

## Should I act for both a buyer and a seller in a conveyancing transaction?

**Rule 11.1** of the *Australian Solicitors Conduct Rules 2012 (ASCR)* requires that a solicitor or law practice must avoid conflict between the duties owed to two or more current clients, except where permitted by the rule.

**Rule 11.2** of the *ASCR* states if a solicitor or law practice seeks to act for two or more clients in the same or related matters where the clients' interests are adverse and there is a conflict or potential conflict of the duties to act in the best interests of each client, the solicitor or law practice must not act, except where permitted by Rule 11.3.

Where a solicitor or legal practice seeks to act in the circumstances specified in **Rule 11.2**, the solicitor may, subject to the solicitor discharging the duty to act in the best interests of their client, only act if each client:

- is aware that the solicitor or law practice is also acting for another client; and
- has given informed consent to the solicitor or practice so acting.

This means that there is no prohibition with respect to you acting for both parties in a conveyancing transaction. However, conveyancing is an area of practice in which there is a high risk of client's interests being adverse and there is a potential for the duty of loyalty owed to each client either being in conflict or potentially being in conflict. The informed consent of the clients will need to address not only the risk of a conflict arising during the transaction, but also have regard to other factors which could compromise a solicitor's ability to act in the best interests of each client. Disclosure of the risk of representing more than one client where the client's interests are adverse requires conscientious and comprehensive candour.<sup>1</sup>

It is prudent to have in place an effective system to identify and assess potential client conflicts before contemplating acting for two or more clients. Even if informed consent is obtained, if an actual conflict arises you will need to withdraw from representing both clients. In evaluating the ethical considerations regard should be had to consequences which may affect your professional indemnity insurance. When in doubt, don't act.<sup>2</sup>

Irrespective of whether you can secure informed consent to act for both parties, if you hold PI insurance with Lexon, you should note that the policy will impose a deterrent excess in such a situation where you act for both parties in a conveyance.

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<sup>1</sup> *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR (R) 674, [52].

<sup>2</sup> *ibid* [44].