

ELECTRONIC CONVEYANCING

Trust Money Perspective

This paper provides guidance to a law practice in regard to the trust money requirements when property settlement is effected through an approved Electronic Lodgment Network Operator (ELNO). 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 ELNO service offerings. Visit the website of the relevant ELNO for an overview of their service offering.

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 ELNO Workspace. The law practice is given the authority to disburse these funds via the ELNO 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 into the ELNO 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. The Client Authorisation Form can be accessed at <https://www.arnecc.gov.au/publications/forms>.
 - (b) The Settlement Completion Record which must be printed and filed in the law practice file. Sample Settlement Completion Records from Sympli and PEXA are attached at the foot of this paper. The Settlement Completion Record is a document printed from the ELNO 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 ELNO environment. The parties agree on the figures via correspondence and then enter the figures directly into the ELNO Workspace.
2. The purchaser's injection of equity: The purchaser's equity may be introduced into the ELNO environment in two ways: the equity being deposited into (i) the law practice's general trust account; or (ii) the relevant ELNO 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 ELNO environment. The Client Authorisation Form can be accessed at <https://www.arnecc.gov.au/publications/forms>.

- (c) The Trust Account Authorisation Record, which is an authorisation provided by the law practice to the ELNO authorising the ELNO to transfer a nominated amount from the law practice general trust account to enable electronic settlement. Sample Trust Account Authorisation Records from Sympli and PEXA are attached at the foot of this paper. The law practice's authorised ADI statement will contain an identifier for the transaction that links the law practice's records with the ELNO record. It is suggested that the law practice adopt the standard of entering the matter number and client name when creating or joining the workspace. 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. Sample Settlement Completion Records from Sympli and PEXA are attached at the foot of this paper. The Settlement Completion Record is a document printed from the ELNO 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 ELNO environment. The parties agree on the figures via correspondence and then enter the figures directly into the ELNO Workspace.

It is important to note that money deposited to the law practice general 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~~ may take up to 3 days to clear a cheque deposited to the law practice general trust account. Law practices are advised to consult their ~~Bank~~ authorised ADI to confirm clearances of cheques.

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

- (ii) ELNO Source Account: The law practice is given the authority by the purchaser to disburse the funds retained on behalf of the purchaser in the relevant ELNO Source Account pursuant to the purchaser's instructions. The Law Society's Trust Accounts Department regulates funds deposited in the ELNO source account as power money. 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 relevant ELNO Source Account.
 - (b) The Settlement Completion Record which must be printed and filed in the law practice file. Sample Settlement Completion Records from Sympli and PEXA are attached at the foot of this paper. The Settlement Completion Record is a document printed from the ELNO 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 ELNO environment. The parties agree on the figures via correspondence and then enter the figures directly ~~on to~~ into the ELNO Workspace.

ELNO Source Accounts are not trust accounts as defined by the *Legal Profession Uniform Law (NSW)*. Interest earned on ELNO Source Accounts accrues to the relevant ELNO.

B. DESTINATION FUNDS - VENDOR

For a vendor's solicitor, the funds paid into the ELNO 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 ELNO environment.
- (b) The Settlement Completion Record which must be printed and filed in the law practice file. Sample Settlement Completion Records from Sympli and PEXA are attached at the foot of this paper.
- (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 ELNO environment. The parties agree on the figures via correspondence and then enter the figures directly into the ELNO Workspace.

EXTERNAL EXAMINER'S REPORT

As explained above, law practices operating under an ELNO environment may have received power money. A law practice is not required to have its trust records externally examined if it has only received or held power money under an ELNO environment, and/or transit money and/or written direction money.

TRUST ACCOUNT INVESTIGATIONS

The Law Society's Trust Account Investigators will be reviewing the Settlement Completion Record as part of their routine investigations. Law practices acting on behalf of purchasers and vendors in an ELNO 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 using an ELNO. The Record will also be available in the ELNO's archives for at least 7 years.

Using an ELNO eliminates 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 ELNO environment. The parties agree on the figures via correspondence and then enter each source and destination item directly into the ELNO Workspace. It is expected that the settlement adjustment statement that is exchanged between the vendor and purchaser will still be available for inspection.

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~~,

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.

SAMPLE SETTLEMENT COMPLETION RECORDS

Sympli:

Settlement Completion Record



Settlement date: 12 Dec 2017

Subscriber: XYZ Lawyers Pty Ltd

Matter ID: XYZ123809

Client: Jane Grace Williams, David John Williams

Type: Purchase

Title: 50839456

Address: 43 Ann Street, Brisbane QLD 4000


Sympli ID: Sympli1234567

Purchaser's distributions

Purchaser's directions: \$24,100.00

Purchaser's source funds: \$124,210.00

No lodgement override

 **Purchaser's distributions**

Directions

Payee and payment details	Subscriber	Amount (\$)
Sympli Service fee	XYZ Lawyers Pty Ltd	110.00
XYZ Lawyers Pty Ltd Trust Professional fee (34 Ann St Brisbane) ANZ BSB 789123 Account number 60657112	XYZ Lawyers Pty Ltd	1,500.00
QLD Office of State Revenue Stamp duty (Transaction ID: 1382930111) ANZ BSB 010191 Account number 128910	XYZ Lawyers Pty Ltd	22,490.00
Purchaser's directions:		\$24,100.00

Source funds

Account details	Subscriber	Amount (\$)
XYZ Lawyers Pty Ltd Trust Purchaser's equity (XYZ123809) ANZ BSB 789123 Account number 60657112	XYZ Lawyers Pty Ltd	124,210.00
Purchaser's source funds:		\$124,210.00

Certifications

1. All financial information included in the Distribution Summary is accurate.

2. I agree with the details included in the Distribution Summary.

3. I accept the fees that will be charged as a result of this settlement transaction.

4. I understand and accept that if the settlement time is extended during the settlement run due to delay, this document will not automatically become unsigned unless settlement is extended to the next business day.

5. A user will then be able to stop settlement in the Distribution Summary if they wish.

Signer: Jane Bloggs

Authorised on: 10 Dec 2017, 12:24PM

Settlement Completion Record
Matter: XYZ123809

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 All settlement distributions in this workspace

Directions

Transaction ID	Payee and payment details	Subscriber	Amount (\$)
Sympli123456701D01	Sympli Service fee	ABC Lawyers Pty Ltd	110.00
Sympli123456701D02	ABC Lawyers Pty Ltd Trust Professional fee (43 Ann St Brisbane)	ABC Lawyers Pty Ltd	500.00
Sympli123456701D03	Anne Smith Gift (43 Ann St Brisbane)	ABC Lawyers Pty Ltd	5,000.00
Sympli123456701D04	Queensland Urban Utilities Water rates (43 Ann St Brisbane)	ABC Lawyers Pty Ltd	120.00
Sympli123456701D05	John Smith Balance to vendor (43 Ann St Brisbane)	ABC Lawyers Pty Ltd	193,960.00
Sympli123456702D01	Sympli Service fee	XYZ Lawyers Pty Ltd	110.00
Sympli123456702D02	XYZ Lawyers Pty Ltd Trust Professional fee (43 Ann St Brisbane)	XYZ Lawyers Pty Ltd	1,500.00
Sympli123456702D03	QLD Office of State Revenue Stamp duty (Transaction ID: 1382930111)	XYZ Lawyers Pty Ltd	22,490.00
Sympli123456702D04	Brisbane Council Council rates (43 Ann St Brisbane)	XYZ Lawyers Pty Ltd	200.00
Sympli123456703D01	Sympli Service fee	Iron Bank Pty Ltd	110.00
Sympli123456703D02	Iron Bank Pty Ltd Loan payout (DM12526713)	Iron Bank Pty Ltd	400,000.00
Sympli123456704D01	Sympli Service fee	Gringotts Bank Pty Ltd	110.00
Total directions:			\$624,210.00

Source funds

Transaction ID	Account details	Subscriber	Amount (\$)
Sympli123456702S01	XYZ Lawyers Pty Ltd Trust Purchaser's equity (XYZ123809)	XYZ Lawyers Pty Ltd	124,210.00
Sympli123456704S01	Gringotts Bank Pty Ltd Loan advance (GB668818)	Gringotts Bank Pty Ltd	500,000.00
Total source funds:			\$624,210.00

PEXA:

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

SAMPLE TRUST ACCOUNT AUTHORISATION RECORDS

Sympli:



Trust account authorisation

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

This authorisation is provided under the direction of:

1. The authorised principal of the law practice; or
2. An authorised legal practitioner associate; or
3. An authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
4. 2 or more authorised associates of the law practice jointly.

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

Sign now ▶

Trust Account Authorisation Record



Settlement date: 12 Dec 2017

Subscriber: XYZ Lawyers Pty Ltd
Matter ID: XYZ123809
Client: Jane Grace Williams, David John Williams
Type: Purchase
Title: 50839456
Address: 43 Ann Street, Brisbane QLD 4000
Sympli ID: Sympli1234567

Trust account: XYZ Lawyers Pty Ltd Trust

BSB: 789123
Account number: 60657112
Category: Purchaser's equity
Reference: XYZ123809
Amount: **\$124,210.00**

Receiving financial institution: ANZ

Account name: ANZ Sympli Clearing Account
BSB: 010191
Account number: 128910
Reference: XYZ123809
Transaction ID: Sympli123456702S01

Authorisation

Signer: Joe Bloggs
Authorised on: 10 Dec 2017, 12:24PM

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