

Is your practice ready for e-conveyancing?

■ BY SIMONE HERBERT-LOWE



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E-conveyancing has been in use in NSW since 2013 and will apply for all mainstream property transactions from 1 July 2019.

The following critical, pending dates should be front-of-mind for lawyers who act in land dealings (including those in legal fields such as family law or litigation, who need to file caveats). Law practices should also factor these dates into their business planning to ensure a smooth transition process and to minimise professional risk.

Critical, pending e-settlement dates for NSW

From 1 July this year, all caveats and standalone transfers (land transfers without mortgages) must be lodged electronically.

From 1 July 2019, all mainstream property transactions must be registered electronically, and all paper certificates of title will be cancelled. Transitional provisions apply for some transactions, but these are limited in nature and likely to be phased out.

The PEXA platform

The Property Exchange Australia ('PEXA') platform is now used in NSW, Victoria, Queensland, South Australia and Western Australia by land titles registries, state revenue agencies, lawyers, conveyancers and banks. While PEXA operates the only approved e-conveyancing platform, other organisations are seeking similar approval. According to PEXA, over one million property transactions nationally have been completed on its platform. More than 20 per cent of property transfers in NSW are now effected electronically.

Transitioning to e-conveyancing

If you have not commenced the transition process, factor in time to receive a **digital signing certificate**, which requires verification of identity (up to 10 days), training and familiarisation with the new process. Training resources are available from the Law Society's website and PEXA (email Sally.Kite@pexa.com.au).

Digital signing certificates

Documents such as transfers are signed digitally in the electronic workspace using a digital signing certificate. A law practice subscriber must obtain a digital certificate. The practice's subscriber administrator then appoints practitioners who will be signers for the practice. Each signer must have his/her identity verified before receiving a 'child' digital certificate.

Snapshot

- Be proactive in transitioning to the new regime.
- Ensure a managed and timely transition process.
- Review funds transfer processes.
- Confirm payment instructions received by email using another method.

The use of digital signing certificates by authorised persons only is fundamental to the integrity of land transfers under the system. Digital certificates and passwords must be kept secure, and must not be used by other persons. The false witnessing of signatures by solicitors has been held by courts to be dishonest. It is possible that a court could find that permitting another person to use your digital signing certificate may constitute dishonest conduct. Claims arising from e-conveyancing work

undertaken by a law practice in the provision of legal services are covered under Lawcover's professional indemnity insurance ('PII') policy (subject to its terms and conditions), but be aware that the policy contains a dishonesty exclusion which could apply to wrongly used digital signing certificates.

Risks associated with holding funds on trust

As outlined in last month's column, Lawcover is concerned about increased levels of email-enabled fraud across all areas of legal practice, in which either the law practice or client receives and acts upon a fake email containing a direction to pay funds into a bank account connected with a fraudster. Two areas of legal practice in which large sums are most commonly held on trust are conveyancing and estates, and e-conveyancing may lead to a significant increase in money held in law practices' trust accounts. Lawcover encourages all law practices to review their current processes to ensure these reflect emerging risks associated with email fraud and cyber-crime, and in particular to confirm payment instructions received by email using another method.

Lawcover's view on e-settlements

Lawcover is often asked for its position on e-conveyancing. From the outset legal PII insurers nationally, including Lawcover, have participated in discussions designed to minimise risk for lawyers. As is the case across all practice areas, Lawcover's concern is to ensure lawyers manage impending change in a timely and appropriate way, to avoid professional negligence claims that might arise from missed deadlines, systems failures or lack of proper supervision. Lawcover has not paid any claims relating to use by law practices of the PEXA platform or its settlement process. In comparison, since July 2017 Lawcover received 60 claims arising out of other conveyancing issues such as alleged failure to advise or to attach prescribed documents to contracts. **LSJ**