

E-Conveyancing

Guidelines

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QLS Guidelines for E-Conveyancing

The Guidelines for E-Conveyancing have been compiled by the Property & Development Law Committee of the Queensland Law Society.

The Guidelines are designed to reflect recommended practice for solicitors who have been retained to act in residential property transactions where electronic settlement and lodgement through PEXA¹ has been agreed.

Where appropriate, the Guidelines are consistent with the PEXA Guidelines and the principles expressed by the National Electronic Conveyancing System Committee developed by the Law Council of Australia.

The QLS Guidelines are not intended:

- to be an exhaustive checklist;
- to reflect the requirements of every type of conveyancing situation;
- to prevent a solicitor from exercising professional judgement;
- to override the obligations of solicitors as representative subscribers under the Queensland Participation Rules and the Participation Agreement signed by the solicitor;
- to be a substitute for the training and education material produced separately for the use of the Electronic Lodgement Network by PEXA and the Queensland Land Registry Office for electronic settlements and lodgements.

1. The Legal Framework

The national regulatory framework for e-conveyancing has been developed by the Australian Registrars' National Electronic Conveyancing Council (ARNECC), and consists of the Electronic Conveyancing National Law (ECNL), which commenced in Queensland by proclamation on 17 May 2013 ([Electronic Conveyancing National Law \(Queensland\) Act 2013](#)), and has been replicated in the other participating jurisdictions.

Two sets of Rules have been approved by ARNECC pursuant to the ECNL:

- the [Model Participation Rules](#) (MPR), which govern the relationship between an ELNO and the subscribers using the electronic system. An ELNO is responsible for monitoring the implementation of those rules by their subscribers and each subscriber is required to sign a Participation Agreement with the relevant ELNO consistent with the MPR. The MPR have been adopted by the Land Registry in Queensland and released as the [Queensland Participation Rules](#) (QPR). The Registrar is also able to issue [Waivers](#) of the QPR from time to time.
- the [Model Operating Requirements](#) (MOR) which govern the relationship between an ELNO and the various land title registries.

As at 30 June 2019, two ELNOs have been approved for operation in Queensland by the Registrar of Titles, PEXA and Sympli.

¹ See [2.1]

In the case of PEXA, the QPR and MOR are given legal effect between PEXA and subscribers by a [Participation Agreement](#) which is signed as part of the registration process. The Participation Agreement incorporates a number of policies which solicitors should familiarise themselves with prior to signing the Participation Agreement:

- i. Settlement Terms and Conditions for Electronic Settlements and Payments (Schedule A to Participation Agreement);
- ii. PEXA Security Policy (<https://www.pexa.com.au/security-policy>);
- iii. PEXA Pricing Policy (<https://www.pexa.com.au/pricing-policy>); and
- iv. PEXA Service Charter (<https://www.pexa.com.au/service-charter>).

Subscribers to Sympli will also be required to sign a subscriber agreement, but the terms of this agreement are not currently available.

Solicitors in Queensland must also comply with the [QLS Guidelines for Trust Account Operations](#) available from the [QLS website](#). Approval to use the law practice's trust account as a source account in PEXA must be obtained in accordance with these rules prior to commencing registration with PEXA as a subscriber.

More information about the regulatory framework and the MPR and MOR can be accessed from the [ARNECC website](#).

Law Practice Guidelines

Preparing to use PEXA

2. Preparing to use PEXA

Prior to registering as a subscriber and using PEXA in a transaction a solicitor should ensure they have a clear understanding of how PEXA works and its impact on conveyancing practice generally and the way in which a conveyance will be conducted with a law practice.

This section provides guidance about the matters a law practice should consider when preparing to use PEXA

2.1 What is PEXA?

PEXA is a secure electronic platform that allows parties to a conveyance to create and lodge documents with the Land Registry and to pay settlement funds electronically at a virtual settlement. PEXA is operated by Property Exchange Australia Ltd. PEXA uses existing payment systems within the Reserve Bank to facilitate the transfer of funds between source and destination accounts at financial institutions. Source funds are reserved within the Exchange Settlement Accounts held by the solicitor's Financial Institution at the Reserve Bank of Australia. At the time of settlement, PEXA will send instructions for the funds to move from the source Financial Institution, through the Reserve Bank, and across to the destination Financial Institution. PEXA does not withdraw funds from accounts but acts as the messenger to facilitate the transfer of funds between source and destination accounts.

PEXA lodges electronic documents via an integrated system with the Land Registry.

2.2 Who can use PEXA?

Only registered subscribers will be able to use PEXA. Registration is limited to persons, partnerships or bodies corporate who meet the eligibility criteria in the [QPR, clause 4](#). In Queensland, solicitors and financial institutions are eligible to become subscribers in PEXA. (In other jurisdictions licensed conveyancers may also become subscribers). Australian Legal Practitioners and Law Practices are deemed to comply with the good character requirements in clause 4.

Subscribers must also hold insurance in accordance with the Insurance Rules in [QPR, Schedule 6](#). An Australian Legal Practitioner or a Law Practice with professional indemnity insurance and fidelity fund cover is deemed to comply with the Insurance Rules for subscribers.

2.3 Registering as a subscriber

Registration for PEXA can be undertaken online with Property Exchange Australia Ltd (www.pexa.com.au).

As part of the registration process, solicitors will need to:

- i. provide documents verifying the legal identity of their law practice (either corporate or partnership or sole trader) and the person who will sign the Participation Agreement on behalf of the law practice;
- ii. comply with the [QLS Guidelines for Trust Account Operations in PEXA](#) prior to commencing registration (see [2.4]);

- iii. sign the Participation Agreement with PEXA. By signing the agreement you are also agreeing to be bound by the:
 - a. Settlement Terms and Conditions for Electronic Settlements and Payments Schedule A to Participation Agreement),
 - b. PEXA Security Policy,
 - c. PEXA Pricing Policy;
 - d. Pexa Privacy Policy;
 - e. Obtain a digital signature through PEXA as part of the registration process.

PEXA agrees to provide services in accordance with their [Service Charter](#) and to comply with the Model Operating Requirements issued by ARNECC. The subscriber acknowledges that PEXA is only able to provide services if the subscriber complies with the PEXA Standard Operating Requirements available at <https://www.pexa.com.au/soe>.

PEXA Policies are available at <https://www.pexa.com.au/policies> . Service Charter is available at <https://www.pexa.com.au/service-charter>.

The registration process will usually take a few weeks to complete before you are able to transact on the system. In addition to the registration process itself, solicitors also need to give consideration to compliance issues and implementing systems to manage any new risks arising from an electronic environment.

There is no fee to register as a subscriber of PEXA regardless of the number of subscribers/users in a law practice. However, there may be a fee payable to PEXA to obtain the digital signature token.

Fees are charged by PEXA for a transaction based upon the type of documents to be lodged and are only payable to PEXA upon the successful completion of a transaction. In the case of a conveyance this will usually be at the time of lodgement of the transfer documents in the Land Registry, unless the solicitor chooses to settle without lodgement – refer to [7.2.9]. If a transaction is commenced in PEXA, but is unable to be completed by electronic lodgement, no fees are payable (except in the case of a manual request for a RIS). The PEXA fees are disbursements which may be passed on to the client – refer to [8.2].

For the lodgement/withdrawal of settlement notices, caveats, mortgages payment will be authorised by the subscriber at the time of lodgement from an authorised account. This may be the general account of the law practice provided at the time of subscribing to PEXA. For a conveyancing transaction the fees payable to PEXA will be a disbursement line in the Financial Settlement Schedule (which requires a source account to be entered) and the solicitor will be able pass on these fees to clients as disbursements.

Refer to the [PEXA Pricing Schedule](#) on the PEXA website for the full list of fees payable.

2.4 Approval to use Trust Accounts for EFT

A law practice is required to obtain approval from QLS to use their trust account for EFT transactions as part of PEXA system. Approval should be obtained prior to commencing the on-boarding process. Reference should be made to the [QLS Guidelines for Trust Account Operations in PEXA](#). These trust account guidelines include an application letter and a certificate in support of the application for approval to make EFT trust payments.

As part of the approval process a law firm will need to certify that suitable practices and procedures have been implemented and will be observed by the law practice to comply with the guidelines. This will require some planning prior to making application for approval.

If a subscriber/law practice does not have a trust account (or does not wish to use the trust account of the law practice for e-conveyancing), arrangements need to be made for the client to deposit cleared funds into the PEXA Source Account which will be used at the settlement. Client's funds must be deposited to the *PEXA Source Account* at least 3 business days before the settlement date.

The PEXA Source Account is a trust account available for the use and application of the client's funds in the conveyancing settlement where the law practice does not operate a trust account or does not wish to use the practice's trust account in PEXA. In Queensland, the client's money is treated as power trust money. This means the law practice must retain a copy of the Financial Settlement Schedule and submit an external examiner's report each year.

Any interest earned on funds deposited to the PEXA Source Account accrues for the benefit of PEXA.

2.5 Managing risk and compliance

Solicitors will need to consider how PEXA will be integrated within existing organisational, administrative and transactional processes within the practice. Changes will be required to trust account processes and conveyancing practice to ensure the solicitor complies with their obligations under the Participation Agreement and the QLS Trust Account Guidelines. Policies and strategies will also be required to ensure the security of computing systems in compliance with the PEXA Security Policy and the proper use of digital signature certificates for signing documents and authorising the transfer of funds.

The potential risks that should be managed within a law practice and strategies for dealing with those risks, as well as complying with the subscriber obligations in the Participation Agreement are examined below.

2.5.1 System requirements and Security

PEXA is a web based system that can be accessed through a computer with internet access.

A subscriber agrees to access PEXA using a computing system that complies with the PEXA Standard Operating Requirements and [PEXA Security Policy](#). In general terms, the Security Policy requires a Subscriber to:

- a. ensure that all of its systems and facilities which it uses to access the PEXA System are protected by the security measures set out in sections 3.2 and 3.3 of the Policy. This includes:
- b. only use digital certificates complying with the Operating Rules (PEXA or Symantec) and store digital certificates in compliance with the rules (hard tokens (USB key) unless an exemption is obtained and approved by PEXA for a soft token);
 - i. virus and firewall protection. Commercially available virus and firewall protections have been identified by PEXA in the Security Policy;
 - ii. system is configured so that passwords are not cached; and
 - iii. the law practice implements security policies for digital certificates and passwords in compliance with the Security Policy, including for managing lost passwords.
See [2.5.2(a)]

Liability to PEXA arising from a failure to comply with the security requirements, which is not connected to legal work within the practice, may not be covered by professional indemnity insurance.

- c. prevent unauthorised access, damage or interference to PEXA's electronic systems, an Electronic Workspace or the lodgement platform by any person employed or engaged by the Subscriber; or through any systems or access points owned or controlled by the Subscriber and through which the Subscriber can connect to PEXA, an Electronic Workspace or the ELN; and
- d. ensure the integrity and confidentiality of information retrieved or received from PEXA, and information supplied to PEXA

2.5.2 Digital Signature Certificate Security

a. Digital Signatures

An electronic document created in an electronic workspace for lodgment in the Land Registry must be signed using a digital signature. Digital signature is defined in ECNL, s 3 to mean:

“encrypted electronic data intended for the exclusive use of a particular person as a means of identifying that person as the sender of an electronic communication or the signer of a document.”

A digital signature is applied to a document by using a digital signature certificate (DSC) (on a USB key) and a password. The DSC is obtained as part of the subscription process from PEXA. It is not possible to use a DSC from another accreditation body. A solicitor will use their DSC to sign by placing the digital signature token (USB key) into their computer and activating the signature by using a password. The token and password should be kept safe and secure. Each solicitor will have an individual DSC which they are authorised to use on behalf of a law practice. Soft tokens (stored on a subscriber’s computer) are not usually provided unless the subscriber applies for an exemption and meets a certain security standard.

b. Security of passwords and tokens

As part of the PEXA Security Policy subscribers are required to keep user names and passwords safe and secure.

Obligations similar to those applying to banking user names and passwords apply:

- i. Do not give your password, access details for PEXA or digital signature token to any other person;
- ii. Ensure the password complies with the requirements of the policy (character length and type) and is not written down or kept with the digital signature token;
- iii. Ensure the digital signature token is protected by a password or PIN and is disconnected from the computer when the User is not accessing the system and the system should prevent the caching of credentials (PINs, passwords or passphrases);
- iv. Take reasonable steps to protect the token from unauthorised use.

Law practices should implement a digital signature and security policy and ensure staff are aware of its terms and the importance of compliance. The policies should include:

- i. Provision for steps to recover lost or forgotten passwords. This should take into account any process provided by PEXA or Symantec (if relevant) for recovery of forgotten passwords;
- ii. Notification to the Subscriber Administrator of a lost digital signature token or forgotten password for a digital signature resulting in an inability to sign electronic documents;
- iii. Requirements for a staff member who leaves the firm to return their digital signature token;
- iv. A process for notifying and dealing with absences of a staff member from work;
- v. A process for dealing with current workspaces where a staff member is unable to access or sign documents at a critical time in the conveyancing process.

c. Responsibility of law practices for unauthorised use of digital signature

A law practice will be responsible for both authorised and unauthorised use of a digital signature certificate by employees or third parties. Liability can only be avoided if the digital signature was created by a person who was not actually or impliedly authorised to act for the subscriber and the creation of the signature was not enabled by a failure of the subscriber to comply with the Participation Rules or to take reasonable care. Refer to [Electronic Conveyancing National Law](#), s12. It should be noted that the Participation Rules require compliance with PEXA’s Security Policy. Refer to [2.5.5].

2.5.3 Managing staff roles within a law practice

a. Assigning roles to staff

Implementation of PEXA within a law practice will differ depending upon the nature and size of the practice and the amount of conveyancing undertaken at the firm. A key issue for all law practices will be ensuring that only authorised staff sign transfer documents and approve financial settlement and transfers from the practice's trust account. Within PEXA there are a number of roles that may be assigned to staff:

i. Subscriber Manager

This person has overall control of all subscriber users and is able to set financial limits for signing and verifying payments for other users. This person should be both a User and Signer and may exercise the role of a subscriber administrator within the system. This will usually be a partner/legal practitioner director of the law practice.

ii. Subscriber Administrator

This person is authorised by the Subscriber Manager (or one person can be the manager and administrator) to maintain the trust account details for the law practice in PEXA and can allocate persons within the practice with signing rights and non-signing rights to work groups for users. This person could be a practice manager of a law practice and will need to have an understanding of the technical and security requirements for the computing system and PEXA. The Administrator is not able to sign documents or financial transactions in PEXA unless they are also assigned the role of a signer – refer to (iv) and (v) below.

iii. Subscriber Users – non-signers

This person is able to open a workspace, create documents and enter data within PEXA and invite participants. This may be a paralegal or solicitor.

iv. Subscriber Users – Document Signers

In Queensland, a Document Signer must be an Australian Legal Practitioner. This person will also have the same rights as a User of the system as well as the ability to sign transfers and other conveyancing instruments for registration in the Land Registry using a digital signature certificate. Staff who are not an Australian Legal Practitioners may be authorised to sign the Financial Settlement Schedule. If the law practice's trust account is used in a transaction, the persons authorised to verify and authorise the transfer of funds from the trust account must be authorised signers for the trust account.

Law firms should give careful consideration to who is authorised to be a document or financial signer. One method of minimising the risk of an unauthorised transaction is to give different staff document and financial signing functions or to require two signatures for financial settlement.

The identity of all staff given signing rights (including the subscriber manager) should be verified by the law practice. The VOI Standard should be followed to identify each person. (See [QPR, Schedule 8](#) and [2.5.5] and [3.2]). The law practice certifies to PEXA that VOI has been undertaken and the law practice remains liable for the use of digital signatures by their staff ([QPR, clause 7.5.4](#)).

v. Trust Account Authorisation Signer

Specific authority will also be needed for designated trust account signers. This will usually be the persons who are already able to sign trust account cheques for the law practice. This type of user can be restricted to signing financial authorities and restricted from signing documents for lodgement in the Land Registry. Refer further to the [QLS Guidelines for Trust Account Operations in PEXA](#).

b. Recommended safeguards

Some safeguards law practices may consider when assigning roles in PEXA to ensure compliance with the Participation Agreement and to minimise the risk of unauthorised transactions or funds transfers are:

- i. Only a solicitor with a practising certificate is able to sign Land Registry documents;
- ii. Only staff currently approved to sign withdrawals from the law practice trust account should be approved by QLS to authorise any electronic withdrawal from the trust account;
- iii. Require dual signatures for any transfer of funds from trust. One trust account signer may be an administrative staff provided that person is already approved to sign trust account cheques for the law practice – refer to the [QLS Guidelines for Trust Account Operations](#);
- iv. Do not give one person the ability to input data to a workspace, sign documents and approve the transfer of funds in PEXA, without other safeguards (unless a sole practitioner);
- v. Consider financial limits for some signers as well as a requirement for more than one signature;
- vi. Limit the number of staff authorised to sign with a digital signature certificate;
- vii. Implement a policy for the security of digital signature tokens consistent with PEXA requirements;
- viii. Implement processes for:
 - a. approving funds from trust to ensure account does not become overdrawn;
 - b. checking payment details within the financial settlement schedule prior to approving; and
 - c. complying with the Participation Agreement in relation to monitoring departures of staff and recovering digital signature tokens and keeping details up to date in PEXA.

2.5.4 Training

A subscriber is required to ensure that all staff using PEXA understand and are familiar with the legal and other requirements for the use of PEXA. This requires the staff to undertake training. PEXA provides training (<https://www.pexa.com.au/pexa-training>). This may be face to face or webinar sessions. There is on-line module based training and a help desk with in-situ support providing step by step guides.

2.5.5 Managing changes to conveyancing process

Electronic settlement requires changes to current conveyancing processes and practice.

One significant change is the requirement to take reasonable steps to verify the identity of your client and to obtain a client authorisation prior to signing transfer documents and financial settlement directions in the electronic system.

Solicitors should consider how the necessary changes in conveyancing practice will be managed, including verification of identity of clients, notifications within the PEXA system or a workspace related to a transaction, new time limits for undertaking tasks, liability for stamp duty, checking for data entry mistakes, confirming accuracy of certifications at the time of signing instruments and ensuring compliance with time limits for exercising client rights prior to settlement.

A summary of issues a law practice should give consideration to appear below and are expanded further where relevant in the Transaction Guidelines.

a. Client authorisations and Verification of Identity

Client Authorisation

A solicitor must obtain a Client Authorisation (see [3.1]) prior to signing a document (except for a settlement notice and caveat) in PEXA.

Verification of Identity

Prior to or at the time of obtaining a Client Authorisation, the solicitor must take reasonable steps to verify the identity of their client ([QPR, clause 6.5.1](#)). The [Verification of Identity \(VOI\) Standard](#) published by ARNECC (reproduced in QPR Schedule 8) requires:

- (i) a face to face verification of identity by the solicitor or through an Identity Agent; and
- (ii) the production of certain original identity documents, copies of which are retained by the solicitor.

A solicitor who complies with the VOI standard will be deemed to have taken reasonable steps in accordance with the [QPR, clause 6.5.1](#). Compliance with the VOI Standard is not compulsory and solicitors will need to assess the risk of non-compliance in each case where the client is unable to provide appropriate identity documents or a face to face meeting is not possible. It may still be possible to take reasonable steps to identify the client even though the VOI Standard is not satisfied. ([QPR, clause 6.5.2](#)). Refer also to [3.2].

A solicitor should note the obligation to undertake further investigation beyond the VOI Standard if an identity document is not genuine or a photograph is not a reasonable likeness or the person does not appear to be the person in the identity documents. ([QPR, clause 6.5.3](#)).

A solicitor is not required to re-verify the identity of their client if the solicitor has taken reasonable steps to identify the client within the previous two years and the solicitor is satisfied they are dealing with the client who was identified by them ([QPR, clause 6.5.4](#)).

Identity Agent

If a solicitor is unable to conduct a face to face interview of the client, the QPR allows the solicitor to appoint an Identity Agent to conduct the VOI on behalf of the solicitor.

Compliance with the VOI Standard by the Identity Agent is deemed by clause 6.5.5 to constitute the taking of reasonable steps by the solicitor for the purposes of clause 6.5.1 i.e. to take reasonable steps to identify their client.

If the VOI Standard is not followed by the Identity Agent the deeming provision does not apply. In this case a solicitor will need to prove reasonable steps were taken by themselves or the Identity Agent to VOI the client. A solicitor may be vicariously liable, subject to any express agreement to the contrary, for any negligence of the Identity Agent.

To obtain the benefit of the VOI Standard when an Identity Agent is used, a solicitor must:

- i. Appoint (by a written agreement) an Identity Agent who is reputable and complies with the Insurance Rule 2 in [QPR, Schedule 6](#) (professional indemnity and fidelity insurance). A solicitor may act as an Identity Agent for another solicitor, subject to the standard terms and conditions of the solicitor's Professional Indemnity Insurance policy, and will be deemed to comply with the Insurance Rules. Australia Post, Zip ID and ID Secure also comply with the insurance requirements. If any other person or entity is used as an Identity Agent, a solicitor should request confirmation from the proposed Identity Agent, as part of the appointment, that insurance in accordance with the Insurance Rules is held by the agent. Refer to [3.2].
- ii. Direct the Identity Agent to comply with the VOI Standard.
- iii. Receive from the Identity Agent copies of all documents produced by the person being identified (signed, dated and endorsed as true copies of the originals by the Identity Agent) and an Identity Agent Certificate in compliance with [QPR, Schedule 9](#). This evidence is required for a solicitor to be able to rely upon the VOI Standard and the deeming provision in [clause 6.5.6](#).

The appointment agreement for each Identity Agent may contain different terms. Solicitors should consider carefully the terms of exclusion clauses, transactional and yearly liability caps and indemnities given by or to the Identity Agent in the agreements.

b. Managing invitations and notifications

Invitations: PEXA allows users to send invitations to new workspaces and other notifications through the PEXA system to other users. Invitations will be sent to the email address designated by the law practice within PEXA. In large law practices designation of one email address may not be practical.

Consideration should be given at the time of setting up PEXA within the law practice as to how the invitations sent through PEXA will be managed including contingencies for when staff are absent.

Notifications and Messages: Once a workspace is opened notifications may be sent by the PEXA system or participants in the workspace may send messages to each other. Notification of a new message will be sent. A subscriber may configure the system to notify the subscriber by email or SMS of the notification. Consideration should be given to who within the firm will be able to access the messages in the workspace so that staff absences and critical dates can be managed. This is particularly important in relation to notifications by the system after the workspace locks for settlement, where a problem needs to be rectified.

One option for managing work flow is for Users and Signers to be allocated to workgroups within a law practice with multiple users. This allocation can be undertaken by the Subscriber Administrator or another staff member within the law practice.

Notices under the contract: Notices under the REIQ Contracts, such as, notice of finance and building approval or notice of termination cannot be given through the PEXA messaging system – refer to clause 10.4 REIQ Houses and Residential Land Contract.

It is also strongly recommended that other important communication, such as, requests and grants of extensions of time are not conveyed through the messaging system. Law practices should have clear policies in place in relation to the use of the PEXA messaging system for communication during the transaction.

c. Unauthorised dealings

There is potential for unauthorised dealings or withdrawals from the trust account unless it is properly managed within the law practice. Protocols and safeguards that may be considered include:

- i. Delegating the document signing and trust account signing roles to different persons;
- ii. Monitoring withdrawals from trust on a daily basis;
- iii. Clear protocols for approving transfer of funds from trust in an electronic settlement;
- iv. Granting signing rights only to a select group of solicitors, not all solicitors within a firm (unless appropriate due to size of firm);
- v. Clear policies and direction to staff about the security of digital signing tokens consistent with the PEXA Security Policy;
- vi. Computer system security protocols consistent with PEXA Security Policy;
- vii. Ensure staff are trained in the use of PEXA and understand their role and how to undertake electronic settlement to avoid inadvertent mistakes.

Warning: Ensure that account details provided by clients are confirmed by telephone. Do not rely upon account information provided by clients in emails due to risk of cyber security breaches in email systems.

d. Data entry mistakes

Each law practice should consider how data entry mistakes will be managed. Title details will be populated from the Land Registry so mistakes for this information are minimised. Refer further to [4.6]. The data can also be checked by obtaining a full title search for the land.

Mistakes may occur in the entry of source and destination accounts and monetary amounts in the Financial Settlement Schedule. PEXA minimises risks of mistakes by:

- i. Having drop down menus with account details for law practice trust accounts, land registry payments, PEXA payments and BPAY biller details for local and state governments;
- ii. A source account for a transaction must be a recognised account in the system. This means that funds can only be paid from a law practice trust account, the PEXA Source Account or a designated clearing account of a financial institution. Each of these accounts will appear in a drop down menu so data entry mistakes cannot be made;
- iii. Financial institutions involved in the transaction will be responsible for the completion of source and destination account details where money is paid by or to the financial institution; and
- iv. Amounts in the Financial Settlement Schedule are required to balance or the transaction will not proceed.

PEXA will also provide further assistance to subscribers where an incorrect destination account is entered and funds are not credited to any account or misapplied to the wrong account. Refer to the PEXA Service Charter at [4.1] and [4.2] for details of the corrective payments process.

Particular care will need to be exercised when completing details of destination accounts where there is no drop down menu and when entering monetary amounts. Potential strategies for checking these details are:

- i. Send a copy of the Financial Settlement Schedule with account details and amounts to the client for confirmation; and
- ii. Require the solicitor or administrative staff signing the Financial Settlement Schedule to re-check and compare the details to the client instructions at the time of signing.

e. Digital signing and certifications

By digitally signing an electronic document a solicitor certifies a number of matters to the Registrar and the other parties to the transaction. The potential certifications are contained in [QPR, Schedule 3](#) and discussed further at [5.2]. The certifications relevant to the particular instrument will be displayed on the screen as the time of signing.

All law practices should consider implementing an appropriate protocol for verifying the accuracy of the relevant certifications prior to a solicitor signing an electronic document. The protocol should include a process for all signers of documents to check or be given verification of each of the certifications listed on the screen.

f. Suspension from the system

A subscriber's access to PEXA may be terminated or suspended by the Registrar for any of the reasons in the [QPR, Schedule 7](#). This includes breaches of the QPR, failure to comply with a compliance examination notice issued by the Registrar, fraud, disciplinary action and unpaid Land Registry fees. The procedure for suspension or termination is outlined in [QPR, Schedule 7](#) and includes a show cause process allowing 15 days for the subscriber to show cause and if possible remedy the problem. However, the Registrar may take immediate action to suspend or terminate access if there is a risk to the security, integrity, stability or operation of the electronic lodgement network.

PEXA is also entitled to terminate a subscriber's access after 20 business days if a breach of the Participation Agreement is not remedied.

Subscribers should ensure appropriate strategies and policies are in place within the firm to monitor the use of PEXA and minimise the risk of a suspension or termination event. If a solicitor's access to PEXA is terminated at a critical time in a transaction there may be insufficient time to revert to paper and comply with time requirements, even though there is a right to do so under the REIQ Contract.

g. Loss of funds due to email compromise

There has been a significant increase in business email compromise affecting law practices. In most cases this will occur through phishing. These are fraudulent emails or messages attempting to deceive you and steal sensitive information such as bank details or passwords.

PEXA provides information about how to protect your business from cyber-based crime and fraud including:

- essential security software;
- storing digital signatures securely;
- not sharing passwords; and
- how to identify phishing emails and what to do if you receive one.

Law practices should establish a cyber-security policy and protocols within the practice and train all employees to follow the protocol. This is essential for all law practices whether using PEXA or not.

Significant losses have occurred in conveyancing transactions where the lawyer's or client's email systems are compromised and criminals have directed payment of funds to accounts unconnected with the buyer or seller.

When obtaining instructions from clients, QLS and Lexon recommend in all situations to confirm the account details with the client by phone and not to request bank account details by email.

In addition, PEXA have incorporated a warning in the financial Settlement Schedule to warn users if the account details have been changed. In this case the user is required to reconfirm the details at the time of signing. At this point a practitioner should phone the client to confirm the details if they are not already on file. PEXA have also made available a new app called PEXA Key which allows secure communication with clients including provision of banking details and allows client to monitor the transaction. More details can be obtained from <https://www.pexa.com.au/pexa-key>.

PEXA also offers a *Residential Seller Guarantee* which provides protection to sellers of residential property in the event of certain kinds of fraud. If the guarantee applies, the seller can make a claim as an alternative to other avenues to recover the money or seeking compensation. More information is available at <https://www.pexa.com.au/pexa-residential-seller-guarantee> (accessed 7 April 2020).

Transaction Guidelines

3. Prior to accepting or initiating a Workspace

Solicitors should take a number of steps prior to opening or accepting an invitation to a Workspace.

These Guidelines refer to the relevant Electronic Settlement clauses of the REIQ Houses and Residential Land Contract. A comparative table for the REIQ Residential Lots in a Community Title Scheme, REIQ Commercial Lots in a Community Title Scheme Contract and Commercial Land and Buildings Contract is provided in Schedule 1 of these Guidelines.

3.1 Client Authorisation Required

A solicitor is required to obtain a Client Authorisation from the client prior to signing an electronic document (except a caveat or settlement notice) in PEXA. ([QPR, \[6.3\]](#)) The Client Authorisation must be in the approved form which can be obtained from [ARNECC](#) or the [Qld Land Registry](#). ([QPR, Schedule 4](#)) A [smart form](#) is available. Further guidance in relation to the Client Authorisation can be obtained from the [MPR Guidance Note 1 – Client Authorisation \(version 5\)](#).

Pursuant to the Client Authorisation a solicitor may sign and submit documents for registration, authorise financial settlement and do anything else necessary to complete the transaction.

3.2 Verification of Identity

In addition to a Client Authorisation, a solicitor is also required to take reasonable steps to verify the identity of the client ([QPR, clause 6.5.1](#)). A Verification of Identity Standard (VOI Standard) appears in [QPR, Schedule 8](#). A solicitor may personally identify the client. Under the VOI Standard this requires the client to be verified by a face to face interview (not via electronic communication) and for the client to produce original identity documents as required by the VOI Standard, copies of which are retained by the solicitor. It is not compulsory to comply with the VOI Standard, but a solicitor who uses and complies with the standard will be deemed to have taken reasonable steps ([QPR, clause 6.5.6](#)). This provides a safe harbour for solicitors and allows the solicitor to certify at the time of signing a transfer that reasonable steps were taken to verify the client's identity. Refer to the certifications in [QPR, Schedule 3](#).

If a solicitor is unable to undertake a face to face in-person interview of their client, another solicitor may act as an Identity Agent, subject to the standard terms and conditions of that other solicitor's Professional Indemnity Insurance policy. Also, Australia Post, Zip ID and ID Secure may be used as an Identity Agent. A solicitor may be vicariously liable for any negligence of the Identity Agent. A solicitor will be deemed to have complied with the VOI Standard if the Identity Agent complies with the standard. Refer further to [2.5.5].

Further guidance in relation verification of identity will be available in [MPR Guidance Note 2 – Verification of Identity \(version 5\)](#).

3.3 Establishing Right to Deal

[Clause 6.4 of the QPR](#) requires a solicitor to take reasonable steps to verify the client is a legal person and has a right to enter the Conveyancing Transaction²

When acting for the **seller** this means a solicitor should take reasonable steps to establish:

- i. the identity of the client or corporation (if the VOI Standard is followed this will establish the person's or corporation's identity as a legal entity);
- ii. the client, as identified, is the registered owner of the property. This will require a title search and evidence the client is the registered owner (e.g. rates, water, electricity account or some other connection to the property); and
- iii. The seller has a 'right' to enter into a contract of sale. A registered owner will naturally have a right to enter a contract of sale. If the seller is a trustee or attorney for the owner their right to enter the contract may be restricted by the terms of the trust deed or power of attorney³

If the client is not the registered owner their right to deal with the property either as authorised agent of the registered owner or pursuant to some other form of authority should be established (e.g. director of corporate owner, attorney under registered power of attorney).

When acting for the **buyer** this means a solicitor should take reasonable steps to establish:

- i. the identity of the client or corporation (if the VOI Standard is followed this will establish the person's or corporation's identity as a legal entity); and
- ii. The buyer has a 'right' to enter the transaction. If the buyer is a trustee or attorney their right to enter the contract may be restricted by the terms of the trust deed or power of attorney.

For further guidance refer to [MPR Guidance Note 4 – Right to Deal](#) (version 5).

3.4 Qualifying Transaction

Prior to opening a Workspace a solicitor should consider whether the transaction can proceed in PEXA having regard to the nature of the transaction and the rules and exclusions published by PEXA, the Land Registry, the Office of State Revenue and any known financial institution.

Most sales of residential or commercial property are capable of being transacted through PEXA following changes introduced by the Office of State Revenue from 17 June 2019.

For an up to date list of instruments able to be lodged in the Land Registry through PEXA refer to the PEXA Community website at <https://community.pexa.com.au/t5/Queensland/Transactions-that-can-be-done-in-PEXA-QLD/gpm-p/15968>

3.5 Contract terms

If your client has not signed a contract with provision for electronic settlement, and the parties wish to use PEXA, further terms facilitating the electronic process should be agreed. Refer to the electronic settlement provisions in each of the standard REIQ contracts. Refer to comparative table in Schedule 1.

3.6 Party not registered for PEXA

If one of the parties' solicitors is not a subscriber, they may be invited to subscribe and participate in the transaction by the Subscriber. PEXA will endeavour to fast track an inflight registration for the solicitor. In the context of conveyancing in Queensland and given the complexity of the considerations for law practices, QLS recommends solicitors undertake the registration process prior to commencing the use of PEXA and not in the middle of a transaction.

² As defined in the Electronic Conveyancing National Law (Queensland). It is broadly defined and includes any transaction to deal with an interest in land or to record or note an interest in the register.

³ Registered or able to be registered prior to settlement.

3.7 Privacy

Under the Participation Agreement, a subscriber is required to obtain the consent of their client to:

- i. the disclosure of personal information to PEXA and other participants in the transaction;
- ii. the use and disclosure of the personal information by PEXA in the Workspace;
- iii. the collection, use, handling and disclosure of the personal information by PEXA to the Registrar of Titles or Office of State Revenue or otherwise as required to provide the services under the Participation Agreement; and
- iv. the disclosure of personal information by PEXA to a recipient outside of Australia.

The client should be referred to the [PEXA Privacy Policy](#).

A privacy statement and consent in compliance with the Participation Agreement is included in the Client Authorisation. For a copy of the Client Authorisation refer to <https://www.arnec.gov.au/publications/forms>

4. Opening a Workspace

4.1 Who should open a workspace?

Usually the seller's solicitor will open the workspace, but any party to a transaction may do so. No fees are incurred unless the transaction settles. If a workspace for the title is already open PEXA will display a message to this effect. If the workspace was not opened by one of the parties to the current transaction, a solicitor should make inquiries to ensure there are no other transactions on foot.

4.2 Invitations to the workspace

The party who opens the workspace should invite the other party and any known financial institutions for the transaction. In the notes section of the invitation, the seller's solicitor should provide, where available, additional customer details of the seller for the benefit of the financier e.g. customer number or address.

The buyer's solicitor will normally invite the incoming mortgagee to the workspace after joining.

The seller's solicitor will still need to ensure the seller signs the outgoing mortgagee's discharge authority, or the invitation to the outgoing mortgagee may be rejected.

Acceptance of an invitation by the other party's solicitor and financial institution constitutes agreement to use electronic settlement for the purposes of clause 11 of the REIQ Houses and Residential Land Contract.

4.3 When to open a workspace

A workspace may be opened at any time, but a solicitor should take steps to ensure that a workspace is opened in sufficient time to allow all electronic documents to be completed and signed by all parties for settlement. Under clause 11.2 of the REIQ Houses and Residential Land Contract both parties are obliged to ensure that all electronic documents are complete and signed prior to settlement and to otherwise cooperate to enable settlement to occur. Considerations for a solicitor in relation to timing include:

- i. Where there is 14 days or more between satisfaction of conditions (ie finance and building and pest) and settlement it is appropriate to delay opening a workspace until the buyer notifies of satisfaction;
- ii. All documents must be complete and a Stamp Duty Verification obtained prior to any party digitally signing the Transfer and Form 24 (Refer also to [5.4]);

- iii. PEXA will undertake a Stamp Duty Verification (SDV) automatically 2 days prior to settlement and again 1 hour prior to the nominated time for settlement. The verification will not be successful unless all of the relevant assessment information has been included in the workspace prior to this time. If a SDV does not occur 2 days prior to settlement and the SDV 1 hour prior to settlement fails, the settlement cannot proceed on the settlement date unless a manual SDV is successful;
- iv. Where there are financial institutions involved in the transaction, reasonable notice of the transaction and the decision to proceed to electronic settlement should be given to the financial institution; and
- v. Time is of the essence of the settlement date.

A workspace may be opened for off the plan transactions prior to registration of the plan creating new lots, but workspaces that remain inactive for 120 days will be closed. It is generally recommended that a workspace be opened approximately 30 days prior to settlement.

4.4 Responding to invitations

A solicitor should endeavour to respond to an invitation within a reasonable time.

If an invitation is rejected a party should provide a reason for the rejection.

4.5 Nominating a settlement time

The party who opens the workspace should complete the date for settlement, in accordance with the contract and nominate a time for settlement.

The time for settlement on the settlement date can be changed by any party prior to the workspace locking for settlement. A change to the nominated settlement time after the electronic documents are signed will not unsign the documents, but the other parties will be required to agree to the new time. Any change to the time must be consistent with the terms of the contract (i.e. between 9am and 4pm).

The nominated settlement date may be changed in PEXA. This will unsign all of the documents and the Financial Settlement Schedule. Any change to the settlement date in the workspace should only occur after the parties have agreed either to an extension or a variation of the settlement date specified in the contract of sale. Extensions of time and variations to the contract should be agreed in the usual way after obtaining instructions from the client.

4.6 Land Registry Information

When a workspace is opened, information will automatically be obtained from the Land Registry for the title reference inserted and populated into the workspace. This will include the names of the registered owners, lot on plan reference, any registered mortgages and if more than one owner, the nature of their interest (joint tenant, tenants in common).

This does not replace the need to undertake a title search. Details of encumbrances other than mortgages on the title, for example, easements and covenants, will not be populated into the workspace.

It is important to cross check the information automatically inserted into the workspace with a title search and the address details of the property provided by PEXA. This is to ensure you are dealing with the correct property.

5. Completing Electronic Documents in Workspace

5.1 Who completes the transfer documents?

Both parties are required to provide information to create the electronic documents necessary for settlement – refer to clause 11.2 REIQ Houses and Residential Land Contract. This is similar to the situation in paper where the buyer prepares the transfer and form 24 for the seller to complete and sign. In accordance with usual practice, prior to preparing the documentation the buyer and seller should confirm that completion of the transfer documents is not a waiver of any rights that may exist under the contract.

The solicitor for each party should co-operate and do all things necessary to ensure the workspace is complete and ready for settlement at the nominated time on the settlement date – refer to clause 11.2(1) REIQ Houses and Residential Land Contract.

5.2 Signing the transfer and Form 24

Both parties are required to sign the transfer documents in time for settlement – refer clause 11.2 of the REIQ Houses and Residential Land contract.

The transfer must be signed in accordance with the requirements of the ECNL and QPR. Once signed it will have the same effect as if it was signed and witnessed in accordance with the *Land Title Act 1994*, s 161. Under the ECNL, s 9(2) an electronic transfer must be digitally signed by a subscriber in accordance with the Client Authorisation. To comply with the ECNL and the QPR a solicitor will need to:

- i. Prior to signing an electronic conveyancing document (except a caveat and settlement notice (waiver by Registrar of requirement for a settlement notice (refer to [1])), obtain a Client Authorisation (in the approved form) and take reasonable steps to verify the identity of the client ([QPR, clauses 6.3, 6.5](#)).
- ii. Verify a seller client's right to deal with the title ([QPR, clause 6.4](#));
- iii. Digitally sign the electronic document using a digital signature approved for use in PEXA ([QPR, clause 7.5](#)). By digitally signing an electronic document the signer makes a number of certifications.

The certifications are contained in the [QPR, Schedule 3](#). The certifications relevant to the particular instrument will be displayed on the screen as the time of signing.

In particular, a solicitor acting for either seller or buyer certifies the following by signing the transfer and Form 24:

- i. The signer has taken reasonable steps to verify the identity of the transferor/transferee;
- ii. The signer holds a properly completed Client Authorisation for the transactions;
- iii. The signer has retained the evidence supporting the Land Registry instruments or document ;
- iv. The signer has taken reasonable steps to ensure the instrument is correct and compliant with relevant legislation and any Prescribed Requirement⁴; and
- v. any paper certificate of title has been retrieved and either cancelled or made invalid (this certification is redundant from 1 October 2019 when paper certificates of title were abolished in Qld).

⁴ Any published requirement of the Registrar for the particular instrument.

Law practices should implement an appropriate practice for verification of the certifications prior to signing.

In addition to the certifications in the [QPR Schedule 3](#), a party and their solicitor are deemed to state that the information in the transfer and Form 24, relevant to transfer duty are true and correct: refer [Duties Act 2001, s 156V](#).

5.3 What is the latest date for signing transfer documents?

Clause 11.2 of the REIQ Houses and Residential Land Contract requires both parties to ensure the electronic documents in the workspace are signed prior to the nominated time for settlement. The transfer and Form 24 cannot be signed by either party until a Lodgement Verification (LV) and Stamp Duty Verification (SDV) have occurred.

A LV will occur each time information in the electronic document is added or changed. A successful lodgement verification (except for signing) will occur if the information is complete.

A SDV will be undertaken by PEXA:

- after a duty assessment number is inserted in the workspace and all data required by OSR is completed in the Transfer and Form 24; and
- automatically two days prior to settlement and 1 hour prior to settlement.

If the duty assessment number or relevant data necessary for the transfer are not completed in the workspace two days prior to settlement, a SDV will fail. If the SDV undertaken by PEXA 1 hour prior to settlement also fails, (this may be due to a computer failure) settlement will not proceed. A prudent solicitor will ensure a duty assessment number is placed into PEXA at least 2 business days prior to settlement.

In contrast, a Title Activity Check (TAC) will still proceed 1 hour prior to the nominated time for settlement even though all electronic documents are not signed.

A Lodgement Verification will also fail until such time as all instruments are signed.

5.4 How will duty be assessed and paid?

A duty assessment should be undertaken using OSR Connect and the relevant assessment number inserted into the Workspace in accordance with the *Self Assessment of Transfer Duty* (version 9) issued by OSR. PEXA will use the assessment number to verify the duty amount with OSR (a Stamp Duty Verification). A solicitor can elect to pay duty prior to settlement through OSR Connect prior to settlement or as part of the settlement in PEXA (but the funds will still need to be remitted to OSR after settlement).

Duty may be paid prior to settlement by remitting the amount to OSR. This option will usually be selected if the buyer does not require finance for the duty or the settlement date is after the expiry of the period for payment of duty.

If duty is being paid from the settlement funds, the option to pay duty in PEXA may be selected. In this case the amount of duty will appear in the Financial Settlement Schedule. The duty may be paid by the financial institution to the buyer's solicitors trust account. The buyer's solicitor will be required to remit the duty to OSR immediately after settlement. If the duty is paid late (more than 14 days after assessment in OSR Connect) penalties will apply. If the duty is not paid, the Commissioner will have a first charge over the buyer's interest in the land. This charge can be registered while the land is owned by the buyer and will run with the land and can be enforced against the owner under certain circumstances.

5.5 Is failing to sign a transfer or form 24 electronically a breach of contract?

The parties are required by clause 11.2 of the REIQ Houses and Residential Land Contract to ensure the electronic documents are complete and digitally signed by the time for settlement and to otherwise co-operate to allow settlement to occur.

A party who fails to sign the electronic documents in the Workspace in time for settlement, **without a valid reason**, will be in breach of clause 11.2. If settlement does not occur because of this failure the other party will be entitled to terminate the contract.

A party is not required to digitally sign the transfer and form 24 if:

- i. either party has withdrawn from electronic settlement. In this case a paper transfer and form 24 will need to be signed. Unless clause 11.5(2) of the REIQ Houses and Residential Land Contract applies, there is no automatic extension of time merely because the transaction is no longer electronic;
- ii. the party is unable to sign the electronic transfer and form 24 because the other party has failed to complete information required for the document. In this case clause 11.3(5) applies and the party is not in breach; and
- iii. the other party has repudiated the contract or indicated an intention not to perform, in which case the first party may terminate the contract and is not required to tender performance. However, if the party not in default wants to exercise a right to terminate and claim damages, the party will need to be able to prove that at the time for settlement the party was ready, willing and able to settle.

5.6 Will the release of mortgage and any new mortgage be completed electronically?

The incoming and outgoing mortgagees, once invited to the workspace will create and sign the new mortgage and release of mortgage. The PEXA guidelines recommend mortgagees should do this at least 5 business days before settlement.

6. Preparation for Settlement

6.1 What should the seller's solicitor do to prepare for settlement?

Prior to the day for settlement, the seller's solicitor should:

- i. Ensure all relevant data as required by the Workspace from the seller has been completed and the seller's solicitor has digitally signed all documents. Check that a successful Lodgement Verification and Stamp Duty Verification have been received for documents and if not take steps to remedy identified issues;
- ii. Agree upon settlement figures with the buyer's solicitor and insert destination accounts in the Financial Settlement Schedule (FSS) (refer to [6.4.1]) and digitally sign the FSS;
- iii. Check the outgoing mortgagee has completed the discharge of mortgage and digitally signed the FSS;
- iv. Ensure a time for settlement on the Settlement Date has been nominated; and
- v. Comply with the escrow requirements in the REIQ Houses and Residential Land contract, cl 11.3(4) for documents and keys not suitable for electronic lodgement. See [6.5].

6.2 What should the buyer's solicitor do to prepare for settlement?

Prior to the day for settlement the **buyer's solicitor** should:

- i. Ensure all relevant data as required by the Workspace from the buyer has been completed and the buyer's solicitor has digitally signed all documents. Check that a successful Lodgement Verification and Stamp Duty Verification have been received for documents and if not take steps to remedy identified issues;
- ii. Agree upon settlement figures with the seller's solicitor and insert source accounts in FSS and digitally sign the FSS;
- iii. Check the incoming mortgagee has completed the mortgage and digitally signed the FSS;
- iv. If the buyer is providing funds ensure cleared funds are provide to either the solicitor's trust account or the PEXA Source Account ([2.4], [6.4.1]) in time for settlement. Even if the buyer transfers these funds electronically, it may take 2-3 days to clear, depending upon the financial institution. Funds deposited to the PEXA Source Account must be cleared funds at least 3 business days prior to settlement;
- v. Ensure a time for settlement on the Settlement Date has been nominated;
- vi. Ensure a Priority Notice has been lodged;
- vii. Ensure duty on the transfer has been assessed in accordance with the requirements for electronic settlement as issued by the Office of State Revenue. An assessment number from OSR Connect should be inserted in PEXA at least 2 business days prior to settlement so that the details can be confirmed by PEXA; and
- viii. Confirm terms of escrow and undertaking by seller's solicitor for keys and other documents required for settlement, but not in electronic form.

Prior to settlement, and prior to signing the FSS, the buyer's solicitor should have received confirmation from the buyer that the buyer is ready to proceed (i.e. the buyer has done a satisfactory pre-settlement inspection and there are no termination rights to be exercised). Once the Workspace locks, rights to terminate may not be exercised— refer clause 11.3(6) REIQ Houses and Residential Land Contract and *Property Law Act 1974*, s 67A.

6.3 Settlement figures and adjustments

Settlement figures should be agreed in the usual way outside PEXA. PEXA does not provide a facility to calculate adjustments. Once the settlement figures are agreed the payment details are inserted into the Financial Settlement Statement.

6.4 Completing the Financial Settlement Schedule (FSS)

6.4.1 What is the FSS?

The FSS is the electronic settlement schedule listing the source accounts and the destination accounts for payment of the purchase money and other outgoings – refer clause 11.7 REIQ Houses and Residential Land Contract. The FSS must be completed and digitally signed by all parties by the time nominated for settlement: clause 11.2.

Destination accounts and amounts for registration fees, duty (if being paid in PEXA) and the PEXA fee will automatically appear in the FSS. A source account for payment will need to be inserted for these items. The source and destination accounts for all other payments (purchase price, local government rates, water and land tax, legal fees) will need to be included.

Source accounts may be a financial institution account provided by the incoming mortgagee, a solicitor's trust account or the PEXA Source account. If the buyer is providing additional funds these amounts may be deposited to either the solicitor's trust account or the PEXA Source account prior to settlement. Funds must however be cleared funds in the account 3 days prior to settlement. The buyer is unable to use their own account.

The **PEXA Source Account** is a trust account maintained by PEXA with an ADI so that persons who are not subscribers can deposit money into the account for settlement. This account will usually be used if the solicitor does not have a trust account, but this is not a restriction. If a client is depositing money into this account it is important to allow sufficient time for the funds to be cleared funds at least 3 business days prior to settlement. Refer also to [6.4.8].

Destination accounts may be a financial institution account provided by the outgoing mortgagee, a solicitor's trust account, the seller's bank account or money may be paid by Bpay or directly to a third party with an Australian bank account.

6.4.2 Who completes the FSS?

Within a reasonable time prior to Settlement:

- i. the seller's solicitor will create and verify the line items for destination payments (to seller's trust account or third parties);
- ii. the seller's solicitor will digitally sign to authorise payments to destination accounts (other than outgoing mortgagee) for the seller balance funds;
- iii. seller's mortgagee will digitally sign any destination accounts for payment of the funds to discharge any mortgages;
- iv. the buyer's solicitor will create and verify the line items for source payments;
- v. the buyer's solicitor will digitally sign to authorise payments from their trust account;
- vi. the buyer's mortgagee will digitally sign any source accounts for payment of funds from the mortgagee;

Refer to clause 11.2(1)(a) REIQ Houses and Residential Land Contract.

The FSS will need to be completed and signed by all parties prior to the time nominated for settlement. If settlement cannot proceed because the FSS is not signed, the party who has not signed will be in breach, unless there is a valid excuse.

When considering when to sign the FSS, it should be noted that the seller and buyer will need to verify the payments from the source accounts and destination accounts prior to the financial institutions signing the FSS.

6.4.3 When will the outgoing mortgagee confirm the payout figures?

PEXA guidelines indicate that at least 2 business days prior to settlement, the outgoing mortgagee will enter an "indicative payout figure" into the FSS. The final payout figure is to be entered by the mortgagee by 10.00am on the day of settlement.

6.4.4 Can outgoings be paid at settlement?

Amounts to local governments, the OSR or a body corporate in a community titles scheme can be paid through PEXA. Payments can be made to designated bank accounts, by direct deposit or Bpay.

6.4.5 How will the buyer ensure payments to discharge outgoings are correctly paid?

Both the buyer and seller will be able to view the Bpay details for payment of outgoings (i.e. Biller details and customer reference number). Account details for direct deposit to third parties may not be visible to all parties.

Under clause 11.2(3) REIQ Houses and Residential Land Contract, the buyer may elect for payments to discharge outgoings to be paid to the buyer's solicitor's trust account. In this case the buyer is responsible for payment of the amount to the relevant authority. Note clause 11.2(3)(a) REIQ Houses and Residential Land Contract.

If the buyer does not require the payment to be made to their solicitor's trust account, the seller is required to provide the buyer with a copy of the latest account for the outgoing so the buyer's solicitor can confirm the payment details. The account must include sufficient details of the account for payment (ie. BPay and Customer Reference number or a direct deposit bank account reference).

6.4.6 What if the deposit is required for settlement?

If the Deposit is required to be used at settlement to discharge an encumbrance or pay an outgoing, clause 11.2(4) of the REIQ Houses and Residential Land Contract provides a mechanism for payment of the deposit to the Seller's solicitor's trust account.

The Seller is entitled to direct the Deposit Holder to release the Deposit (and interest) less commission to the seller's solicitor, who will hold the money as Deposit Holder under the contract. The buyer and the seller authorise this payment in clause 11.2(4)(b). The Seller's solicitor will then authorise payment of the deposit from their trust account as part of the FSS. The obligations of a solicitor under s 249 of the *Legal Profession Act 2007* should be noted.

If the deposit is not required for settlement this amount will need to be excluded from the total funds required for settlement in the FSS.

6.4.7 What if the source or destination account details are incorrect?

Solicitors should ensure that source and destination account details which are inserted by the solicitor are correct.

A financial institution is entitled to rely upon the account details as there is no facility to cross check account names and numbers. If a mistake is made and payment is directed to an incorrect account, the solicitor will be responsible for recovering the amount and will be liable for the reasonable costs of a financial institution which assists in recovering the money.

The solicitor may notify other subscribers in the transaction of the incorrect payment. Once notified the other subscribers are required to take reasonable steps to assist. Similarly where the account details provided by the solicitor are not a valid account the solicitor must take reasonable steps to provide the correct details for the account. Refer to the [Settlement Terms and Conditions for Electronic Settlements and Payments in Attachment A to the Participation Agreement](#).

6.4.8 PEXA Source Account

The PEXA Source Account is a trust account maintained by PEXA with a financial institution so that persons who are not subscribers can deposit money into the account for settlement. This would usually be used if the solicitor does not have a trust account, but this is not a restriction.

The law practice is still required to create a line item and digitally sign the FSS authorising the withdrawal of money from the PEXA Source Account for settlement. The line item must be created to obtain the deposit instructions for the client (i.e. account number, reference number etc.) so this will need to occur well in advance of the settlement date. Note: 3 business days must be allowed for the funds to clear.

The PEXA Source account is a power money account and obligations attach to the law practice if the account is used. Refer to the [QLS Guidelines for Trust Account Operations in PEXA](#) which require a solicitor to keep a copy of the FSS and an annual external examiners report if the account is used. Refer to [2.4].

6.5 Escrow requirements and undertaking to be given by seller's solicitor

In the absence of the parties making arrangements for the delivery of the keys and other documents referred to in clause 5.3(1)(b) of the REIQ Houses and Residential Land Contract, the seller's solicitor is required by clause 11.3(4) of the REIQ Houses and Residential Land Contract to:

- i. Confirm in writing prior to settlement that he or she holds all relevant documents which are not suitable for electronic lodgement and keys in escrow on the terms contained in the QLS e-Conveyancing Guidelines; and
- ii. Give a written undertaking to send the documents and keys to the buyer no later than the business day after settlement.

To comply with clause 11.3(4) a seller's solicitor should:

- i. Obtain and retain in their office the original version of documents required for settlement by the contract (e.g. leases, notices to tenants);
- ii. Provide copies of the documents to the buyer's solicitor prior to settlement;
- iii. Not release the documents to their client or any other party pending settlement; and
- iv. Send the original documents to the buyer's solicitor no later than the next business day after settlement.

The form of undertaking approved by the QLS is:

"On instructions from the Seller, I (insert Seller's solicitor's name) hold the following items/documents in escrow pending settlement...(list the keys and/or list the documents held). I undertake to send by [insert method of delivery (ie. registered/express/ordinary post/courier/delivery)] the following... (list the keys and/or list the documents held) to [insert name of buyer/buyer's solicitor] on the next business day after the settlement date."

6.6 Can the parties withdraw from electronic settlement?

Either party may elect by written notice not to proceed with electronic settlement at any time up until 5 business days prior to settlement and revert to a paper based settlement – refer clause 11.5(1) & (2) REIQ Houses and Residential Land Contract. This election does not automatically change the settlement date. Solicitors should ensure that any decision not to proceed with electronic settlement is taken early in the transaction to enable transfer documents to be executed.

Withdrawal from electronic settlement less than 5 business days prior to settlement is only permitted by the contract in the situations listed in clause 11.5(2) (e.g. not a qualifying transaction, a solicitor for a party is incapacitated, a financial institution is unable to settle using PEXA). A party who relies upon this provision must provide adequate evidence of the reason. Settlement is extended for 5 business days.

There is no right to withdraw and extend the settlement date under clause 11.5(2) where:

- i. A party does not digitally sign the electronic transfer documents or the FSS (unless there is a valid right to refuse to settle under clause 11.5(2));
- ii. There are insufficient funds in a source account that is not remedied on the Settlement Date;
- iii. Stamp duty has not been paid, provision for payment of duty has not been made or a Stamp Duty Verification fails;
- iv. An instrument has been lodged in the Titles Office that means the seller is not delivering title as contracted;
- v. An incorrect source account is provided and not remedied on the date for settlement.

7. Settlement

7.1 Electronic Settlement

7.1.1 Electronic settlement and workspace locking

Electronic settlement occurs when PEXA notifies that financial settlement is effected – refer to clause 11.3(7) REIQ Houses and Residential Land Contract.

Financial settlement is defined in clause 11.7 of the REIQ Houses and Residential Land Contract as “the exchange of funds between financial institutions facilitated by an ELNO system in accordance with the Financial Settlement Schedule”

The settlement process commences after the Workspace locks. A workspace will lock at the time nominated in the Workspace for settlement provided the Workspace is in *Ready* status. *Ready* status will be achieved if all electronic documents in the workspace are digitally signed by all relevant parties, lodgement and duty verifications are successful and the FSS is complete and signed.

One hour prior to the nominated time for settlement a title activity check will be undertaken. This is similar to a check search. [7.1.3]

After the Workspace locks for settlement:

- i. no changes can be made to the documents or the FSS;
- ii. settlement cannot be stopped by the parties; and
- iii. rights to terminate the contract cannot be exercised, even if the right is expressed to be exercisable prior to settlement.

If settlement does not occur due to mistakes in the workspace or computer system unavailability, the workspace will unlock. Whether settlement is required to be rescheduled for the next day will depend upon the reason settlement did not occur. If the parties are using an REIQ Contract and the settlement failed because a computer system operated by the Land Registry, Office of State Revenue, RBA, a financial institution or PEXA is unavailable, no party is in default and settlement must be rescheduled for the next day. Refer to clause 11.4 REIQ Houses and Residential Land Contract. In all other cases a default by one or both parties may have occurred. Refer to the terms of the contract to ensure the clause has not been deleted.

In addition, contractual or statutory rights to terminate which are exercisable up to settlement may be relied on by either party after the Workspace unlocks – refer to clause 11.3(6) REIQ Contract and *Property Law Act 1974*, s 67A.

On the day for settlement, prior to the nominated time for workspace locking, a solicitor should confirm with the client that settlement should proceed and if the client has any issues these should be raised prior to the nominated time for locking.

7.1.2 What is the latest time for electronic settlement?

Settlement must occur between 9am and 4pm AEST on the settlement date – refer clause 5.1 REIQ Houses and Residential Land Contract.

Due to Land Registry requirements, the latest time the parties can nominate for settlement in PEXA is 4pm for settlement on the settlement date. The time shown in the workspace will be the time in Queensland.

If 4pm is nominated as the settlement time, settlement will occur after 4pm. Once the workspace locks at 4pm although settlement has not occurred by 4pm as required by clause 5.1, neither party can exercise a right to terminate. If settlement is successful, any right to terminate for a failure to settle by 4pm will be lost. If settlement does not occur, the workspace will unlock and contractual or other rights may be exercised. If settlement did not proceed due to a computer system being inoperative clause 11.4 will apply and settlement is extended to the following business day.

7.1.3 Title Activity Check (TAC)

The system will automatically carry out a TAC 1 hour prior to settlement.

The TAC will check for activity on the title since the last successful TAC. This TAC is equivalent to a check search usually conducted prior to settlement.

A TAC will proceed even if the transfer documents are not signed.

If the time nominated for settlement is changed by the parties and there is less than 1 hour to settlement, a TAC will not automatically occur. In this case a solicitor should conduct a manual TAC or check search.

If the TAC indicates a new dealing on the title the parties will be notified. Refer to [7.2.3].

7.1.4 How does a party tender performance of the contract for electronic settlement?

The buyer and seller are still required to be ready, willing and able to settle on the settlement date in accordance with the contract. Usually proof that a party is ready, willing and able is provided by the party tendering performance of the contract at the time nominated for settlement. What the party is required to tender and when the tender takes place is governed by the terms of the contract of sale. In a normal settlement this is governed by clause 5.3 and 5.5 of the REIQ Houses and Residential Land Contract which requires the seller to tender particular documents and give vacant possession and for the buyer to tender the balance purchase price.

Clause 11.3 of the REIQ Houses and Residential Land Contract provides for compliance with the seller's obligations under clause 5.3 within an electronic settlement. Clause 5.3 is deemed to be satisfied if at the time of settlement (which in PEXA is the time the workspace locks for settlement):

- i. the workspace contains a transfer, Form 24 (digitally signed by the seller's solicitor) and a release of any encumbrances (digitally signed by outgoing mortgagee);
- ii. the seller's solicitor and any outgoing mortgagee have provided destination accounts and digitally signed the FSS;
- iii. the seller's solicitor has complied with the escrow requirements in clause 11.3 in relation to any documents or keys required by clause 5.3, but not able to be lodged electronically in the Land Registry; and
- iv. vacant possession (if agreed) can be given.

A buyer will be ready willing and able for an electronic settlement if at settlement:

- i. the workspace contains a transfer, Form 24 (digitally signed by the buyer's solicitor) and an electronic mortgage (if any) signed by the incoming mortgagee; and
- ii. the buyer's solicitor and any incoming mortgagee has provided source accounts and has digitally signed the FSS.

A seller or buyer who satisfy these individual requirements at the time nominated for settlement and remain ready until 4pm on the settlement date will be ready willing and able.

7.2 Managing settlement issues

7.2.1 Can settlement be stopped?

Up until the workspace locks at the agreed settlement time and date, the settlement can be rescheduled or stopped by any workspace participant by unsigned a document or the FSS. PEXA will issue a notification to workspace participants that the workspace is not ready for settlement. Solicitors should take steps to avoid accidental unsigned of a document or the FSS in the hour prior to settlement, which can occur if information within the documents is altered.

Changing the settlement time on the date for settlement will not unsigned the electronic documents, but approval to the change from the other parties will be required.

Changing the date for settlement will stop settlement, but this should only be done if the parties have agreed to vary or extend the date.

Once the time nominated for settlement is reached the workspace will lock and settlement cannot be stopped.

7.2.2 Notifications of problems with settlement

After the workspace locks for settlement, a solicitor should monitor the progress of settlement and any email/SMS notifications. Notification of settlement should be received within 30 minutes of locking. If PEXA encounters a problem after the workspace locks for settlement, a notification will be sent to the parties. This may require one or more of the parties to take steps to rectify the problem so that settlement may proceed. Solicitors should take reasonable steps to rectify any issue as soon as reasonably practicable. Refer to [2.5.5]

7.2.3 TAC indicates a new dealing prior to locking

One hour prior to settlement, PEXA will perform a Title Activity Check (TAC) and will immediately notify all parties if a new dealing or other activity has occurred on the title (positive TAC). The incoming participants (buyer and their mortgagee) are required to acknowledge the positive TAC in order for the settlement to proceed. The TAC will not provide information of the new dealing. Solicitors will need to undertake a title search to find out what activity has occurred on the title. If the buyer and incoming mortgagee do not acknowledge the positive TAC by 4pm, the settlement will not proceed on that day.

The steps a buyer's solicitor may take will depend upon the terms of the contract and whether the seller can still deliver title according to the contract. For example, if a Priority Notice was lodged prior to settlement the priority of the purchaser's transfer is protected unless the dealing is a caveat or writ. If the dealing was a new easement the buyer once registered will not be subject to the easement due to the operation of the Priority Notice. In that case a buyer will be able to proceed with settlement and become registered.

If the incoming parties do not acknowledge the positive TAC the time for settlement will be reallocated to the next available time until the parties elect to proceed or at the latest by 4pm. If there is no election by 4pm AEST the settlement will fail unless an extension is granted. If an extension is granted the date and time for settlement should be changed in PEXA to reflect the agreement.

If a Priority Notice was not lodged or the dealing is a caveat or a writ the buyer should not settle until the caveat, writ or other dealing is removed. If the dealing cannot be removed in time for settlement the seller will be in breach of the contract – refer to clauses 7.2 & 11.3(3) REIQ Houses and Residential Land Contract.

7.2.4 A new dealing lodged after locking and before settlement

Once the workspace locks it will proceed to settlement unless the dealing lodged after locking prevents lodgement. The only dealing that will prevent lodgement of the transfer documents will be a change of name request. Other dealings such as caveat, writs or encumbrances will prevent registration, but not lodgement. This is the same as the risk in a paper settlement where a dealing is lodged after the settlement has occurred, but before lodgement and registration. The risk to a buyer can be minimised by lodging a Priority Notice. Lodgement gap insurance cover provided by PEXA for all transactions, may also provide some compensation to a buyer affected by the dealing.

7.2.5 Failure of lodgement because of document error

If lodgement cannot occur because of a document error discovered after the workspace has closed/locked for settlement and prior to lodgement, PEXA will notify all subscribers that settlement will not proceed.

The parties must cooperate and take reasonable steps to correct the error prior to 4pm – refer to clause 11.2 REIQ Houses and Residential Land Contract.

If the error cannot be rectified and settlement fails the other party may terminate if they were ready willing and able. This is the same as a party turning up to a traditional settlement with a mistake in the transfer or an incorrect amount on a cheque.

7.2.6 The other party has not signed all electronic documents or the FSS

Each party is required to ensure that electronic documents are complete and signed and the FSS is digitally signed prior to settlement. A party who has not completed all required information and signed electronic documents by settlement will be in breach.

If the workspace is not in Ready status 1 hour prior to settlement the other party should be contacted. If settlement needs to be delayed to later in the day it is prudent to change the time nominated in PEXA for settlement.

The other party will be entitled to terminate the contract if settlement does not proceed on the settlement day provided they are ready willing and able to perform.

As indicated above a party will be ready willing and able for electronic settlement if:

- i. all information required from the party to enable preparation of the electronic documents required for lodgement has been provided;
- ii. the party's solicitor has digitally signed the electronic documents and FSS;
- iii. the party's financier has completed and signed the electronic mortgage/or discharge and digitally signed the financial settlement statement; and
- iv. the party has complied with any other contractual obligation necessary for settlement. In the case of the seller this will include complying with the escrow requirements in the REIQ Contract and giving vacant possession (if required).

The party must be ready, willing and able at the time for settlement and remain ready willing and able until 4pm on the settlement date, unless the contract is otherwise terminated.

Evidence that the party was ready willing and able up to 4pm should be retained. This may include copies of the signed electronic documents and FSS and screen shot of the workspace indicating the party has completed and signed all documents. A letter confirming the party was ready willing and able and providing evidence of signing of documents and other obligations may be included in any correspondence with the other party.

7.2.7 If PEXA is unable to do a TAC on the settlement date because the Land Registry Office system is unavailable

PEXA will automatically undertake a TAC once a day in the week prior to settlement and on the day of settlement, one hour prior to locking.

PEXA will notify all subscribers that it cannot do a TAC and will ask the buyer's solicitor and the incoming mortgagee if they still wish to proceed to financial settlement without a TAC. A buyer is not required to agree to proceed without a TAC if the reason it cannot be obtained is due to the Land Registry computer system being unavailable: (clause 11.4 REIQ Houses and Residential Land Contract and *Property Law Act 1974*, s 70A). If the Land Registry system is operating, and the reason for the inability to obtain a TAC is for any other reason, a buyer should undertake a check search in the usual manner. If the check search is clear, the buyer will not have a contractual right to refuse to settle.

The buyer will also have the benefit of Lodgement Gap Cover provided by PEXA where the last successful TAC took place within 2 business days of the scheduled settlement.

In this case, PEXA will assume responsibility for:

- (i) Any resulting difference in the land value;
- (ii) Legal fees incurred; and/or
- (iii) Certain other expenses that are incurred.

If the buyer and incoming mortgagee agree to proceed to settlement without a TAC or electronic lodgement, settlement will occur at the time of financial settlement. Refer to clause 11.3(6) REIQ Houses and Residential Land Contract. PEXA will lodge the documents with the Land Registry as soon as it is available. A solicitor for the buyer should not contemplate this course of action unless at a minimum a settlement notice has been lodged and all risks have been fully explained to the buyer.

7.2.8 PEXA is unable to do a duty verification 1 hour prior to settlement

A duty verification will be done 2 days prior to settlement and again 1 hour prior to settlement. If the verification cannot be undertaken 1 hour before settlement, PEXA will proceed with settlement only if there was a valid verification 2 days (or earlier) prior to settlement (and no relevant workspace data has changed). If there is no valid verification 2 days prior or 1 hour prior, PEXA will not proceed with settlement. If the reason a verification cannot be undertaken 1 hour before is that the OSR system is unavailable, and it remains unavailable until 4pm, settlement will be extended to the next day.

7.2.9 Land Registry, OSR, PEXA or financial institution systems are unavailable up to 4pm

If a computer system required for settlement is unavailable, PEXA will notify all subscribers that settlement is delayed because of the unavailability of one of these systems.

If the unavailable system is the Land Registry, PEXA will proceed to settlement if certain conditions are met. If PEXA determines that communications cannot be established with the Land Registry. A secondary Lodgement Verification allows a settlement to progress to 'Ready' where:

- All Documents in the Lodgement Case have been signed, and
- The latest Lodgement Verification Result (usually the day prior to settlement) is successful for each Document in the Lodgement Case, and
- No Document data has changed since that last Lodgement Verification was performed, and
- The current date is the settlement date for the workspace.

A Secondary Lodgement Verification will only be performed if the documents are prepared and signed the day prior to settlement, a Lodgement Verification was performed the day prior to settlement and no changes are made to the documents after the Secondary Lodgement Verification. If these conditions are not met and the Land Registry remains unavailable on the settlement date, settlement will not proceed and will need to be rescheduled.

If settlement proceeds, PEXA will notify of financial settlement and continue to attempt to lodge the documents with the Land Registry. The buyer will have the benefit of the Lodgement Gap Cover as described above [7.2.7]. Refer also to PEXA Help Centre at <https://community.pexa.com.au/t5/Help-Centre/Proceeding-with-Settlement-when-a-land-registry-is-unavailable/ba-p/6520>.

If a computer system other than the Land Registry is unavailable, PEXA will continue to try to settle up until 4pm but will not proceed unless the computer system is available. The PEXA system will move the settlement time to the next available settlement time. If that time is less than 1 hour after the failed settlement attempt, a new TAC will not be conducted. A solicitor who is on notice of a potential caveat or writ should undertake a check search of the title if settlement is delayed in PEXA. Settlement will not stop merely because a caveat or writ is lodged – refer to [7.2.4]. In each case, the workspace will remain locked until 4pm. At 4pm the workspace will unlock and unsign the documents.

If settlement does not proceed by 4pm due to a computer system being unavailable neither party is in default and the settlement date is deemed to be the next business day – time remains of the essence – refer to clause 11.4 REIQ Houses and Residential Land Contract. In this case, each subscriber is required to take all necessary steps to re-schedule the settlement for the next business day by nominating a new settlement time and re-signing the workspace. Each solicitor must take all reasonable steps to ensure their financier also signs the necessary documents for settlement on the next business day.

7.2.10 Law practice computer system is inoperative

The computer system of a subscriber does not need to be operative at the time of settlement if all documents and the FSS are signed and ready for settlement prior to this time. There is no right to delay settlement merely because a party's solicitor is unable to correct a mistake or access the system because their computer is inoperative. A solicitor should seek to access the system through another computer or seek an extension of time for settlement.

7.2.11 Insufficient funds available in account for settlement

If there are insufficient funds in the **solicitor's trust account** (or the PEXA Source Account), PEXA will notify the relevant subscribers that funds are required. The relevant party and his/her solicitor must take all reasonable steps to place sufficient cleared funds in the trust account for settlement to proceed on the date of settlement.

If sufficient funds are not provided by the last available time for settlement, the other party may terminate the contract for breach of an essential term.

If there are insufficient funds in the **financial institution account**, PEXA will notify all subscribers that settlement will not proceed. PEXA or the RBA will notify the financial institution. If the deficiency is not the fault of the buyer, but settlement cannot be effected on the date of settlement, the parties can agree to extend the settlement date to another date or the buyer can give notice under clause 11.5(2) opting out of PEXA and extending the settlement date by 5 business days on the basis their financial institution is unable to settle using PEXA.

7.2.12 The other party has changed the settlement date without requesting an extension

The settlement date and time are inserted into the workspace by the parties. The settlement date in PEXA can be changed prior to the workspace locking. A solicitor should not insert a date inconsistent with the contract of sale or change the date without the agreement of the other parties. A change to the date after the other party has signed which prevents settlement proceeding will be a breach of the parties obligation to co-operate in completion of the workspace.

7.2.13 Exercising rights to terminate

The time by which a party should exercise any common law, contractual or statutory rights is altered in an electronic settlement. Any contractual rights or statutory rights that must be exercised prior to settlement will end once the workspace locks for settlement. These rights may however, be exercisable if the workspace unlocks because settlement cannot proceed.

7.2.14 A party's solicitor has died, lost capacity or is in administration, receivership or other similar steps have been taken by QLS (refer clause 11.5(2)(b) REIQ Contract)

In this case the affected party has the right to notify and delay settlement. The documents and FSS may be unsigned by each subscriber. The affected party can elect to move to a paper settlement or otherwise agree to extend the settlement for a reasonable period. All subscribers should co-operate to give effect to the transaction

8. After settlement

Each party's solicitor will be notified by PEXA that registration of the documents has occurred (this should be on the same day).

Each party's solicitor will notify their respective clients that settlement has occurred.

8.1 Potential problems after lodgement of documents

a. An intervening dealing

Documents have been lodged and settlement money paid but the documents are unable to be registered because of the lodgement of a caveat, writ or an interest has been created in priority to the buyer (mortgage, lease, easement) after the Workspace was locked for settlement and before lodgement:

- i. A Priority Notice should have been lodged – therefore the only risk is the lodgement of a caveat or writ.
- ii. The same risk exists in a paper settlement and lodgement.
- iii. In PEXA the buyer is able to claim against the Lodgement Gap Cover for:
 - a. Any resulting difference in the land value;
 - b. Legal fees incurred; and/or
 - c. Certain other expenses that are incurred.

b. An error in destination accounts

There is an error in the accounts for the disbursements – wrong account numbers, over or under payment:

- i. There is an obligation on parties to take all reasonable steps to give effect to the obligations in the contract;
- ii. This obligation regarding payment and to take reasonable steps does not merge on registration;
- iii. Refer to Participation Agreement – mutual obligations on parties including FI to place the money in the correct account.

Under the PEXA Service Charter PEXA will also provide further assistance to subscribers where an incorrect destination account is entered and funds are not credited to any account or misapplied to the wrong account. Refer to the PEXA Service Charter at [4.1] and [4.2] for details of the corrective payments process.

8.2 PEXA fees

Each party must pay their own costs for the use of PEXA. A fee is included in the FSS and charged at settlement by PEXA. Refer to the [PEXA Pricing Policy](#).

It is the view of QLS that the PEXA fee is in the nature of a disbursement and may be passed on to the client.

9. Retention of Documents

9.1 Obligations under QPR

Subscribers are required by [QPR clause 6.6](#) to retain any documentation supporting a Registry instrument⁵ or other electronic document for 7 years from the date of lodgement in the Land Registry. This will include:

- i. any forms or evidence required by the OSR;
- ii. any Client Authorisation and any evidence supporting that Client Authorisation;
- iii. any material supporting the Subscriber's Client's entitlement to enter into the Conveyancing Transaction;
- iv. any evidence supporting verification of identity (copies of identity documents); and
- v. any other material demonstrating compliance with any requirement published by the Registrar of Titles.

There is no prescribed method for storing this evidence. Paper copies of documents or electronic copies may be kept. Paper documents may be converted and kept in electronic form provided the electronic document maintains its integrity and is reasonably expected to be readily accessible. Documents originating in electronic form may also be kept electronically provided the storage method means the document is readily accessible; the method is reliable for maintaining integrity of the document and the metadata related to the electronic document is kept and is accessible. Refer to the [Electronic Transactions \(Queensland\) Act 2001, ss 20, 21](#).

⁵ This is defined broadly in the *Electronic Conveyancing National Law (Queensland) Act 2013* (Qld), s.6.

Schedule 1

Comparative Table REIQ Contracts Electronic Settlement Provisions

Houses and Residential Land 16 th ed	Residential Community Title 12 th ed	Commercial Community Title 7 th ed	Commercial Land and Buildings 8 th ed
11.1	11.1	13.1	36.1
11.2	11.2	13.2	36.2
11.3	11.3	13.3	36.3
11.4	11.4	13.4	36.4
11.5	11.5	13.5	36.5
11.6	11.6	13.6	36.6
11.7	11.7	13.7	36.7