



# Electronic conveyancing and settlement

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**Electronic conveyancing and settlement, or ‘e-Conveyancing’, is an initiative aimed to provide a much needed modernization of the sale of real property throughout Australia.**

## Bringing Queensland Conveyancing into the 21st Century

With the royal assent of the Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015 (Act) on 11 June 2015, solicitors are now able to complete a property transaction (Settlement) through an electronic property exchange platform.

Whilst the passing of the Act itself is an important landmark in the future of conveyancing, it is not alone – it is only a step as conveyancing transitions from pen and paper to electronic management.

## The Previous State of Conveyancing

Before the passing of this Act, all Settlements in Queensland were completed through a physical, paper based system, with the solicitors meeting in person to conduct the transfer of monies and property. Until now, conveyancers have not had the platform to enable e-conveyancing. However, with the introduction of PEXA, this is going to change.

## PEXA: Conveyancing Goes Digital

PEXA is an electronic platform, allowing for solicitors and financiers to a transaction to undertake Settlements online. The PEXA system is owned by PEXA Ltd (Property Exchange Australia Limited), it is a private company with shareholders that include:

- a. Queensland, New South Wales, Western Australia and Victoria Governments;
- b. The four Major Banks; and
- c. Macquarie Capital.

Currently Settlements require the exchange of physical documents at a specific time which leaves considerable opportunity for error to occur (e.g. the failure of one or more parties to meet at the specific location at the specified time, mistakes in the written forms, etc.). Interruptions in the process such as these delay proceedings and typically result in increased workloads for all parties involved.

PEXA aims to provide an efficient and accessible tool for solicitors to conduct Settlements without being tied down with paper, and optimistically avoiding basic and preventable errors tied to pen and paper settlements.

PEXA is an opt-in subscription based platform. There are high hopes for the success of PEXA, the Chief Executive Officer of PEXA, Marcus Price, predicts that 85% of property transfers will be completed through the PEXA platform by 2019.

With the exception of the ACT, the PEXA system has already been adopted and is operational in all States.

## **E-Conveyancing in Legislation**

Amongst other things, the Act amended the Duties Act 2001, introducing Section 156D, enabling Queensland solicitors to complete a Settlement in its entirety, through an electronic lodgment network. The passing of this Act, in tandem with the Electronic Conveyancing National Law (Queensland) Act 2013, marks a continuing parliamentary trend in Australia toward electronic management of Settlements.

## **The 11th Edition REIQ Residential Contract**

On 15 of May 2015, the Queensland Law Society released the 11th edition of the REIQ Residential Contract. The amendments include the following:

- a. Settlement must now occur by 4pm, replacing the 5pm deadline;
- b. Land tax is now fully payable by the seller with special provisions required if the seller wishes to retain the right to adjust its land tax liability with a buyer;
- c. The term 'Business Day' has been amended so that any obligations which fall between the 25th of December and the 1st of January will carry over to the 2nd of January; and
- d. New provisions incorporated in clause 11 to facilitate e-conveyancing.

Clause 11 now clearly sets out the process and circumstances by which all parties to the contract may 'opt in' to settle electronically. The first obligation is that the lawyers for all parties must be subscribed to PEXA.

The amended REIQ contract aims to facilitate e-commerce conveyances and ultimately modernise the current conveyancing landscape.

Through the digitalisation of conveyancing and settlement, the Australian Government, QLS, PEXA and many other invested parties hope to eliminate errors in paperwork, improve the efficiency of the conveyancing process, reduce the costs of settlement (as the workload will be minimised, agents will no longer need to attend, and reduce failures of settlements through occurrences such as late attendance).

## **What next?**

As with the introduction of any new system as radical as this, there are bound to be resulting complications. Whilst the platform itself is likely to bring much needed improvements to property transactions in Australia, its slow implementation in the market is likely to bring with it a number of complications.

Conveyancing until this point has been largely a uniform procedure, with all parties involved following the same processes. The introduction of the PEXA platform creates issues in that there is no longer a uniform, expected system for conveyancing and settlement. As PEXA is an opt-in system, where one party in a transaction is not subscribed to the system, both parties must use the older paper-based system. With the introduction of a new means of settlement coming into effect, this uniformity has departed.

This ultimately means that it will most likely be a long wait until the paper based system can be relinquished. It also emphasises the importance of firms to promptly adopt the new e-Conveyancing system to facilitate the shift towards digitalisation.

PEXA is still a new platform – despite being available for use since early this year, it was not until the 11th of June that Queensland solicitors were able to complete a settlement in its entirety through the electronic system. The importance the Australian Government has placed on this digitilisation of conveyancing practices is a clear indicator that e-conveyancing is the future of property transactions.

E-Conveyancing is an initiative set to provide a positive shift in the property sector. It aims to greatly improve the efficiency of settlement, reduce the workload of solicitors, minimise the costs associated with conveyancing (i.e, the cost of appointing agents to meet at settlement, bank cheques etc.) and lessen the need for physical paper

documents.

We as a firm are embracing this shift toward the digitisation of conveyancing, and are currently in the process of applying to PEXA.

Whilst large strides have been taken towards the implementation of PEXA and the overall modernisation of the conveyancing field, widespread change will not come into effect immediately. The passing of the Act signifies a milestone for the property sector, however it will be years before pen and paper are done away with. This will be a slow but positive shift in the conveyancing world.

**Should you wish to discuss any matters arising out of this article, please contact the author:**

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