

The End of an Era: The Introduction of E-Conveyancing

By David Nicholson

For the past 150 years it has been necessary for lawyers and conveyancers to physically attend settlements, which would involve the handing over and checking of paper documents, exchange of cheques and subsequent lodgement of document at Landgate. Once settlement had occurred, the representatives would notify the relevant government authorities of the change in land ownership and upon the dealing being registered by landgate, which could take up to several weeks, new titles would issue and the transfer of land would be complete. This somewhat laborious, paper-based process will soon be relegated to history. As of 1 December 2018, it will be compulsory in Western Australia for eligible settlements and other transactions to occur electronically via the Property Exchange Australia (PEXA) network.

What is PEXA?

In 2010, the Council of Australian Governments (COAG) formed PEXA as part of an initiative to provide a national electronic platform for the Australian property industry. PEXA is a company limited by shares with some of its key shareholders being the Victorian, New South Wales, Queensland and Western Australian Governments as well as the four major banks. However, despite its formation in 2010, PEXA has only recently gained momentum due to the state governments, together with the land registries, declaring PEXA to be compulsory for conveyancers and lawyers as of this year. This monumental change in the industry was due to occur in Western Australia earlier this year, but due to the reluctance of the industry to voluntarily use PEXA during the transitional period, the date was extended. So with the end of 2018, comes the end of the paper era as we know it and the commencement of compulsory electronic conveyancing.

Settlements conducted through PEXA remove the requirement for hard copy documents to be prepared and executed. As such, there is no need for physical attendance at settlement. Instead, one of the representatives opens an electronic workspace on PEXA and invites the other parties to join. There is a step by step process on the workspace with the next step often not being available until the prerequisites have been met by all the parties. All relevant documents and settlement schedules are created on the workspace, with all information being transparent between the parties so it is clear what task is pending and who is responsible for its completion.

Once the preparation for settlement is complete, PEXA will automatically lodge the documents with Landgate at the specified settlement time, exchange any loan funds, pay stamp duty, GST, third party beneficiaries and other necessary entities as well as deposit the purchase price directly to the vendor. Settlement occurs in real time as opposed to several days or weeks later.

In the future, it is expected that all property transactions will occur electronically via PEXA. However at the present time, the eligible transactions most relevant to the local government context are transfers of land, caveats and withdrawal of caveats. Documents of a more complex and comprehensive nature, such as Easements, Restrictive Covenants and Agreements are

not yet compatible with PEXA and will continue to be prepared in the traditional way, often in conjunction with PEXA. For example, when caveats are lodged via PEXA, the document giving rise to the caveat will still be prepared and executed in hard copy.

Digital Signing

As PEXA documentation is electronic, there is no requirement for physical execution of documents by the client. Documents are instead prepared online by the representative and executed by the representative using a digital signature. Digital signing enables representatives to sign documents on behalf of their client through the use of a personalized electronic stamp which is inserted into the electronic document through a USB. The USB is personal to that authorised signatory and cannot be used by others as to do so would be the equivalent of forging someone else's signature. Digital signing saves significant time as there is no requirement for the document to be physically forwarded to the appropriate parties. Problems which can occur under the traditional system, such as difficulties scheduling authorised signatories or incorrect or incomplete execution is therefore eliminated. Through PEXA each party's representative can sign on behalf of their client instantly which can result in a transfer document being finalized in a matter of minutes.

Authority

Importantly, representatives will not be able to transact or digitally sign on behalf of a client without being granted the appropriate authority. Clients can elect to grant specific authority or standing authority. Specific authority grants the representative the authority to act on the client's behalf in relation to the particular matter at hand. Therefore, once that matter is concluded, the authority ceases and further authority must be obtained as each new PEXA matter arises.

If a client grants standing authority, it is granting the representative authority to act on its behalf in every PEXA transaction, which eliminates the requirement for authorisation to be sought as each new matter arises. Conditions can be placed on the standing authority to limit its scope. For example, the standing authority can have a specified expiry date after which the representative would no longer be authorised to act on the client's behalf. Limitations can also be placed on the type of documents the representative is authorised to deal with on behalf of the client. For instance, whilst the client may not be agreeable to a representative acting on its behalf in relation to all transfers, it may wish to grant the representative standing authority in relation to caveat documents, as under the traditional system caveat documents are already able to be executed by an agent on behalf of a client. However, it would still be appropriate for representatives with standing authority to seek instructions from their client prior to acting in each PEXA matter.

Expected Benefits

PEXA dramatically reduces the time taken for both preparation and attendance at settlement as well as post-settlement tasks such as attending to various payments and notifying relevant authorities. It reduces many of the administrative risks and delays which currently encumber the traditional system, such as postal delay and the risk of documents going missing, getting damaged or being incomplete or incorrectly executed. However, before PEXA can be fully utilized by local governments, it may be necessary for local governments to review their policies in regard to execution of documents, granting of authority and other procedural matters to ensure a local government's PEXA representatives are appropriately authorised under the Local Government Act 1995 to effect a local government's designated transactions.



The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For further information please contact David Nicholson by email to dnicholson@mcleods.com.au