

Who are you acting for on PEXA? – risks and pitfalls

Electronic conveyancing requires participants to be legally represented, with solicitors and conveyancers performing this role as representative subscribers.

However, in property transactions it is not uncommon for only one party to appoint a representative and, as a result, a solicitor acting for a client on PEXA may also receive a request to act for the unrepresented party.

Solicitors will be familiar with issues that may arise when acting for both parties to a transaction, including the application of rule 11 of the *Legal Profession Uniform Law* in relation to avoiding conflicts between duties owed to two or more current clients. However, recent Lawcover claims indicate that, within the PEXA platform, solicitors are not always cognisant that they are acting for both parties, mistakenly regarding their role as administrative in nature, or as that of an agent.

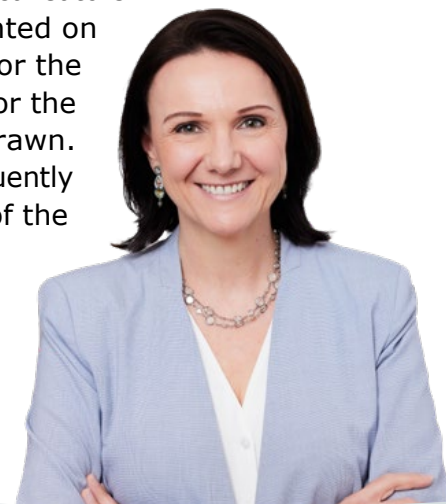
A solicitor acting on PEXA is required to verify the identity of their clients and must hold written authority from their client to act, in the form of a Client Authorisation. The Client Authorisation provides the authority for the solicitor to sign the electronic documents and do all things necessary to finalise the transaction on the client's behalf. The Client Authorisation is not an alternative to the standard retainer; it is required in addition to the usual retainer agreement or authority to act.

Lawcover see claims arising in circumstances where solicitors overlook their advisory obligations that flow from a Client Authorisation for PEXA transactions, particularly PEXA transactions processed on behalf of an unrepresented parties to the transaction.

In a recent claim, a solicitor received instructions from their client in relation to a transfer. The instructions stated that the other party to the transaction was unrepresented but agreed with the proposed course of action. Whilst the other party provided a completed Client Authorisation form, the solicitor did not meet the other party face to face or contact them directly to confirm their instructions. The other party later claimed that they should have received advice from the solicitor in respect of the transaction, or alternatively they should have been advised to seek independent legal advice. The claimant sought to be compensated for the loss of a valuable asset.

In another claim, a solicitor received instructions from their vendor client that the caveats lodged on the property were to be removed to facilitate the sale and that the caveators had been informed and consented. The solicitor did not verify the identity of the caveators or seek confirmation from the caveators directly but represented on PEXA that he acted for the caveators, allowing for the caveats to be withdrawn. The caveators subsequently claimed for the loss of the security.

Sophie Duffy
Claims Solicitor



Another claim arose when a solicitor acting for a client in respect of a purchase of a property was advised that the vendor was unrepresented and was asked to facilitate the transaction for both parties on PEXA. The solicitor had understood the extent of their relationship with the other party was to act as agent on the PEXA transaction. No retainer was created. The claimant subsequently alleged that the solicitor failed to seek their instructions or authority in respect of critical details of the transaction, which resulted in a shortfall in the sale proceeds.

Managing the risk

To avoid a situation where a solicitor is in breach of duties owed to a party they did not consider to be a client, solicitors should:

- a) Check the details of the transaction with the other party and obtain their informed consent to the scope of the role being adopted
- b) Set out the scope of the retainer in writing, especially in circumstances where the retainer is limited to putting through a transaction on PEXA
- c) Advise the other party directly to seek independent legal advice in circumstances where there may be a conflict of duty

