

An electronic system of conveyancing started to operate in Australia in early 2015. From 11 October 2021, NSW transitioned to 100% electronic conveyancing including the cancellation of Certificates of Title (CT) pursuant to the *Real Property Amendment (Certificates of Title) Act 2021*. This article sets out the key concepts of electronic conveyancing and what this new system will mean for you.



## **A. WHAT IS E-CONVEYANCING?**

Electronic conveyancing (or e-conveyancing) refers to a conveyancing transaction (which can be either a sale or a purchase of land) where your lawyer or licensed conveyancer settles your transaction electronically. Now, all land dealings are lodged with NSW Land Registry Services (LRS) via e-conveyancing, including leases, mortgages and caveats. Often, a paper document is still signed by clients (eg Leases), but a scanned copy is lodged through e-conveyancing. Recently, Contracts for the sale and purchase of land are also exchanged digitally (by signing on paper and scanning it, or through digital signing systems).

Lawyers and licensed conveyancers are expected to verify the identity of the clients, check that the documents have been signed correctly and that the signatory has the right to deal with the land.

## **B. HOW DOES THE ELECTRONIC SYSTEM OPERATE?**

PEXA is Australia's electronic conveyancing system. PEXA is both the company providing the electronic platform and the electronic platform system itself. The State Governments of New South Wales, Victoria, Queensland and Western Australia together with the major banks (ANZ, Commonwealth, National Australia Bank, Westpac and Macquarie Capital) are the principal shareholders of the company Property Exchange Australia Limited ("PEXA" for short).

Any lawyer or licensed conveyancer wishing to join the electronic conveyancing system must firstly register with PEXA. The transactions then take place electronically on the PEXA platform. Land registries of each participating State have been incorporated on the PEXA platform by effect of the Electronic Conveyancing National Law (ECNL).

Documents can be lodged to LRS via PEXA. For transactions involving financial settlement, funds can be paid directly into a client's or law firm's bank account at settlement. Funds can also be directed out from a law firm's trust account. If a mortgagee is involved, the relevant lender or bank may direct funds from a client's savings bank account to cover any shortfall arising from a loan.

In NSW, PEXA is also linked to Revenue NSW so that stamp duty charged by the state government on land transactions can be paid at settlement from the settlement funds.

If there are GST withholding obligations (eg in the sale and purchase of new residential premises), the Purchaser's representative can advise the Australian Taxation Office (ATO) by lodgment of forms via PEXA, and funds could be paid to the ATO if necessary.

## **C. WHAT WILL CHANGE WITH E-CONVEYANCING?**

### **C.1. CLIENT AUTHORISATION (CA)**

The first step for the lawyer or licensed conveyancer involved with e-Conveyancing is to enter into a Client Authorisation with you.

The Client Authorisation form (or CA form) is mandated by legislation. It follows that a practitioner cannot opt out of using this form which is signed by you and the practitioner. This two-page form is very important and you should read it carefully before signing it. Through the CA form you authorise your lawyer or licensed conveyancer to do the following for you:

- Sign documents on your behalf as required for the conveyancing transaction type;
- Submit or authorise submission of documents for lodgment with the relevant land registry;
- Authorise any financial settlement involved in the conveyancing transaction; and
- Do anything else necessary to complete the conveyancing transaction.

The conveyancing transaction types are as follows:

- Transfer



- Mortgage
- Caveat
- Priority/Settlement Notice
- Discharge/Release of Mortgage
- Withdrawal of Caveat
- Other (as specified in your instructions).

By signing the CA form you are also certifying:

- That you are the Client (or the Client's Agent where applicable); and
- That you have the legal authority to instruct the lawyer or licensed conveyancer in relation to the conveyancing.

### C.2. VERIFICATION OF IDENTITY (VOI)

The second step for the lawyer or licensed conveyancer is to verify your identity which must be done at the time of entering into a Client Authorisation with you.

This Verification of Identity (or VOI) process is more complex than the current identification that is required for stamp duty purposes when purchasing property, and your lawyer or licensed conveyancer will guide you in regard to meeting these VOI requirements.

You should be aware of the following:

- VOI is compulsory whether you are a vendor or a purchaser (or in another capacity) as it underpins the Client Authorisation form that you sign which, in turn, supports the e-conveyancing system;
- You will need to produce documents from one of the categories set out in the Rules (your practitioner will advise you what is required in relation to your circumstances);
- Where a Client Authorisation is to be executed by a company, your practitioner is required to:
  - (i) confirm the existence and identity of the company by conducting an ASIC (Australian Securities and Investments Commission) company search; and
  - (ii) take reasonable steps to establish who is authorised to sign on behalf of the company; and
  - (iii) verify the identity of the individual or individuals signing on behalf of the company in accordance with the VOI requirements; in other words, both the company itself and the persons signing the CA on its behalf must be identified in accordance with the Rules.

### C.3. DIGITAL SIGNATURE

Documents such as the Transfer and the financial settlement

statement are digitally signed using a digital certificate.

You will still need to sign the 'Contract for the purchase and sale of land' in readiness for exchange but beyond that point, after you have entered into a CA, your lawyer or licensed conveyancer will digitally sign all other documents for you including the Transfer.

Under the electronic conveyancing system, the practitioner has the authority to digitally sign the Transfer for a client provided that the CA has been signed by both the client and the practitioner.

### C.4. SETTLEMENT

Where you are purchasing property, you would no longer provide additional funds for settlement by way of bank cheques.

All funds for settlement must be provided electronically through the electronic workspace in PEXA. Accordingly, your practitioner will request you to deposit your funds for settlement to a source account (in most cases this will be your practitioner's firm's trust account) at least three days prior to settlement.

This is because settlement can only occur on cleared funds (banks generally take three business days to clear funds). It follows that when you are selling a property, your funds will become available immediately (cleared funds) after electronic settlement.

### C.5. CANCELLATION OF CTs

From 11 October 2021, CTs (hardcopy Certificates of Titles) are no longer used. Existing CTs are considered as cancelled and new CTs will not be issued. Paper CTs may be retained or destroyed and will no longer be effective as evidence of ownership.

Instead, the Torrens Title Register will be updated whenever there are any changes to land ownership or a land dealing. When changes are made, an Information Notice is issued by LRS which confirms the land dealing has been registered and the date of change. For the most accurate and up to date information, a title search should be obtained via your practitioner.

Comasters has joined PEXA for electronic conveyancing transactions and can assist you with all electronic conveyancing matters.

## CONTACT US