

## **BEST PRACTICE GUIDELINES**

### **1. When Using a Third Party to Undertake the Electronic Component of a Conveyancing Transaction.**

As the crucial mandated date of 1<sup>st</sup> October 2018 is fast approaching, it has emerged that there are some practitioners who will not be ready for the deadline and also some lawyers who do not wish to register for PEXA, as they handle minimal conveyancing work.

This niche in the market has been recognised by a number of large and small organisations who are offering to undertake the electronic part of a conveyancing transaction, i.e. financial settlement, stamping and registration, (similar to the role that a settlement agent has carried out for many years in the paper world).

However, there are different rules that apply in the PEXA environment that do not apply in the paper environment. The most significant is that only Licensed Conveyancers, Lawyers and Authorised Deposit Taking Institutions (ADIs) are able to subscribe to PEXA. This situation is not the same as a conveyancer appointing a settlement agent in paper. In the PEXA arrangement the client must directly engage the settlement agent so as to comply with ARNECC's requirements.

### **Where a Conveyancer elects not to Register for PEXA and Outsources Settlements:**

If you are considering appointing a third-party Subscriber to handle the settlement process of a Conveyancing transaction, the following guidelines should be considered in order that you do not jeopardise your professional indemnity insurance policy:

- Ensure that the Settlement Agent you are appointing is a current Licensed Conveyancer or Australian Legal Practitioner and is a current Subscriber to PEXA.
- Copies of all relevant documents connected to the transaction should be sent to the Settlement Agent (excluding the Verification of Identity and Client Authorisation).
- The Settlement Agent must undertake Verification of Identity in accordance with the Registrar's Requirements. The bottom line is that your client now becomes the client of the Settlement Agent and therefore the Settlement Agent must comply with the Registrar's Requirements.
- The client will also have to sign a separate Agent Authority appointing the Settlement Agent. (It is important that the client directly engage the Settlement Agent so that the Settlement Agent has a clear and separate relationship with the client.)
- The client will also have to sign a Client Authorisation which allows them to apply the appropriate certifications required by the Registrar's Requirements
- When sending your original Costs Disclosure to the client, ensure that a separate Costs Disclosure and Tax Invoice from the Settlement Agent is attached which covers

the charge to be made by the Settlement Agent. (You need to be aware that if the settlement time/date rolls over to another time/date, the Settlement Agent's fee may increase.)

- You should make it clear to the client that any mistakes arising out of the settlement are the responsibility of the Settlement Agent, not the Conveyancer, as the client has authorised the Settlement Agent independently.

**Where a Conveyancer Elects to Market Themselves as Available to handle Electronic Settlements for other practitioners not registered for PEXA:**

Similar guidelines should be followed as those outlined above:

- You must receive copies of all relevant documents (e.c. Contract, Statement of Adjustments, etc.) from the instructing party.
- You must obtain a signed Agent Authority from the client appointing you to act.
- You must obtain a Verification of Identity from the client as per the Registrar's Requirements (remember that it is your responsibility to take reasonable steps to verify the client).
- You must obtain a signed original Client Authorisation from the client prior to opening a Workspace in PEXA.
- You must give the client a Costs Disclosure Notice as soon as you are instructed in the matter.

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