

Preparing for mandated electronic conveyancing – don't leave it too late

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The lodging of a caveat to protect a client's interest is a crucial service that a legal practice can provide to its clients. From 1 July 2018, a caveat can only be lodged electronically and a caveat prepared in the traditional manner in paper will not be accepted for registration at NSW Land Registry Services (formerly LPI). For many practitioners, this next milestone in the timeline for transitioning to electronic conveyancing will be critical. Practitioners will no longer be asking 'Should I register?' but 'When do I need to be registered so I am ready for 1 July 2018?'

No more paper caveats from 1 July 2018

The NSW Government's transition timetable provides a number of important milestones which allow for a step-by-step transition to electronic conveyancing. To date, these milestones have largely focused on mortgages, discharges of mortgage and refinances. The next milestone of 1 July 2018 will have a much larger impact, as most, if not all, legal practices must be able to lodge a caveat if instructed to do so.

Happily, practitioners who have already lodged caveats electronically find the process easy to use and faster than lodging in paper. The instant lodgment and quick noting on the register is particularly advantageous. Registering a caveat is also a great way to start using electronic conveyancing.

1 July 2018: eLodgment for stand-alone transfers

A stand-alone transfer is one that is lodged for registration without other related dealings, such as a discharge of mortgage or a mortgage (for example, a cash buyer purchasing unencumbered land or an inter-family or company arrangement). Although stand-alone transfers are not that common, it means practitioners should consider being registered and ready to transact electronically from May 2018, given contracts are often on foot for six weeks.

100 per cent digital by 1 July 2019

From 1 July 2019, all transfers, mortgages, discharges of mortgage or combinations of these for the same folio must be lodged electronically, except where lodged with another dealing for the same folio and that other dealing cannot be lodged electronically.

Snapshot

- From 1 July 2018, a caveat can only be lodged electronically; paper caveats will not be accepted for registration.
- Stand-alone transfers must also be lodged electronically from 1 July 2018.
- If your practice is not yet ready for e-conveyancing, don't leave it too late.

In other words, virtually all standard conveyancing transactions must be carried out electronically. All remaining paper certificates of title will be cancelled as well.

The *Conveyancing Rules* (made under s 12E of the *Real Property Act 1900*) implement the milestones of the transition timetable and provide additional guidance. The *Conveyancing Rules* are updated as new milestones approach. One rare exception to the requirements is where the folio of the register for the land is not electronically tradeable. In those limited

cases, the transaction will proceed using the paper channel. Over time, the number of folios that are not electronically tradeable will continue to be reduced.

Where do I start?

At this stage, the only electronic lodgment network operator in NSW is Property Exchange Australia Ltd ('PEXA'). To transact electronically you must register as a subscriber with PEXA. You can register on pexa.com.au or contact PEXA to ask for a 'Direct Specialist' to come to your practice and help you register, prepare and complete your first transactions.

The Law Society will continue to provide CPD sessions to help practitioners prepare. Other resources include:

- The Law Society has a dedicated section on our website for electronic conveyancing (lawsociety.com.au/resources/areaso-flaw/ElectronicConveyancing/).
- The Office of the Registrar General has published information (registrargeneral.nsw.gov.au/econveyancing/), including details of the transition timetable, guidance on the key concepts, legal framework and practical steps in getting ready.
- PEXA's website has a help centre, online demonstrations and FAQs, as well as information on how to register. Practitioners can join the PEXA Community (community.pexa.com.au/) to contribute and see answers to FAQs from other practitioners.
- The Australian Registrars' National Electronic Conveyancing Council is the body established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing. Their website (arnecc.gov.au/) has information regarding the legal framework and useful guidance notes. **LSJ**