if termite activity is sufficient to cause, or has caused, damage then the contract of sale can be cancelled or the seller made liable for the cost of treatment or repair.

Sellers may offer to pay for the timber pest inspection. Although this option may seem cheaper for a buyer, there are strong reasons why buyers should engage their own timber pest inspector.

If buyers hire their own timber pest inspector, the report will be independent and not affected by a seller's interests. In addition, if buyers engage the timber pest inspector then not only will the person contracted provide advice directly to them, but the buyers will also be in a position to ensure that the quality of the inspection and report meets their expectations. This will enable the buyers to enforce contractual obligations.



Disaster 4:

A large fine imposed for not complying with regulations.

Failure to sell a property that meets regulations could lead to fines being imposed. A quality settlement agent will keep up to date with any changes and advise you right in the beginning of your obligations.

Similarly, if you purchase a property and a regulation has not been adhered to by the previous owner, the obligation may pass to you by the regulatory body.

Case Study: Smoke alarms and RCD's

Kate had her home on the market for quite a few months before a buyer made her an offer, which she decided to accept.

The buyer knew that they had to arrange for finance and that they were also going on an overseas holiday in a week's time, so had been advised to make settlement three months from the date of the offer being made. Kate agreed to the long settlement, as she wanted to secure the sale with the buyer.

During the course of the settlement there were changes in legislation that required Kate to install two Residual Current Devices (RCD's) and Mains Powered Smoke Alarms at the property, prior to the property being transferred.

As Kate entered into the contract prior to the changes, Kate did not think she had to do anything else before settlement, as the only special condition on the O&A was for the buyer to obtain a timber pest inspection.

The settlement agent acting for Kate, was aware of the new regulations and provided information and advised her of her obligations as the current owner.

Kate then arranged for the regulations to be met before settlement and provided evidence to show the buyer.

If Kate had not been made aware early that she had to arrange for the RCD's or mains powered smoke alarms to be installed she would have been in a situation where settlement could have been delayed or a large fine imposed on her by the regulatory body.

Disaster 5:

Mortgagee Sale contracts can cause delays.

A mortgagee sale is one in which the owner of the property has had the property seized by their bank and the bank has sold it as mortgagee in possession.

It is important to understand the situation that surrounds this type of sale and how it could affect a buyer.

This type of sale normally arises due to the owner being unable to meet their mortgage repayments and their bank taking possession to sell the property and recover their debt.

In a lot of situations it is not just the bank that is owed money, there may be other debtors that also want to recover a debt. In order for them to do this they may lodge a caveat over the property, claiming their interest.

A delay in settlement could occur, if at any time prior to settlement a caveat is lodged, as the caveat needs to be assessed at Landgate and the appropriate steps taken by the mortgagee to arrange for its removal prior to or at settlement.

Your settlement agent will advise you as soon as they become aware of any possible delay, but it is important for you to know that this situation could occur right up to the day of settlement.

The LJ Hooker Difference: Title Insurance Tip

Title insurance is a specialised type of insurance which provides protection to home buyers against the risk that a third party, such as a creditor of the seller, lodges a caveat or writ on the title in the period between settlement and registration of your transfer. This is called 'registration gap' cover. Creditors may delay lodging a caveat or writ so that it only becomes a problem after settlement takes place. In the event that a caveat or writ is registered which prevents the home buyer's transfer from being registered, thereby depriving the home buyer of title, title insurance will provide cover to the home buyer. Such cover will include any necessary legal costs associated with removing the caveat in a timely manner and any other costs associated with securing registration of the home buyer's transfer. As there is no excess payable on a claim, the home buyer will be completely indemnified. The premium is a "one off" payment and premiums start from \$225 plus GST and applicable taxes. Contact our office for further details.



Case Study: Mortgage Sale Contract

A buyer who resided previously overseas, purchased a property from a mortgagee sale. The buyer had cash to purchase the property and needed somewhere to live asap, so the contract was written up for settlement to take place in 14 days from acceptance. There was a caveat on the property and the bank requested the caveator remove the caveat.

As the caveator did not want to provide a withdrawal of caveat (as they were annoyed they were not receiving the debt owed to them at settlement due to the lack of sale proceeds available) they had not done this prior to settlement.

The bank then had to request Landgate remove the caveat via a 21 day notice application. This application which was required to be made by the bank, took over 4 weeks to be signed, and then the application process took another 4 weeks to remove it.

The buyer had nowhere to live, and had to reside in temporary accommodation for nearly 3 months. The buyer could not charge penalty interest to the bank for the delay as the contract advised that the buyer could not charge for a delay in settlement due to a caveat not being withdrawn in time.



Disaster 6:

Being unaware of an encumbrance that effects your use of the property.

Purchasing a property without checking the Certificate of Title for encumbrances can mean that you may not be able to use the land in the way in which you intended.

Prior to signing an Offer & Acceptance contract buyers should always make their own enquiries on a property they intend to purchase; this includes obtaining a copy of the Certificate of Title and Strata Plan, if applicable. The title will show any restrictions about if and how the land can be used.

For example a Restrictive Covenant on the title will describe any restrictions on the type of dwelling which can be built, or a memorial may state an environmental situation which may affect your enjoyment of the land. ie: Mosquito infected area or land prone to flooding.

Regardless, a thorough settlement agent will, before settlement, ensure you are made aware of any encumbrances that will remain on the title.

Case Study: Do your homework when buying a strata-titled unit.

Laila, a sole parent, was purchasing a unit. After a long search, she found a neat and sunny two-bedroom, first floor apartment in East Fremantle, with newly landscaped gardens. Laila bought her four year old son a little puppy to help him settle into their new home.

Laila did not thoroughly read the forms or the contract when she made an offer on the unit.

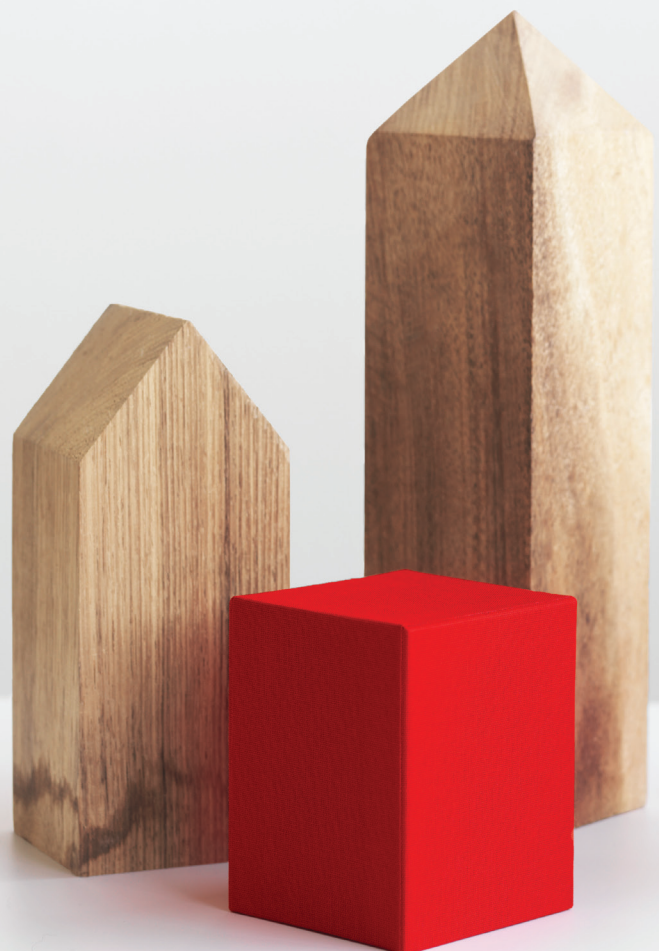
With 20 flats on the property, owned by a range of organisations and people, it was difficult for the strata company to make decisions. She was one of only two owners who actually lived in their units. Many of the tenants in the other units regularly held noisy parties until very late in the evening.

Laila was not aware that the strata company had banned pets from the complex. Although Laila owned her property, she was required to give away her son's beloved puppy.

Laila did consider selling her unit, but after taking into account the cost of relocating and buying another home, she decided to love the choice she had made.

The LJ Hooker Difference: Title Insurance Tip

Title insurance is a specialised type of insurance which provides protection to home buyers against unregistered easements and covenants and other encumbrances which should be registered on title but are overlooked or omitted during the development or subdivision process. Most encumbrances are recorded on the Certificate of Title, but home buyers run the risk that encumbrances are accidentally omitted and the mistake is only discovered after the property is purchased. In those circumstances, the home buyer may be liable to register the encumbrance and may be bound by its terms, even though the encumbrance was not registered on the Certificate of Title when the property was purchased. Title insurance is designed to provide cover for home buyers in these kinds of situations. Such cover would include the costs of registering the encumbrance and any loss in market value of the property as a result of the encumbrance. The premium is a "one off" payment and premiums start from \$225 plus GST and applicable taxes. Contact our office for further details.



Disaster 7:

Your Offer & Acceptance contract becomes invalid.

It is important to ensure that a person signing documentation in regards to an Offer & Acceptance contract or settlement paperwork is authorised to do so. Otherwise the contract may be invalid and unenforceable.

There are many different ways in which a person can buy or sell property. Some examples are:

By Power of Attorney; A formal document by which one person empowers another to represent them, or act in their shoes for certain purposes. When signing a contract under Power of Attorney, there must be a registerable document in place which must be lodged at Landgate prior to settlement taking place. The correct Donee (person authorized to sign for somebody) must be signing the contract.

Under a Company; A company search obtained through ASIC can determine who the director/director secretary are to ensure the authorised signatories have signed the contract.

Trustees for a Trust; Many people set up a trust document for taxation purposes. It is all of the trustees of the trust that must sign the contract. A stamped copy of this trust document for a buyer is required prior to settlement.

Executors of a will; The probate document will show who the executors are for a deceased proprietor.

A prudent settlement agent will ensure they obtain copies of the required documents on these sorts of scenarios to ensure the paperwork is correct to effect settlement.

Disaster 8:

Large additional unknown rates.

Always make enquires before purchasing a property to find out what rates are payable on a property every year and what proposed charges may be raised.

For example in some instances a council may propose to levy an underground power cost, but have not done so prior to settlement. If this is the case, the total cost will be payable by the buyer and could be up to \$5,000.

If you are purchasing a strata property it is advised to get a copy of the strata company records to find out if there are any special levies which you have to contribute to or will be liable for in the future. In some cases, these could be quite large and add a substantial outgoing amount each year.

The LJ Hooker Difference: Title Insurance Tip

Title insurance is a specialised type of insurance which provides protection to home buyers against the costs associated with outstanding rates, levies and taxes which are not brought to the attention of your settlement agent prior to settlement but which become the responsibility of the home buyer as the new owner. Errors can be made by Council when advising on the amount of rates which are payable on a property. In some cases, special levies may be struck by a body corporate after the enquiry is made by the buyer's settlement agent and not disclosed by the seller. In those circumstances, the buyer may be liable to pay the special levy, even though the buyer was not aware of it. In those circumstances, title insurance would cover the buyer for the outstanding rates, levies or taxes, ensuring that no enforcement action is taken by the relevant rating authority. The premium is a "one off" payment and premiums start from \$225 plus GST and applicable taxes. Contact our office for further details.



Disaster 9:

Your site is contaminated.

Buying a property which has been contaminated by a previous land use could be a costly mistake. A site is considered contaminated if it has a substance present...at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value.

But more importantly, selling a property without reporting and disclosing a contamination could lead to a fine of up to \$250,000 as the Contaminated Sites Act 2006 introduced mandatory reporting of known or suspected contamination by an owner occupier, a person who caused or contributed to the contamination or a contaminated sites auditor.

If you are buying property that you suspect is or may be contaminated it is highly recommended to do a search at www.dec.wa.gov.au/contaminatedsites

The Contaminated Sites database holds information on known contaminated sites, in other words sites that have been classified by the Department of Environment and Conservation as:

- Contaminated – remediation required;
- Contaminated – restricted use; or
- Remediated for restricted use.

The database allows searches for known contaminated sites using search fields such as Street Name, Suburb/Town, Local Government Authority (e.g. Council), Land Title or Crown Land Reserve Number.

You can search all records, by submitting a Form to DEC, of suspected contaminated sites reported to DEC, including sites that have not yet been classified, or sites classified as:

- Possibly contaminated – investigation required;
- Decontaminated;
- Not contaminated – unrestricted use; or
- Report not substantiated.

Disaster 10:

Your home doesn't have the required home indemnity insurance.

If you purchase a property that does not have Home Indemnity insurance (HII) for building works, including alterations and additions, you could find yourself out of pocket should those works be faulty and the builder dies, disappears or becomes insolvent.

The mandatory HII is required pursuant to the Home Building Contracts Act, and is a key consumer protection measure for purchases of residential property. Where compliance with the legislation is maintained it provides limited financial protection (to a maximum of \$100,000, unless otherwise agreed by the parties) against faulty workmanship following the construction of a new home or additions/renovations to an existing property.

HII cover remains effective for a 6 year period following the practical completion of any work valued over \$20,000 undertaken by a registered builder. This period extends to 7 years from the date the building license was issued.

A thorough and prudent settlement agent will ensure that the HII is in place before the property is transferred to ensure you are protected.

If you are an owner builder, your real estate agent or settlement agent can advise you of your obligations with regards to taking out indemnity insurance to protect you from prosecution and a maximum fine of \$10,000.



A woman with brown hair, wearing a dark business suit and a blue shirt, is smiling and holding up a set of keys. The keys are silver and attached to a black ring. The background is a blurred office setting.

About LJ Hooker Settlements

With the most important monetary transaction in your life, it is imperative to appoint professionals to act on your behalf. Our professionalism has been developed over many years of trading and is recognised widely by the industry. Our continued repeat business is a reflection of this.

Our professionalism is demonstrated through:

- **A brand to uphold:**

The LJ Hooker Brand is an icon and providing professional service to our clients maintains that good name.

- **Professional Staff:**

Our highly trained team of professionals means that your transaction is treated with paramount importance... all too often we hear of the "one man band settlement agency" with no support and no back up procedures in place causing a very bad experience for clients. Our systems and training have been duplicated and showcased in the State training arena as "Best Practice" methods and used as an example and a model other offices aspire to.

- **Location:**

If you are choosing a settlement agency that is away from the hub of activity (the Central CBD) then you may experience delays... and they can be costly. Our CBD location means we are close to all major banks and the Office of State Revenue, and as such can take necessary actions quickly to avoid costly delays.

- **Technology:**

Professionalism means you are up to date with the latest technology... LJ Hooker is an innovator and is ahead of the industry in this field, keep in touch using our 24/7 state of the art Settlement Tracker programme.

Thank you Mr Hooker

When it comes to settlements...

nobody does it better[®]

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