

# PEXA Settlements and Caveats: Proceed with Caution

Recently Lawcover has seen several claims against solicitors arising from property settlements proceeding through PEXA without clear title.

The factual circumstances of these claims are similar:

- ▼ The solicitor sets up a workspace on the PEXA platform for settlement of the property conveyance.
- ▼ The solicitor does not identify that a caveat has been lodged over the property during the period between exchange of contracts and completion.
- ▼ The conveyance is completed, and the settlement funds are disbursed to the vendors.
- ▼ Due to the caveat being lodged on title, the transfer of the property is not completed, and the solicitor's clients do not become the registered proprietors of the property.

The underlying cause of the claims against the solicitors in these circumstances is the oversight by the solicitor in identifying and investigating a positive Title Activity Check (TAC) result on the PEXA workspace.

This investigation would have revealed and provided details of the lodgement of the caveat.

A TAC is an automated check conducted by PEXA with NSW Land Registry for any activity on the title of the property which has been added to the workspace. For workspaces with a financial settlement and a set settlement date and time, automated TACs are scheduled to occur:

- ▼ when the title is first added to the workspace (this first TAC advises if any activity has been registered on the title within the past 60 days);
- ▼ once a week when the transaction is one month from settlement date;
- ▼ once a day when the transaction is one week from settlement date; and
- ▼ on the day of settlement between 4-5 am and again 55 minutes prior to the settlement time.



To avoid any title not being identified, solicitors should ensure that they obtain a title search up to 60 days before adding the property title to the workspace.

It is imperative that solicitors carefully monitor and review the workspace throughout the course of a conveyance and fully investigate any positive TAC results. Solicitors should be particularly aware that consecutive TACs only identify **new** registry activity on the land title since the previous TAC; they do not show **all** activity.

Solicitors are cautioned to avoid 'alert fatigue'. When conducting a busy practice, with multiple live workspaces on PEXA at any one time, solicitors can become overwhelmed by the number of alerts and email notifications, or may become desensitised to their importance. This is what we have seen occurring in the claims context.

It is important to carefully read and consider each alert before clicking away. Solicitors should have systems in place to ensure the diligent monitoring of all PEXA alerts and email notifications regarding each conveyance.

Finally, solicitors should be aware that the PEXA platform **does not prevent settlement from occurring where the property has a caveat registered on title**. If a caveat on title has been identified by a positive TAC, solicitors should not allow settlement to proceed until the caveat has been removed.

When it comes to ensuring a clear title passes to their clients on settlement, solicitors cannot be too careful on the PEXA platform and should proceed with caution.



Natalie Sullivan  
Claims Solicitor

