

ELECTRONIC CONVEYANCING

Trust Money Perspective

This paper provides guidance to a law practice in regard to the trust money requirements if settlement is effected under the PEXA electronic settlement module. Relevant provisions under the [Legal Profession Uniform Law \(NSW\)](#) and [Legal Profession Uniform General Rules 2015](#) are reprinted at the foot of this paper. The paper is not intended to provide an overview of the PEXA electronic settlement module. For an overview of the electronic settlement module, visit the PEXA Website at <http://www.pexa.com.au/>.

TRUST MONEY OBLIGATIONS

A. SOURCE FUNDS - PURCHASER

For a purchaser's solicitor, funds to purchase a property may be introduced by:

1. The loan amount: The Bank enters the loan amount into the PEXA environment. The law practice is given the authority to disburse these funds via the PEXA environment pursuant to the purchaser's instructions. This represents power money. Only persons in the law practice given the power may exercise the authority and digitally sign in the PEXA environment on behalf of the purchaser.

Power money records will need to be maintained by the purchaser's solicitor and include:

- (a) The Client Authorisation Form providing authority from the purchaser authorising the law practice to effect withdrawal from the loan account. A copy of the Client Authorisation Form is attached at the foot of this paper.
 - (b) The Settlement Completion Record which must be printed and filed in the law practice file. A copy of the Settlement Completion Record is attached at the foot of this paper. The Settlement Completion Record is a document printed from the PEXA environment and provides full particulars of the property, money introduced to the settlement and money paid from the settlement.
 - (c) The Settlement Adjustment Statement that is exchanged between the vendor and purchaser. The calculation of the settlement adjustment figures is still paper based and outside of the PEXA environment. The parties agree on the figures via correspondence and then enter the figures directly on to the PEXA environment.
2. The purchaser's injection of equity: The purchaser's equity may be introduced to the PEXA environment in two ways: the equity being deposited into (i) the law practice's trust account; or (ii) the PEXA Source Account.
 - (i) Law Practice's General Trust Account: General trust account records will need to be maintained by the purchaser's solicitor. The trust records include:
 - (a) The trust receipt that is issued on the receipt of trust money from the purchaser which is then posted to the accounting records.
 - (b) Client Authorisation Form providing authority from the purchaser for the law practice to effect settlement via the PEXA environment. A copy of the Client Authorisation Form is attached at the foot of this paper.
 - (c) The Trust Account Authorisation Record which is an authorisation provided by the law practice to PEXA authorising PEXA to transfer a nominated amount from the law practice trust account to enable PEXA settlement. A copy of the Trust Account Authorisation Record is reprinted at the foot of this paper. The line entry headed "Transaction Description" is the detail that will appear on the law practice's bank statement which will enable identification of the transaction and

link to the law practice's records. It is suggested that the law practice adopt the standard of entering the matter number and client name. For example, the entry in the bank statement would read: "AB2016Wakefield". This form properly completed enables compliance with [Rule 43](#) of the *Legal Profession Uniform General Rules 2015*. Law practices must also ensure this form is only digitally signed by authorised signatories in accordance with [Rule 43\(2\)](#).

- (d) The Settlement Completion Record must be printed and filed in the law practice file. A copy of the Settlement Completion Record is attached at the foot of this document. The Settlement Completion Record is a document printed from the PEXA environment and provides full particulars of the property, money introduced to the settlement and money paid from the settlement.
- (e) The Settlement Adjustment Statement that is exchanged between the vendor and purchaser. The calculation of the settlement adjustment figures is still paper based and outside of the PEXA environment. The parties agree on the figures via correspondence and then enter the figures directly on to the PEXA environment.

It is important to note that money deposited to the law practice trust account must be deposited within sufficient time for the deposit to be cleared. The advice received by the Trust Accounts Department is that it takes 3 days to clear a cheque deposited to the law practice trust account. Law practices are advised to consult their Bank to confirm clearances of cheques.

Interest earned on statutory trust accounts maintained by a law practice is paid to the Public Purpose Fund.

- (ii) PEXA Source Account: The law practice is given the authority by the purchaser to disburse the funds retained on behalf of the purchaser in the PEXA Source Account pursuant to the purchaser's instructions. This represents power money and power money records will need to be maintained by the purchaser's solicitor. Power money records include:
 - (a) The Client Authorisation Form providing authority from the purchaser authorising the law practice to effect withdrawal from the PEXA Source Account.
 - (b) The Settlement Completion Record which must be printed and filed in the law practice file. A copy of the Settlement Completion Record is attached at the foot of this document. The Settlement Completion Record is a document printed from the PEXA environment and provides full particulars of the property, money introduced to the settlement and money paid from the settlement.
 - (c) The Settlement Adjustment Statement that is exchanged between the vendor and purchaser. The calculation of the settlement adjustment figures is still paper based and outside of the PEXA environment. The parties agree on the figures via correspondence and then enter the figures directly on to the PEXA environment.

The PEXA Source Account is not a trust account as defined by the *Legal Profession Uniform Law (NSW)*. Interest earned on the PEXA Source Account accrues to PEXA.

B. DESTINATION FUNDS

For a vendor's solicitor, the funds paid into the PEXA environment will be disbursed under the authority of the vendor's solicitor pursuant to the vendor's instructions. This represents power money and power money records need to be maintained by the vendor's solicitor. The power money records include:

- (a) The Client Authorisation Form providing authority from the vendor authorising the law practice to effect payments via the PEXA environment.

- (b) The Settlement Completion Record which must be printed and filed in the law practice file. A copy of the Settlement Completion Record is attached at the foot of this document.
- (c) The Settlement Adjustment Statement that is exchanged between the vendor and purchaser. The calculation of the settlement adjustment figures is still paper based and outside of the PEXA environment. The parties agree on the figures via correspondence and then enter the figures directly on to the PEXA environment.

EXTERNAL EXAMINER'S REPORT

[Section 155\(4\)](#) of the *Legal Profession Uniform Law (NSW)* provides that if the only trust money received or held by a law practice during a financial year is transit money, the practice's trust records in respect of that year are not required to be externally examined. In addition to transit money, a law practice is not required to have trust records externally examined if they have only received or held trust money Subject to a Specific Power pursuant to the PEXA Settlement Scheme and/or trust money Subject to a Written Direction.

TRUST ACCOUNT INSPECTIONS

The Law Society's Trust Account Investigators will be reviewing the Settlement Completion Record as part of its routine investigations. Law practices acting on behalf of purchasers and vendors in the PEXA environment should ensure a copy of the Settlement Completion Record is printed and placed in the file on completion of the matter. This Record will put investigators in a better position to examine the money flow of a conveyance transacted on PEXA. The Record will also be available on PEXA archives for 7 years.

PEXA will eliminate the handing over of bank cheques at the settlement table for which a record is required to be maintained.

The calculation of the settlement adjustment figures is still paper based and outside of the PEXA environment. The parties agree on the figures via correspondence and then enter each source and destination item directly on to the PEXA environment. It is expected that the settlement adjustment statement that is exchanged between the vendor and purchaser will still be available for inspection.

FREQUENTLY ASKED QUESTIONS

Below are a number of Frequently Asked Questions which have been asked of officers of the Trust Accounts Department.

LEGAL PROFESSION UNIFORM LAW (NSW) and LEGAL PROFESSION UNIFORM GENERAL RULES 2015

Power Money - Definitions

Section 129(1) of the *Legal Profession Uniform Law (NSW)*:

For the purposes of this Law, **trust money** is money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice, and includes—

- (a) money received by the law practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the law practice; and
- (c) transit money received by the law practice; and
- (d) money received by the law practice, that is the subject of a power exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person.

Section 6 of the *Legal Profession Uniform Law (NSW)*:

power, in relation to trust money, includes an authority.

Section 152 of the *Legal Profession Uniform Law (NSW)*:

- (1) For the purposes of this Law, a law practice receives money when—
 - (a) the law practice obtains possession or control of it directly; or
 - (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
 - (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person.
- (2) For the purposes of this Law, a law practice or associate is taken to have received money if the money is available to the law practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

Power Money – Records

Rule 55 of the *Legal Profession Uniform General Rules 2015*:

- (1) This rule has effect for the purposes of section 141 of the Uniform Law.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the law practice must keep:
 - (a) a record of all dealings with the money to which the law practice or associate is a party; and
 - (b) all supporting information in relation to the dealings; in a manner that enables the dealings to be clearly understood.
- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

External Examination

Section 155(4) of the *Legal Profession Uniform Law (NSW)*:

If the only trust money received or held by a law practice during a financial year is transit money, its trust records in respect of that year are not required to be externally examined.

CLIENT AUTHORISATION FORM

<h2 style="margin: 0;">CLIENT AUTHORISATION</h2> <p style="margin: 0; font-size: small;">When this form is signed, the Subscriber is authorised to act for the Client in a Conveyancing Transaction or Conveyancing Transactions.</p>		
Subscriber Reference: _____		
CLIENT DETAILS	CLIENT 1	CLIENT 2
	NAME _____	NAME _____
	ACN/IARBN _____	ACN/IARBN _____
ADDRESS _____		ADDRESS _____
TRANSACTION DETAILS	AUTHORITY TYPE <input type="checkbox"/> SPECIFIC AUTHORITY (details of transactions to be provided below) <input type="checkbox"/> STANDING AUTHORITY AUTHORITY EXPIRATION DATE: ___/___/___ or on revocation. (details to be attached when available) <input type="checkbox"/> BATCH AUTHORITY (details to be attached)	
	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2
	PROPERTY ADDRESS _____	
	LAND TITLE REFERENCE(S) (and/or property description) _____	
	TRANSACTION TYPE(S) <input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAW CAVEAT <input type="checkbox"/> OTHER	
SPECIAL INSTRUCTIONS _____		
CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	I CERTIFY that: (a) I am the Client or Client Agent; and (b) I have the legal authority to instruct the Subscriber in relation to the Conveyancing Transaction(s); and (c) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.	
	I AUTHORISE the Subscriber to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to: (a) sign Documents on my behalf as required for the Conveyancing Transaction Type; and (b) submit or authorise submission of Documents for Lodgement with the relevant Land Registry; and (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and (d) do anything else necessary to complete the Conveyancing Transaction(s).	
	CAPACITY: _____ DATE / / _____ PRINT NAME: _____	CAPACITY: _____ DATE / / _____ PRINT NAME: _____
SUBSCRIBER DETAILS AND SIGNING	SUBSCRIBER	SUBSCRIBER AGENT (if used)
	NAME _____	NAME _____
	ABN/ACN/IARBN _____	ABN/ACN/IARBN _____
	ADDRESS _____	
I CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the Persons named above as Client or Client Agent.		
DATE / / _____ PRINT NAME: _____	DATE / / _____ PRINT NAME: _____	

SETTLEMENT COMPLETION RECORD



Date Generated: 28/04/2015

Settlement Completion Record

Settlement Details:

Subscriber: PEXA SOLICITORS 4 LTD
 Subscriber Role: Incoming Proprietor
 Subscriber Reference: sh 11625 vnset p2 061 retest
 Being purchase or refinance of: 10 Verdant Club Queen Street Melbourne VIC 3000
 Land Title Reference: 90007/950
 Total funds settled via PEXA: 505.00
 Funds not included in PEXA Financial Settlement: 0
 Net Adjustments: 0
 PEXA Workspace ID: PEXA150021630
 Settlement Date: 15/01/2015

Signature(s) on Settlement Statement:

Vinod Burugula - 15/01/2015 08:40 AEST
 Vinod Burugula - 15/01/2015 08:33 AEST

Signature(s) on Trust Account Debit Authorisation:

Dummy JIT64 - 15/01/2015 08:44 AEST

Other Workspace Participants

Proprietor on Title PEXA SOLICITORS 4 LTD

Source Financial Line Item(s)

	Transaction ID	Category	Account Name	Account Details	Client Name	Owner	Amount
1	PEXA150021630 S01F	First Home Owner's Grant	WBC Valid Trust Account	032003 275946	Sfdg	PEXA SOLICITORS 4 LTD	505.00
					Total		505.00

Destination Financial Line Item(s)

	Transaction ID	Category	Account Name	Account Details	Owner	Amount
1	PEXA150021630 D02F	Lodgement Fees	Lodgement Fee Account - VIC	-	PEXA SOLICITORS 4 LTD	286.00
2	PEXA150021630 D03F	PEXA Fees	PEXA Fee Account	-	PEXA SOLICITORS 4 LTD	104.50
3	PEXA150021630 D04F	PEXA Fees	PEXA Fee Account	-	PEXA SOLICITORS 4 LTD	104.50
4	PEXA150021630 D01F	Stamp Duty Disbursement	State Revenue Office Victoria	-	PEXA SOLICITORS 4 LTD	10.00
				Total		505.00

TRUST ACCOUNT AUTHORISATION RECORD

Document Signing

All fields are required except where marked as *optional*

XYZ Trust Account (AB2016Wakefield - \$617,653.90)

I hereby authorise the debiting of \$617,653.90 from XYZ Trust Account as per directions received.

This authorisation is provided under the direction of

(1) In the case of a law practice:

- (a) the authorised principal of the law practice; or
- (b) an authorised legal practitioner associate; or
- (c) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
- (d) 2 or more authorised associates of the law practice jointly.

(2) In the case of a licensed conveyancing practice:

- (a) the licensee; or
- (b) an authorised employee at the licensee's place of business.

A record of this transaction will be stored in PEXA and a written record can be generated as required.

Sign Documents

Cancel

XYZ Trust Account

Workspace Details

Subscriber: WHITEHAVEN CONVEYANCING SERVICES
Subscriber Reference: AB2016Wakefield
PEXA Workspace ID: PEXA150026406

Transaction Details

Payment Category: Purchaser's Equity
Client Name: Amanda Wakefield, William Wakefield
Trust Account Name: XYZ Trust Account
Trust Account BSB: 012111
Trust Account Number: 562345243
Amount: \$617,653.9
Receiving Financial Institution: BPI
Receiving Account Name: BPI Internal Account
Receiving Account BSB: 012111
Receiving Account Number: 987654321
Transaction Description: AB2016Wakefield
Transaction ID: PEXA150026406S01F
Date Of Transaction: 25/05/2015
Authorised By: User Brett
Authorised On: 25/05/2015 04:11 UTC

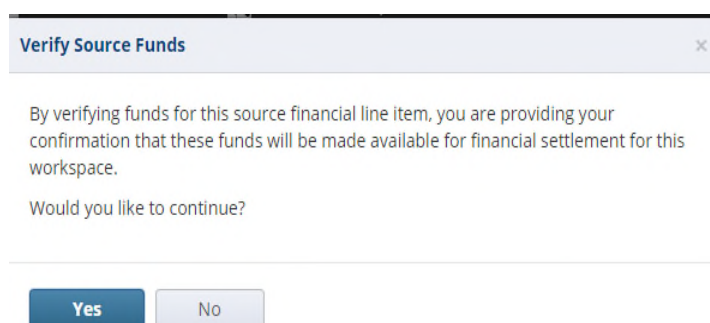
FREQUENTLY ASKED QUESTIONS

- A.** PEXA requires the Practitioner's Trust Account to receive trust money which is to be made available for PEXA settlement, generally this will be the solicitor acting for the Purchaser (Incoming Proprietor).

This is the same as current conveyancing transaction when the law practice receives the balance of settlement money. The law practice will issue a trust account receipt and post the transaction to the ledger that has been opened for this matter.

- B.** PEXA requires the Practitioner's Trust Account to provide cleared funds to the PEXA platform.

Yes this is no different to a current conveyancing transaction when the practitioner attends settlement with bank cheques drawn on the law practice trust account. The funds received from the purchaser are expected to be received in time to allow that deposit to clear. The law practice is required to verify in the PEXA Platform that funds in the general trust account are cleared. See authorisation below from the PEXA Platform:



The screenshot shows a dialog box titled "Verify Source Funds" with a close button (x) in the top right corner. The text inside the dialog box reads: "By verifying funds for this source financial line item, you are providing your confirmation that these funds will be made available for financial settlement for this workspace." Below this text is the question "Would you like to continue?". At the bottom of the dialog box, there are two buttons: "Yes" (highlighted in blue) and "No" (grey).

The law practice cannot use the general trust funds to provide cleared funds to PEXA. Law practices are advised that they need to seek advice from the Authorised ADI at which their trust account is maintained as to the period required for various deposits to be cleared. The various deposits are Personal Cheque, Bank Cheque, and Electronic Funds Transfers into the law practice trust account. The Trust Accounts Department of the Law Society will not provide advice on the time it takes Authorised ADI's to clear deposits. Practitioners should also enquire about the facility of special clearances by Authorised ADI's.

- C.** Once the money has been deposited to the law practice trust account and released to the PEXA Platform as cleared funds by the law practice, the PEXA Platform will sweep all the accounts and direct debit the nominated amount from the practitioner's trust account. Is this in accordance with the Legal Profession Uniform General Rules 2015?

Yes, Rule 43(2) of the *Legal Profession Uniform General Rules 2015* allows for Electronic Funds Transfers from a law practice trust account. The clause reads:

A cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of:

- (a) an authorised principal of the law practice; or*
- (b) if such a principal is not available:*
 - (i) an authorised legal practitioner associate; or*
 - (ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or*
 - (iii) two or more authorised associates jointly.*

The PEXA Platform provides for this in the process of Authorising of Source Financial Line Items.

- D.** All that the law practice receives to record the transaction in the law practice's trust records is the debit entry on the Authorised ADI's bank statement which reflects the amount that has been debited to the bank account by EFT.

This is not fully correct. The law practice will also receive the "Trust Account Authorisation Record" and a "Settlement Completion Record". However, it is essential that the law practice enters relevant information into the "Transaction Description" field when creating a Source Financial Line Item. It is this field that will be disclosed in the details section of the bank statement and this information should be sufficient to enable to law practice to post the EFT from the bank statement. The entry should provide sufficient details to identify the matter name as it is recorded in the trust records. It is also noted that PEXA provides a "Trust Account Authorisation Record" and a "Settlement Completion Record". These records should be printed and are considered to be source records to support the EFT from the law practice's trust account.

- E.** A settlement may not proceed and may be discontinued after the law practice has provided authorisation for the transfer from the law practice trust ADI account and the transfer has been effected. The money is withdrawn from the law practice trust ADI account and re credited to the law practice trust ADI account on the same day. This transaction is referred to by PEXA as a "Rollback of Source Funds". On a Rollback of Source Funds, all verifications and authorisations are voided and must be re-entered to the PEXA Platform. Does the law practice have to post the entries the subject of the Rollback?

Yes, as the entries have been processed to the law practice trust ADI statement the entries are required to be posted to the trust ledger. This provides the history of the matter in the trust ledger.

- F.** The solicitor acting for the vendor may not receive money that is to be deposited to the general trust account of the law practice. Does the solicitor for the vendor need to maintain records when general trust money is not received by the practice?

Yes, the solicitor for the vendor directs the "pool of funds" to be disbursed. This is "Power Money" as defined in Section 129 of the *Legal Profession Uniform Law (NSW)*. The law practice acting for the vendor will be required to retain the "Settlement Completion Record" recording the destination of the funds that have been disbursed at the direction of the solicitor acting for the vendor.

- G.** The solicitor acting for the vendor may receive money from the "Pool of Settlement Money" as an EFT credit to the law practice's general trust ADI statement. Will there be sufficient information recorded in the general trust ADI statement for the law practice to identify the transaction, issue a receipt and post the money to the relevant ledger?

It is considered that provided the law practice completes the "Transaction Description" when completing a Destination Line Item then there is sufficient information provided in the bank statement for the law practice to identify the matter to which the money received relates. This is also applicable to payment to 3rd party bank accounts. The law practice must complete the "Transaction Description" field with sufficient detail that will enable the recipient of the money to identify why the money was deposited.

H. Does the law practice need to purchase additional software to use the PEXA Platform.

No. PEXA is a web based application and is accessible via your internet browser. However, the law practice must be mindful of the Participation Rules for Electronic Conveyancing published by the Registrar General, particularly Rule 7 Obligations Regarding System Security and Integrity. The Participation Rules for Electronic Conveyancing is available at the Australian Registrars' National Electronic Conveyancing Council (ARNECC) website at www.arnecc.gov.au.