

eConveyancing

What are my compliance obligations?

Victorian Legal Services
BOARD + COMMISSIONER



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In Victoria, all conveyancing transactions must take place electronically, with some minor exceptions.

This guide sets out our specific expectations of you and your practice when conducting electronic conveyancing (eConveyancing).

Your practice must be proactive in meeting your obligations under the eConveyancing framework. This includes obligations relating to verification of identity and cyber security as set by the:

- Australian Registrars' National Electronic Conveyancing Council (ARNECC) and;
- electronic lodgement network operators (ELNOs)¹.

Conduct contrary to these obligations could be professional misconduct or unsatisfactory professional conduct.

¹ The eConveyancing framework is governed by the Electronic Conveyancing National Law as adopted by each state and territory and is overseen by ARNECC, the Australian Registrars National Electronic Conveyancing Council. Electronic Lodgement Network Operators (ELNOs) such as Property Exchange Australia (PEXA) and Sympli Australia Pty Ltd (Sympli), operate the Electronic Lodgement Networks, the electronic workspaces, where Subscribers can conduct electronic lodgement and settlement of conveyancing transactions. ELNOs and Subscribers operate under Model Operating Requirements and Model Participation Rules promulgated by ARNECC, and adopted by each Registrar as Operating Requirements and Participation Rules.

eConveyancing funds as general trust money

Funds received for the purposes of eConveyancing are trust money. Therefore, to undertake eConveyancing, your law practice requires:

- a principal holding a practising certificate with trust account authorisation; and
- access to a solicitors' general trust account.



The VLSB+C has determined that for Victoria, eConveyancing funds are best categorised as general trust money under the Uniform Law² and therefore they must be placed in a general trust account.

ELNO source accounts, such as the PEXA source account³, are not trust accounts and are not regulated under the Uniform Law. The VLSB+C has concluded that Victorian lawyers should not use ELNO source accounts. If you do not have a trust account or do not want to open one you have other options for your clients, which are set out over the page.

² The *Legal Profession Uniform Law Application Act 2014* (Vic) currently applies the 'Uniform Law' in Victoria. Provisions regulating trust money and trust accounts are contained within Chapter 4

³ See sections 136 and 137 of the Uniform Law



Benefits of having a trust account to conduct eConveyancing

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

- your clients' funds are clearly covered by the protections and safeguards offered by the Uniform Law.
- you can better manage your practice by requesting payment in advance for your anticipated legal costs.
- the interest on trust accounts accrues to the Public Purpose Fund (PPF), which supports Victoria Legal Aid and other law-related services and activities, such as law reform and legal education and research.

Alternative arrangements for eConveyancing

Opening and operating a trust account may not be suitable or viable for all law practices. There are several alternatives for law practices who don't have a trust account but need to do occasional conveyancing work.

Third party law practices

Some law practices with existing trust accounts offer services where they subscribe to the eConveyancing system and are responsible for the financial settlement, stamping and registration on behalf of the 'instructing' law practice.

If you utilise a third party law practice there are arrangements you need to have in place to protect your clients and meet your obligations. This applies, whether you are engaging a 'third party' law practice to undertake the eConveyancing aspects for your client or are a law practice seeking to offer these services to 'instructing' law practices.

Our expectations are that:

- The client has given informed consent to their funds being held in the third party law practice trust account.
- The third party law practice opens a separate trust ledger under the name of the client.
- The instructing law practice's costs agreement with the client carefully considers and clearly informs the client about the risks, fees, costs and benefits of the arrangement, and sets out exactly who is responsible and liable for what.
- The instructing law practice has ensured the third party law practice has the appropriate insurance and current subscriber registration to conduct eConveyancing.⁴
- The client understands the relationship between themselves and the 'instructing' and 'third party' law practice and what interactions will occur.
- Both law practices involved have a principal who is authorised to receive trust money.
- Appropriate records are kept in accordance with the Legal Profession Uniform General Rules.
- Third party law practices and instructing law practices must comply with ARNECC's 'Guidance for e-settlement subscribers and their instructing practitioners'.⁵

⁴ You should view the certificates of currency for insurance: it is not sufficient to assume insurance is current just because the third party law practices are Subscribers to an ELNO

⁵ See - https://www.arnecc.gov.au/publications/guidance_queries



Importantly, the third party law practice must be undertaking the legal services in relation to the client's transaction as required by section 129 of the Uniform Law. Legal services would include perusal, checking and processing of the documentation for settlement and direct liaison with the client.

The third party law practice cannot be used only for access to their trust account.

Some examples of arrangements that would not satisfy our expectations are:

- Law practices acting as third parties for licensed conveyancing businesses and allowing access to their trust account without offering any legal services to the client.
- Intermixing non-trust money with money held on trust for clients of the instructing law practice.

Our staff are available to assist you with any queries about opening and operating a trust account or ensuring any third party arrangement you are contemplating will meet our expectations. Please email trustgroup@lsbc.vic.gov.au.

Movement of trust money

The Uniform Law⁶ allows withdrawals from a trust account via the following methods:

1. Cheque
2. Electronic Funds Transfer (EFT)

As of 1 February 2020, Land Use Victoria⁷ is no longer accepting cheques as a method of payment for paper lodgements, and this includes lawyers' and conveyancers' trust or office account cheques. Their suggested methods of payment – direct debit for regular customers, and credit or debit card payments for one-off payments – are not in contravention of the Rules as the VLSB+C considers these methods to be a form of EFT.

⁶ See section 144 and the law practice should ensure compliance with the Legal Profession General Rules, being rules 43(4)(e) and 45(1)(d)

⁷ This section is not applicable to ELNO transactions

Supervision and signing registry instruments

ARNECC provides direction to subscribers and ELNOs about who is entitled to sign registry instruments on the eConveyancing system. This is based on advice provided by practitioner regulators, including the VLSB+C⁸.

We have determined that non-legal employees of law practices in Victoria will be permitted to sign registry instruments, provided they are appropriately supervised by the responsible principal as set out below.

Each principal of a law practice is responsible for ensuring the legal services provided by their law practice are provided in accordance with the Uniform Law and their professional obligations⁹. As the responsible principal, you are responsible for your employees and you must know what is going on.

In order to meet our expectations of appropriate supervision of non-legal staff undertaking the digital signature process, your law practice should have prudent measures in place, including ensuring that:

- the employee has the requisite seniority, experience and expertise to conduct eConveyancing competently and diligently
- the employee has undertaken specific training in eConveyancing and cyber security
- only non-legal employees who meet these criteria are named in law practice documentation as authorised to effect the digital signature process within the law practice and set up as Signers in an Electronic Lodgment Network
- your law practice has accessible policies, checklists and procedures about the conduct of eConveyancing that are implemented and reviewed on a regular basis.

Your obligations as Subscribers to eConveyancing

You and your law practice must comply with the requirements placed on you under ARNECC's Model Participation Rules and your contractual obligations when conducting eConveyancing on an ELNO platform. Non-compliance with your obligations may threaten your ability to continue to practice in conveyancing and may also be conduct amounting to unsatisfactory professional conduct or professional misconduct.

⁸ See https://www.arnecc.gov.au/_data/assets/pdf_file/0003/1264125/entitlement-to-sign-registry-instruments.pdf

⁹ See Section 34(1)(b) of the Uniform Law



