



## Electronic Conveyancing – What is it and how does it work?

*The term “electronic conveyancing” can be a little confusing as it infers that the whole process of preparing, negotiating, and entering into the contract to buy and sell a property, to investigate the title to that property and to “settle” or complete the sale and purchase and transfer the title to property is done “electronically” or in a “virtual platform”. However, “electronic conveyancing” does not cover the whole of the conveyancing transaction; just the preparation for and completion of the “settlement” of the transaction (including payment of the balance of the price) and the registration process to record the transfer of the title to the property.*

Traditionally there exists a physical title deed for a property. The title deed is held by the seller, or if the seller has a mortgage, by the seller’s mortgagee. After the contract for sale of a property has been entered into and deposit paid, and the title investigated so that the buyer is ready to pay the balance of the price for the property, the buyer or the buyer’s lawyers prepares and signs the transfer document that will ultimately be physically lodged with NSW Land Registry Service to transfer the title of the property into the purchaser’s name, pays the stamp duty (which payment is physically recorded on the transfer) and sends it to the seller to sign. If the buyer is borrowing money to pay part of the price, the buyer will also sign a mortgage document with his lender. If the seller has a mortgage, the seller makes arrangements with their mortgagee to pay out their mortgage and for their mortgagee to prepare a discharge of its mortgage to remove that mortgage from the title.

When the buyer and seller are ready to complete or “settle” the sale of the property, they arrange a “settlement”. Traditionally this is a physical meeting at an agreed time and place at which the seller, the seller’s mortgagee, the buyer and the buyer’s mortgagee physically attend. At this meeting the physical title deed, and discharge of mortgage are handed by the seller’s mortgagee to the seller. The seller hands these and the signed transfer to the buyer and a written direction as to how the balance of the price is to be paid. The buyer hands these documents to his mortgagee who, when satisfied with them, gives bank cheques (drawn as directed by the buyer and the seller) for the loan monies to the buyer. The buyer adds bank cheques for any balance of the price to these loan monies and gives them to the seller. The seller then gives the bank cheque for the money the seller owes to his mortgagee to it. The “settlement” is then completed and, after settlement, the buyer’s mortgagee physically lodges the title deed, discharge of mortgage, transfer and new mortgage at NSW Land Registry Service for registration, and when registered, a replacement title deed is physically created and delivered to the buyer’s mortgagee.

**“Electronic conveyancing” replaces this traditional physical “settlement” process and creates a “virtual settlement room”.** The participants and the process remain the same, but physical documents are replaced with electronic documents, physical signatures on documents are replaced with digital signatures, bank cheques are replaced with electronic funds transfers and handing over and registration of documents occurs electronically, and the physical title deed is replaced with an electronic title deed.

To regulate and make the “electronic conveyancing” process secure, the Electronic Conveyancing National Law (ECNL) has been enacted. The ECNL creates a regulatory framework with Participation Rules to govern and guide participants using the system. Central to the framework is the appointment of an Electronic Lodgement Network Operator (ENLO) which is the body that operates the common electronic platform that the participants use. At present this ENLO is



Property Exchange Australia Limited (PEXA). Financial institutions, lawyers and conveyancers become Subscribers to the ENLO so that they are then authorised to conduct electronic conveyancing transactions using the common electronic platform. Subscribers must then have their identity verified to obtain a digital certificate to allow them to digitally sign documents, such as transfers and discharges of mortgages, and must register their trust account or bank account with the ELNO so that all funds for settlement can be provided electronically through the electronic workspace. For a lawyer to conduct a client's conveyance using the electronic platform, the client must first provide the lawyer with a prescribed form of Client Authorisation, and as part of that Client Authorisation, the client's identity is verified in accordance with the Verification of Identity Standard (essentially proper photographic identification).

Each conveyancing transaction has its own "workspace" in the electronic system which the registered Subscribers for that conveyance join into to create and sign electronic documents, to transfer monies and to lodge documents for registration. Because NSW Land Registry Service is connected to the system, when documents are electronically created and digitally signed, a lodgement verification check is automatically performed and a lodgement acceptability advice (LAA) is notified to the Subscribers in the workspace. The Subscribers then provide details of the source accounts (from which money will be drawn) and the details of destination accounts (to which funds will be paid). At the time fixed for settlement, the workspace is "locked", the funds in the source accounts are, in effect frozen and, at the same time the documents are lodged. When notification of registration is received from NSW Land Registry Service, the cash is transferred from the source accounts to the destination accounts with funds immediately available. The "settlement" has then occurred.

**"Electronic conveyancing" is mandated to come into effect on 1st July 2019, but has already started for certain transactions, and is at present otherwise voluntary.**

*If you, or someone you know needs help or advice regarding Electronic Conveyancing or buying or selling a property, or any other property issue, please contact one of our [accredited property law specialists](#), [Michael Battersby](#) or [John Bateman](#) on 02 4731 5899 or email [property@batemanbattersby.com.au](mailto:property@batemanbattersby.com.au).*