

Real Estate Transactions Pre & Post Settlement

Presented by

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Know the client, know the transaction, know the property.

This seminar proceeds on the basis that a Contract for Sale of Land or Strata Title by Offer & Acceptance (O&A) is executed by the client as Seller or Buyer and Balfour Meagher receives instructions from agent/client to act in settlement.

- *The contents of this presentation are for general information only and intended only as a guide. It does not constitute legal advice and must not be relied upon as such.*
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1. ACTING FOR SELLER

- 1.1 First 24 hours – introduction
- 1.2 First 24 hours – searches
- 1.3 First 48 hours – O&A
- 1.4 Once settlement looks sufficiently certain
- 1.5 Towards settlement – Client bundle
- 1.6 Towards settlement – VOI
- 1.7 PEXA itself
- 1.8 Non- PEXA transactions

2. **ACTING FOR BUYER**

- 2.1 First 24 hours or so
- 2.2 Searches
- 2.3 O&A
- 2.4 Once settlement looks sufficiently certain
- 2.5 Toward settlement – Client bundle
- 2.6 Towards settlement – VOI
- 2.7 PEXA itself
- 2.8 Pre-settlement financial resources
- 2.9 Time and place for settlement
- 2.10 Post settlement undertakings

1. Acting for Seller

1.1 First 24 hours – introductions

- (a) Review O&A and ancillary instructions from agent/client.
- (b) Acknowledge receipt of instructions to agent/client. Introduce self to client by email.
- (c) Send Client Services Agreement.

1.2 First 24 hours – searches

- (a) Certificate of title.
- (b) Confirm whether the duplicate certificate of title has issued (that is, paper title) or is non-issue.
- (c) Search ASIC for Seller company's details including identification of officeholders and determining whether the company by a single authorised signatory or by 2 authorised signatories.
- (d) Ask if Seller holds the sale property is trustee on behalf of a trust.
- (e) Seller produces a Foreign Resident Capital Gains Withholding (FRCGW) clearance certificate.

1.3 First 48 hours - O&A

- (a) Review in detail.
- (b) Make a timeline, diarise key dates. Give Seller notice/warnings of upcoming dates.
 - ✓ Contract date
 - ✓ Due date for settlement
 - ✓ Conditions precedent and their satisfaction dates.
 - ✓ Check consequences of triggers – automatically terminate, automatically waived or right to terminate.
 - ✓ Don't rely on agent or even client for notice of satisfaction of CPs.
- (c) Inform client of mortgages and caveats encumbering the title to the property.
- (d) Ascertain from Selling Agent:
 - i. that the deposit payable by the Buyer under the O&A has been received
 - ii. the amount of the selling agent's commission or selling fee
 - iii. communicate to the Seller client the details of the selling agent's commission or selling fee
 - iv. The identity and contact details of the Buyer's Conveyancer.

1.4 Once settlement looks sufficiently certain

- (a) When conditions precedent have been satisfied (or substantially satisfied).
- (b) Create PEXA workspace if the transaction can be conducted under the PEXA e-conveyancing regime.
- (c) Invite Buyer's representative to PEXA workspace or accept an invitation generated by Buyer's representative to its initiated workspace.
- (d) In the non-PEXA environment, notify the Buyer's representative that Balfour Meagher is acting for the Seller.
- (e) In both PEXA and non-PEXA settlements, ask Buyer's representative to ensure Balfour Meagher is copied into the EAS responses as the Seller's Conveyancer.

1.5 Towards settlement - Client bundle

- (a) PEXA Client Authorisation Form
- (b) Prepare and email indicative formal Transfer of Land form
- (c) prepare written irrevocable authority to settle on that basis
- (d) Instructions to client for requirement to undertake VOI

1.6 Towards settlement - VOI

- (a) Balfour Meagher policy is to VOI for each transaction. (Not required for a discharge of mortgage)
- (b) Common process is for client to attend Balfour Meagher at its office for signing of CAF and Transfer forms and Irrevocable Authority, and VOI is done by Balfour Meagher at that time.
- (c) Create identifier certificate for Balfour Meagher's file. Drafted as a letter to Landgate.

1.7 PEXA itself

- (a) Costantino & Co is instructed to act as sub-agent for Balfour Meagher and is engaged without exception for PEXA sale and purchase of property transactions. Generally, Costantino & Co is not instructed to participate in mortgages, discharges of mortgage, caveats or withdrawals of caveat.
- (b) Costantino & Co will:
 - (i) prepare the Settlement Statement and adjustments
 - (ii) possibly complete certain elements of the process in the PEXA workspace

1.8 Non-PEXA transactions

- a) It is our responsibility as the Seller's Conveyancer, to coordinate the attendance at the paper settlement venue, of any party providing a discharge of mortgage or withdrawal of Caveat or other document necessary for settlement
- b) We are required to ascertain the amount of any payout figure required by a discharging mortgagee at settlement
- c) In some circumstances, a Seller's bank (discharging mortgage on title at settlement) will be authorised by the Seller to collect the whole of the proceeds of settlement on behalf of the Seller
- d) determine the paper settlement venue (usually nominated by the Buyer's conveyancer or an incoming mortgagee)
- e) immediately upon notification that settlement has been effected, we notify the client either by telephone or by SMS or by email that the settlement has been completed
- f) Notify the local authority; this settlement of the transactions has been completed

- g) Within a few days following settlement, we:
 - i. communicate in writing to the Seller client a reiteration of our confirmation of settlement having been effected and the deposit of any funds from settlement to the client's bank account
 - ii. pay any outstanding selling fee
 - iii. pay any outstanding rates and taxes
 - iv. ensure that Renée is appropriately instructed and authorised to effect a transfer of our professional fees and disbursements held in our trust account, to the firm's General account;
 - v. prepare and provide to the Seller client, a final settlement statement and a Trust Statement (being generated by Renée) and arrange for any surplus proceeds of settlement that I held by us in our trust account to be transferred to the Seller clients nominated bank account to finalise the financial elements of the transaction and the engagement.

2. Acting for Buyer

2.1 First 24 hours or so

- (a) Review instructions
- (b) Acknowledge receipt of instructions to agent/client. Introduce self to client.
- (c) Send Client Services Agreement.
- (d) Determine if the transaction is between related parties so as to ascertain if the transaction can be conducted in the PEXA platform or not;
- (e) if advised that the transaction is between related parties,
- (f) Confirm Buyer's financing arrangements and Buyer's customer number from financier.

2.2 Searches

- (a) Certificate of title.
 - (i) Confirm whether the duplicate certificate of title has issued
- (b) ASIC for corporations
- (c) Ask whether the Buyer is buying as trustee of a trust if not noted on the O&A
- (d) Inform client of encumbrances and identify for the client those encumbrances which are expected to remain on title and survive settlement

2.3 O&A

- (a) Review in detail.
- (b) Make a timeline, diarise key dates. Give Buyer notice/warnings of upcoming dates.
 - (i) Contract date
 - (ii) Due date for settlement
 - (iii) Conditions precedent and their satisfaction dates.
 - (1) Check consequences of triggers – automatically terminate, automatically waived or right to terminate.
 - (2) Don't rely on agent or even client for notice of satisfaction of CPs.
- (c) Check O&A is lodged for assessment of duty and not expected to be subject to an adjudication of duty

2.4 Once settlement looks sufficiently certain:

- (a) Likely after conditions precedent satisfied (or thereabouts).
- (b) Create PEXA workspace.
- (c) Notify the Seller's representative that Balfour Meagher is acting and request the FRCGTW clearance certificate if sale price is greater than \$750k.
- (d) Instruct Costantino & Co to prepare and file electronic advice of sale (EAS) via Property Reporting Online (via Landgate).

2.5 Towards settlement - Client bundle

- (a) PEXA Client Authorisation Form (CAF)
- (b) Prepare and have executed by the Buyer, an indicative or registrable formal Transfer of Land instrument
- (c) Prepare and have executed by the Buyer, a Foreign Buyers Duty Declaration.
- (d) Get irrevocable authority to settle on that basis.
- (e) Instructions for VOI, including documents to bring.
- (f) If the transaction is to be conducted at a paper settlement , post Buyer executed Transfer of Land to Seller's Conveyancer

2.6 Towards settlement - VOI

- (a) Prepare VOI for each document.
- (b) Client to attend Balfour Meagher for signing of CAF.
- (c) Create identifier certificate for Balfour Meagher's file.

2.7 PEXA itself

- (a) Mark Balfour is authorised to sign transactions (and engage with the trust account) and has a PEXA key.

2.8 Pre-settlement financial resources

- (a) Within a reasonable time of the scheduled settlement date.
- (b) prepare an interim settlement statement
- (c) The funds required from the buyer for settlement will generally include:
 - (i) the estimated stamp duty payable upon the contract;
 - (ii) the Landgate registration fee;
 - (iii) Balfour Meagher's estimated professional fees and disbursements/cost recoveries;
 - (iv) the Buyer's proportion of any adjustment of rates and taxes and strata levies
- (e) we prepare an Irrevocable Authority which provides us with the overarching authority to pay specific monies to specific recipients
- (f) This authority also serves as an authorisation to Balfour Meagher to comply with any requisitions or notices issued by the Registrar of Titles

2.9 Time and place for settlement

- (a) For PEXA settlements, the PEXA workspace
- (b) For paper settlements, the date for settlement is prescribed by the contract and the time and place for settlement on that date is nominated by the buyer (or if the buyer has an incoming mortgagee, then the incoming mortgagee or its solicitors)
- (c) The PEXA settlement protocols are established and generated by the PEXA workspace
- (d) For paper settlements, it is acknowledged and accepted that the Buyer's solicitor or conveyancer (or the incoming mortgagee or its solicitor or conveyancer) will control the settlement process at the place of settlement, check all documents and satisfy itself as to the validity of those documents for registration at Landgate, before the parties exchange bank cheques for the monetary aspects of the transaction.

2.10 Post settlement undertakings

- (a) On the day that settlement is completed, a communication by either email or text to the Buyer confirming the completion of settlement
- (b) Some local authorities require the Buyer's conveyancer to notify them in writing when the settlement has been completed
- (c) within 2 to 3 working days following settlement, Balfour Meagher prepares a final settlement statement for the Buyer
- (d) maintain an ongoing dialogue with the Seller's conveyancer to finalise the apportionment of rates and taxes and strata levies
- (e) our Practice Manager should be instructed to undertake the transfer of any funds held in our law practice trust account for professional fees, GST and cost recoveries to our general practice account

Thank You!

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