

RPA News

Regulation. Protection. Action.

News update for all practitioners from the Victorian Legal Services Board + Commissioner

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Mandatory e-conveyancing: Is your practice ready?

On 1 October the progress towards full e-conveyancing will take another big step, when the vast majority of Victorian transactions will be mandated to take place electronically.

The Board recognises the benefits to the Victorian community in terms of greater efficiency and lower costs, as well as the many benefits for you and your practice. These include immediate availability of funds, time saved by not needing to physically attend settlements, and real-time payout figures available online.

Mandatory e-conveyancing inevitably means cheques and paper titles will largely disappear, so if you practise in this area you will need to ensure you are fully prepared to transact in this new way, in the best interests of your clients.

Regulation of e-conveyancing

The Electronic Conveyancing National Law provides the legislative framework which each state has adopted as suits its requirements for both the financial and lodgement aspects of conveyancing transactions. The Australian Registrars' Electronic Conveyancing Council (ARNECC) is responsible for the rules which govern both operators and users of an ELN (electronic lodgement network) – a virtual settlement room. PEXA is currently the only registered operator, although there is provision for competitors. There are also [Participation Rules applicable to Subscribers](#), which apply to how you transact on behalf of your clients on an ELN, and further contractual requirements when you register as a subscriber to the PEXA ELN.

Are you ready?

To make the most of the efficiency gains available and to act in the best interests of your clients, it is important that you are well aware of, and that your practice is capable of complying with, the obligations and responsibilities under the Participation Rules when transacting on an ELN.

These obligations include but are not limited to:

- compliance with the ELN security requirements and policies;
- ensuring security of identity and document retention;
- having appropriate internal management and training of staff;
- ensuring appropriate use of the electronic key when authorising transactions; and
- ensuring you are regularly reviewing and updating all of the above.

In addition, as when dealing with paper titles and manual financial settlements, you must be actively cross checking and applying your professional skill to all transactions. The Legal Profession Uniform Law requirement that you hold a practising certificate authorising you to receive trust money even where you only handle cheques as transit money, will not change in the move to handling money electronically. You will still be required to have that trust money authority.

In knowing your obligations and responsibilities intimately you will be able to maximise the opportunities e-conveyancing offers your practice and your clients. Not knowing may lead to intensive auditing, complaints to ARNECC or this office, or to having your access to an ELN removed, flowing on to potential damage to your practice and reputation.

PEXA source account

The PEXA 'source account' was intended for use by Subscribers who either did not have a trust account, or where the approved deposit taking institution (ADI) used by the Subscriber was not yet connected to the PEXA ELN. PEXA has advised that most ADIs are now connected to their ELN, and that they have commenced the process of transitioning Subscribers to use of their own registered trust accounts.

The PEXA source account is not a trust account within the meaning of the Uniform Law. It is not now offered by PEXA to Subscribers with connected ADI trust accounts. A further matter to note is that the *Sale of Land Act 1962* (s. 24) does not appear to allow a real estate agent to direct an EFT transfer into the PEXA source account, and only permits such a transfer to another real estate agent, a solicitor or conveyancer's trust account.

A trust account opened under the Uniform Law has the following advantages:

- your clients are covered by the protections offered by the Fidelity Fund within the Uniform Law;
- the interest on your trust account accrues to the Public Purpose Fund, which supports Victoria Legal Aid, and funds law reform, legal education and access to justice initiatives; and
- having a trust account can assist you better manage your practice by allowing you to request payment in advance for your anticipated legal costs.

Information on [opening and maintaining a trust account](#) is available on the Board and Commissioner website.

Further information available

For further information on e-conveyancing, please see the following resources;

- [Australian Registrars' National Electronic Conveyancing Council](#);
- [Property Exchange Australia](#) (PEXA);

Victorian Legal Services **BOARD + COMMISSIONER**

- the [Legal Practitioners' Liability Committee](#)'s practical information on cyber security, risk management and e- conveyancing;
- the 'Managing client money' pages of the [Board and Commissioner website](#); and
- members of the LIV can access further information by contacting the LIV.

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