



APARTMENT OWNER 101

The steps to purchasing your apartment Guide for buyers

GLOSSARY

These are some of the terms that you will see frequently in the Education kit:

Strata Company – this references the entire apartment complex

Strata lots – the individual apartments that form the Strata Company

Strata Manager – this is an independent third party that performs the tasks at the direction of the Council of Owners (COO) to manage the Strata Company and associated expenses/finances

Council of Owners (COO) – up to 7 people (who own an apartment in the Strata Company) who are nominated to the COO to make decisions about the maintenance and upkeep of the Strata Company

By-laws – these are the management guidelines for the Strata Company and residents, and deals with matters such as common space, short stay, pets etc

CONTENTS

Message from Director of Australian Apartment Advocacy Samantha Reece	4
Apartment living - Is it for you?	7
The indicative building and warranty timeline	8
Purchasing off the plan – questions to ask	10
Signing a sales contract	14

Message from Samantha Reece Director WAAA



The Australian Apartment Advocacy is the voice for 2.5 million people who own or live in an apartment within Australia.

And it is anticipated that this number will only continue to grow as we evolve as a nation.

As education is one of the core roles of the Australian Apartment Advocacy, our agency partnered with the Building and Energy Division of the Department of Mines, Industry Regulation and Safety (formerly WA Building Commission) to create this education kit.

Whether you are looking to buy or are a current owner or renter, this kit, which is broken into the 3 stages of purchasing and living in an apartment is the first publication Australia wide, which outlines what it is like to live in an apartment.

While AAA advocates that apartment living is “easy breezy” we also advocate that buyers are empowered to make wiser decisions about choosing, purchasing and living in an apartment that reflects high standards of quality.

As with any new apartment, there are a number of specialists who are involved in its construction and ongoing maintenance, which ensures that your apartment complex stays healthy and hence retains its property values.

“The
Australian
Apartment
Advocacy is
the voice for
2.5 million
people who
own or
live in an
apartment
within
Australia.”

These specialists include the developer, builder, architect, structural engineer, specialized maintenance contractors, strata manager and of course you – the apartment owner.

These are certainly exciting times for WA with the revised Strata Titles Act 1985 (WA) (the Act) and the Strata Titles [General] Regulations 2019 (the Regulations) coming into effect (1st May 2020), which address both strata management and construction processes. This guide will aid with informing buyers about what they should be mindful of, as well as educate apartment owners about their role in maintaining their apartment and complex.

The AAA is a big believer that education is essential in making any calculated decision. And now this Apartment buyer and owners guide can be that trustworthy resource to help with your purchasing decision.

We know that if the market starts asking for additional proof of quality, ultimately the standard of our apartments will only improve and that is our long term aim.

We hope that you enjoy this document and that it is the start of your positive experience as an apartment owner and resident.

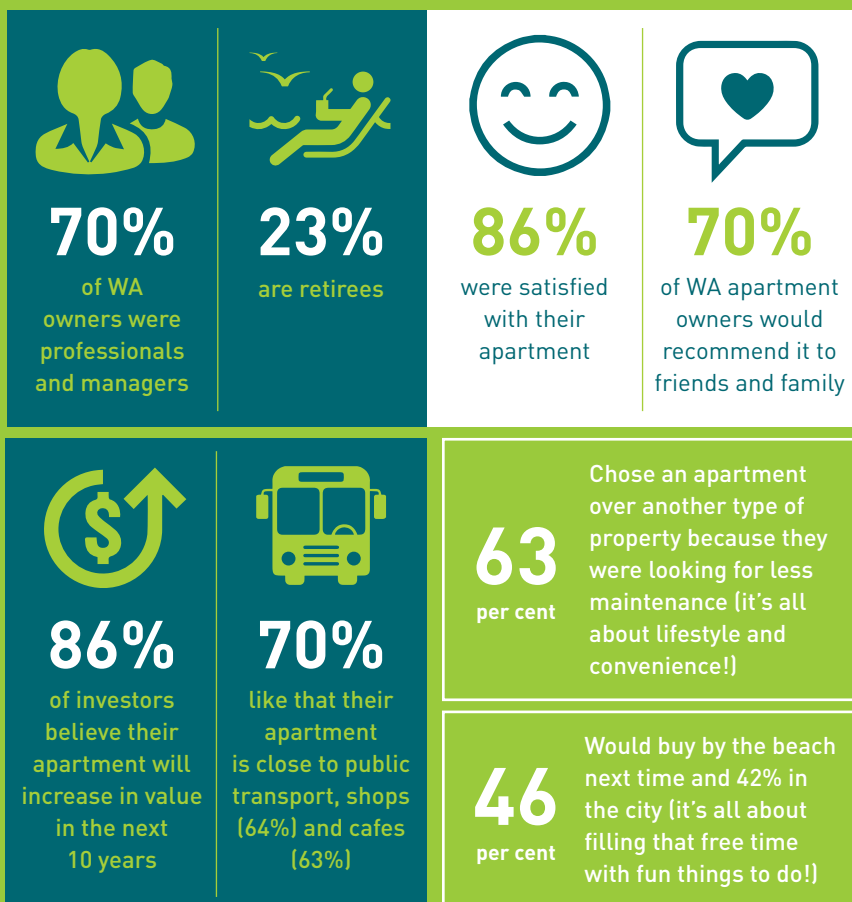
The WAAA is here for all WA apartment owners and we can be contacted on email sam@waaa.net.au or phone **0452 067 117**.

WAAA is very grateful for the working group that contributed towards the creation of this kit and who have set a high benchmark in terms of standards that we are seeking to come to the fore here in WA as well as other states.

- Sandy Randall – Building and Energy
- Bryn Williams (WA Representative for the Australian Institute of Waterproofing)
- Tristan Salter, RSA Pty Ltd
- Will Schofield, Plus Architecture
- Kylie Wigham, Celsius
- Matthew Burkett, Paint Inspec
- Paul Colliver, Banhams
- Greg Keet, AllianceFM
- Leanne Wahlert, CHU Insurance
- Scott Bellerby, B-Strata
- Faris Saba

WHY DO 2.5 MILLION PEOPLE CHOOSE APARTMENTS IN AUSTRALIA?

Recent research conducted by the Australian Apartment Advocacy with 3300 people nationally found:



APARTMENT LIVING – IS IT FOR YOU?

There is no doubt that apartment living offers a number of advantages, with 2.5 million residents Australia wide enjoying this housing choice. Often located in vibrant centres, the simplicity of apartment living ensures a high level of satisfaction – as witnessed in WAAA's 2019 National Research.

However, if you are new to apartment living, then there are a number of factors to consider.

Firstly, you are moving into a community similar to any neighbourhood. But rather than this being a typical horizontal street, these communities are more often vertical.

Regardless, the same etiquette applies.

When you live in a strata you need to be considerate of your fellow residents. So, if there are processes to follow – such as booking common spaces, then please follow them. They have been introduced to provide everyone with an equitable system. There are also by-laws that you will need to comply with and while these can sometimes be changed at an AGM, you need to be aware of them and be happy to follow them. Again, they have been created to maximise efficiencies and residents' quality of life.

Furthermore, you need to be good at sharing, tolerant and community-minded to successfully live in a strata apartment. Ultimately you need to be responsible for your actions, as they are likely to impact on your neighbours.

There is no doubt that belonging to a strong community benefits our lives. Case studies have proven that people living in positive communities live longer, happier lives.

And with modern construction methods, there is no doubt that apartments more so than ever, are acoustically treated and designed to maximise residents' quality of life and privacy.

However, as with any community, it takes more than a building to create harmony, it is the members themselves that ensure positive relationships and a well managed strata plan.

If this all sounds practical and straight forward to you, then WAAA is pleased to welcome you to the apartment lifestyle!

THE INDICATIVE BUILDING AND WARRANTY TIMELINE

Below is the outline of the typical steps taken by a developer to gain approval and commence with construction of an apartment – based on off the plan sales.

1	Developer submits an application for Development Approval to relevant body i.e. Local Government, DAP.
2	The developer progresses the design of the Project and tenders the Project to Builders. A builder is then appointed.
3	Once the builder is appointed the builder / developer submits an application for a Building Permit to the relevant Permit Authority (typically Local Government)
4	Once the Building Permit is issued by the Permit Authority, construction commences and typically takes 12-24 months to complete. This is the point where apartment customisation of designs (if at all possible in the first instance) will become more difficult and expensive to implement.
5	The developer's representatives undertake inspections (this could be the Project Superintendent / Architect / Consultants or any combination thereof) in the lead up to Practical Completion of the Project. Defects are identified and works undertaken by the Builder to rectify. Once complete, a registered building surveyor signs a Certificate of Construction Compliance certifying that the building has been constructed as per the approved plans and specifications.
6	The builder / developer make application to the Permit Authority for Occupancy Permit. An Occupancy Permit is then issued by the Permit Authority. The builder also issues a Notice of Completion to the Permit Authority.
7	Construction reaches Practical Completion. 50% of the retention fund (if applicable) is issued to the builder. This is the time from which a Defects Liability Period (DLP) comes into effect. The period of the DLP will be outlined in the contract with the builder (check with the developer if this is 6 or 12 months). Concurrently the builder / developer will commence obtaining approvals for the development which result in the issue of individual Certificates of Title for each lot in the scheme.
8	Residents commence settling and moving into their apartments. Pre-settlement checks are undertaken (ideally with an independent building inspector). Defects are identified and reported to the strata manager. These are forwarded to the developer / builder for action. An IGM is held first with the developer and Strata Manager to enable relevant documents / agreement to be put into operation to enable the Strata to operate. First AGM is held between the apartment owners and the appointed Strata Manager. It is recommended that an independent building inspection is undertaken prior to defects liability period concluding.
9	Defects Liability Period concludes. Final inspection undertaken by the architect and consultants. Final inspection certificate issued. Apartment owners now become responsible for all maintenance and repairs within their apartment and building (bar what was identified within first DLP). It should also be noted that any defects that arise within the Statutory Warranty period will still be the responsibility of the builder to repair. The Trust refunds the remaining 50% of the retention to the builder, if all works completed.

PURCHASING OFF THE PLAN – QUESTIONS TO ASK

When purchasing an apartment you have a choice of buying off the plan or completed.

There are a number of advantages to buying off the plan:

- You can have your pick of your preferred apartment.
- You secure the apartment at a fixed price and if property values do improve, you can gain these benefits.
- You may have the ability to customise your floor plan.
- You can then wait to sell your home (if downsizing) at the best time.
- It gives you the time to sort and dispose of your possessions in your existing home.

When buying off the plan there are a number of key questions WAAA recommends you ask the developer, which we have categorised as follows:

Construction

- How long has the developer been developing apartments? Building stand alone homes versus apartments or commercial are all very different types of construction. Make sure your choice of developer and builder have a long history specifically building apartments. If possible, try and view one of their previously completed projects to ascertain the build quality by speaking to the Council of Owners or strata manager.
- Has the Builder been appointed yet and if so, who is the company? In particular, can the developer provide examples of the works completed by the appointed builder i.e. other apartment buildings. FYI the appointed builder must also be named on the building permit issued by the Local Government.
 - There are a number of checks buyers can do regarding the builder's financial position. The Australian Securities and Investments Commission (ASIC) allows you to purchase a current and historical company extract search. Along with a range of other useful information, the search will show whether the company has gone into liquidation or administration. However, these actions can sometimes take time to appear on the search. See www.asic.gov.au for details.
 - Buyers should be wary of Directors of companies who engage in phoenix behaviour i.e. building companies that are set up to complete one project and then wound up, in turn providing no protection to the buyers for building defects. The Western Australia Register of builders will show buyers how long a company has been registered. The Register can be viewed at: www.commerce.wa.gov.au/building-and-energy/find-registered-builder.

- Buyers can also check the Building and Energy media releases for information concerning disciplinary sanctions or prosecution actions taken against a building company. For further details see www.commerce.wa.gov.au/building-and-energy/disciplinary-and-prosecution-media-releases.
- Ask the developer what the company's management systems are for controlling the builder in terms of acoustic, waterproofing, fire systems etc. In particular, how are they validating that the sub contractors are doing the appropriate installations. Owners should be seeking a verification from the developer that the builder's nominated supervisor will be inspecting these stages of work. For example you can also go as far as asking if they have photographs of the installation as part of the quality assurance.
- Ask if the below ground aspects such as carparks will be certified by a structural engineer.
- Ask how long the Defect Liability Period (DLP) will be for the completed apartment (and check that it is written into the sales contract). Irrespective of the Defects Liability Period (warranty), owners of buildings have up to six years to lodge a building service complaint against the builder regarding faulty or unsatisfactory building work (Statutory Warranty period refer **Your rights and how you are protected – Owners Guide**).
- Ask about customisation options and when this will no longer be available (generally once the construction commences it is more difficult to customise the apartments).
- Ask if an architect has been appointed to oversee the project and if there is any conflict of interest between the parties i.e. family related, business partners etc.
- Ask what is the programme for the construction period i.e. timeline. Please note if construction commencing is dependent on pre-sales there may be a time lag, so it is best to determine this fact and how close the company is to commencement point.
- Ask if the waterproofing system was selected after consultation with an experienced, competent waterproofing consultant or directly with the system manufacturer.
- Ask if warranties have been supplied for the waterproofing manufacturer/installer. It is essential for the longevity of a building that the water membrane is installed correctly. Waterproofing warranties have two components; the manufacturer's material warranty (covering defects in the membrane system materials), and the applicators application warranty (covers quality of workmanship). The duration for each warranty should match. The manufacturer will typically issue a warranty to the applicator, but it will name the building owner as the intended party to receive its protection. Some warranties are transferable upon sale of the building, others are not. Waterproofing warranty periods typically span from 10 - 20 years, depending on the system installed and hence above and beyond the 6 year Statutory Warranty protection that is offered on building works.

- Check location of car bays, often tandem / stackers / separated so that you are happy with the arrangement.
- If you have floor boards installed, they can be affected by climatisation. Ask if floorboards come with a blinds package to ensure they are not affected by the sun which could cause expansion and cupping (refer to **Appendix 1**). Ask if the floor boards are hard wood or engineered boards and what is the method by which they will be adhered to the floor- i.e. direct stick or floating system and what sort of climatic controls will the developer be implementing prior to settlement.
- Ask if there has been any combustible cladding applied to the development – as this could impact on Bank finance and insurance.
- Ask if the apartment area quoted in sales material (internal, balcony, storage and car park) is Architectural or Strata. Architectural is from the middle of the brick on one side of the room to the middle of the brick on the opposite wall and often appears larger than strata area. Strata is deemed as the sqm of the floor space. More information can be found at <https://bit.ly/35q5Unj>.
- Ask if the tiles in wet and outdoor areas are slip resistant and request certification to verify.
- Ask which walls are fire walls (as these may be restrictions on whether they can be drilled into/penetrated).

Contract

- Ask when the sunset clause (also known as the registration date) comes into effect – this is a future date, whereby the contract concludes. Ideally this should be no more than three years from commencement of sales for the apartment, but this could vary depending on market conditions. Once the sunset clause has expired then the buyer can be released from the contract. There is also a latest date – date by which developer needs to decide if proceeding with project or not based on sales. If the developer does not proceed then contracts are cancelled and deposits returned. It may be wise to seek legal advice re the contract so you are aware of all clauses of this nature.
- Check the policy that the developer will employ if there are variances to the contract (note: if there is a variance of more than 5% the developer is required to advise in writing but the buyer must then respond within 7 days. If the buyer does not respond it is deemed as consent by the buyer for the variance to proceed. If the buyer does not agree with the variance, this then permits for cancellation of the sales contract).

Management/ongoing costs

- Ask what the anticipated annual strata fees are and ask for a break down for the next two years. It is anticipated that strata fees will increase by 15-25% when moving from year one to year two due to the Defects Liability Period (DLP) coming to an end. Strata fees can also vary depending on a range of factors including upgrades, electricity usage etc. It is wise to ask to see the strata fees for a past project over a three year trajectory to see if they have jumped substantially.
- Ask if the strata manager has been appointed and if so, ask if the strata manager meets the requirements of Section 144 of the Act; in that they have adequate Public Indemnity Insurance; can verify they have conducted criminal record checks of all staff as at the date of the sales contract; they have a 'good' understanding of the legislation and they meet the education qualifications.
- Check if there is a conflict of interest (some companies are the developer, builder and strata manager). It is preferred that each of these roles are independent for the best interests of the apartment owners.
- If you are concerned about peace and quiet, then ask for an acoustic report (which would be conducted by a 3rd party supplier and hence independent) as well as the by-laws in relation to short stay accommodation. It is also wise to ask what the ratio of sales has been to date for owner / occupiers versus investors. The greater ratio of investors tends to indicate rental tenants.
- Ask what date the appliances in the apartment were installed and their warranty periods. Check if you can extend the warranty period (ideally by 5 years). Note: some developers/builders will purchase end of run items as these are more cost effective, however more often than not, they do not have a warranty period. When considering an extended warranty, you should first check that it provides you with benefits greater than you already have under the Australian Consumer Law. For example, does the extended period become void after you make a claim, especially under the manufacturer's warranty? What exactly is covered by the extended warranty, does it cover labour and parts? A list of suggested questions to ask can be found on Consumer Protection's website www.commerce.wa.gov.au/consumer-protection/extended-warranties.
- Ask how the electricity, gas and water meters will be read. Some meters are housed within the building and can cause access issues for the utility meter readers [they will often estimate use if not easily accessible].
- Ask if there are any commercial tenancies in the building and request to view their by-laws as this will relate to trading hours, delivery times and the like and are an important aspect to the quality of life within your apartment.
- Ask to see a copy of the by-laws and read them carefully as this will outline policies re pets, 3rd party service providers (Foxtel, NBN, utilities etc) and also short stay.
- Ask if there are any 3rd party suppliers that have been contracted to the building such as Foxtel, NBN, utility providers as these could lock the building (Strata) into a long-term situation which is non-negotiable.

SIGNING A SALES CONTRACT

With strata-titled properties, the developer is required within the Act to provide certain information about the scheme before the buyer signs the contract to buy the property. A developer must provide specific disclosure statements and information about the proposed strata scheme (apartment complex) or survey scheme and by-laws, amongst other things. Where a developer fails to comply with the Act, the buyer may have a right to void the contract by notice in writing given to the developer, before settlement of the contract.

It is essential that you read the by-laws thoroughly and raise any questions with the developer for response. It may also be wise to seek legal advice as these by-laws will be binding.

It is worth noting that in some schemes there are common amenities such as pools, gyms etc as well as major plant and equipment such as lifts, and hence all apartment owners will be required to pay for this upkeep as each lot has a share of the common property and a responsibility to ensure it is adequately maintained. Generally, the more amenities the higher the strata fees and hence you need to consider this in terms of budgeting longer term.

In most cases, the buyer must pay the developer a deposit upon signing the contract, with the balance of the purchase price due at settlement. Some developers may accept a deposit bond or bank guarantee in lieu of a cash deposit.

With a cash deposit, the buyer should ensure that the money is safeguarded by asking the developer to place their deposit in trust until settlement and for this requirement to be included in the contract.

The Act requires deposits, and any other money payable by a buyer prior to the registration of the strata or survey-strata plan, that may be paid to a solicitor, real estate agent or settlement agent, who must also be named or specified in the contract, be held in trust.

If your deposit is being held by a real estate agent or settlement agent, and settlement is more than 60 days away or your deposit is more than \$20,000, you can request (in writing) that the funds be placed in an interest-bearing trust account, with the interest payable to you.

This does not have to be part of the initial contract, but can occur at a later date. If your deposit is held with a solicitor, you will need to make it a condition of the contract that the money be held in an interest-bearing trust account.

As already stated, developers use sunset clauses to set a contract's end date. In deciding whether the time frame is acceptable, buyers should consider how far advanced the development is when they sign the contract and what the required future steps are. Matters that should be considered include:

- Whether the developer has obtained all the necessary approvals to commence and, if not, what still needs to be approved;

- Whether the developer is required to secure a minimum number or proportion of unconditional contracts before they can obtain funding to allow the project to proceed, and, if so, how many contracts have already been secured; and
- The extent of progress of the development made to date (to check on progress, a proposed buyer could ask their solicitor, the developer or the developers representative whether the milestones are being met within the necessary time frames under the contract). Refer to the indicative building and **warranty timeline**.

With strata developments, an off-the-plan contract may provide for the developer to complete the 'common property' either before or after the settlement date. Common property is any space or feature used or shared between all of the owners, e.g. driveways, visitor parking, landscaping, pools and gyms.

As a buyer, it is important to consider what would happen if the common property is not completed within the agreed time frame and what recourse you would have. To avoid any doubt, a contract should clarify exactly what recourse the buyer has if time frames are not met. Importantly, if no time frame is specified a buyer could still have recourse under the Australian Consumer Law if common property is not completed within a reasonable time.

Additionally, with strata developments, buyers have a statutory right under the Act to cancel a contract if the deadline to register the strata scheme or survey scheme (apartment development) is not met. If you and the developer have agreed upon a date in writing when the scheme must be registered and it is not met, or you have not agreed upon a date but it is more than six months since the date of the contract and the scheme is not yet registered, you have the right to cancel the sale at any time before registration.

Finally, every sales contract should list the 3rd party utility and service providers (such as provision of hot water, invoicing of utilities and the strata and building managers contracts) that have been appointed by the developer for the ongoing operations of the scheme once completed. It is important to review these as they could have long term implications for the Strata Company and individual lot owners i.e. you could be locked into a contract with a utility provider that invoices you monthly at escalated billing fees for extended terms.



DISCLAIMER

WA Apartment Advocacy, its employees, agents, consultants, contributors to this document and assigns herein after referred to as WAAA, believes the information provided herein is reliable, however, it does not warrant that it is accurate and persons relying on the information do so at their own risk. WAAA disclaims all liability to any person relying on the information in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or arise directly or indirectly in respect of such information.

Any advice contained in this document is general advice. It has been prepared without taking account of any person's objectives, financial situation or needs, and because of that, any person should before acting on the advice, consider the appropriateness of the advice having regard to their objectives, financial situation and needs.

THANK YOU TO OUR SPONSORS



#mychoice

▶ waa.net.au