

NSW Government Discussion Papers: Removing Barriers to Electronic Land Contracts

Towards the end of 2017, the Minister for Finance, Service and Property, Victor Dominello, released two (2) Discussion papers for comment in relation to:

- **Removing barriers to electronic land contracts, and**
- **Off-the-Plan Contracts for Residential Property.**

REMOVING BARRIERS TO ELECTRONIC LAND CONTRACTS

In this paper, Minister Dominello commented on the three (3) stages to property acquisition, more commonly referred to as:

1. **Due Diligence** – The research and negotiation stage;
2. **Exchange of Contracts** – Entering into a binding agreement; and
3. **Settlement** – Payment is made and the incoming Proprietor is registered.

In June 2016, KREISSON were the first law firm in Australia to convey Australian real property using entirely digital means from end-to-end. Since then, the NSW Government has been actively encouraging the digital revolution.

MANDATORY PAPERLESS REGISTRATION

Less than a month after the historical sale of this one-bedroom unit in Dee Why, the then Minister for Finance, Services & Property, the Hon Dominic Perrottet MP, announced plans to transition to mandatory paperless

registration, which should see close to 100% of dealings being registered electronically by 1 July 2019 and the phasing out of paper certificates of title in NSW, with the exception of properties subject to Old System title.

COMMITMENT TO PROMOTE INNOVATION

Minister Dominello has since affirmed the government is committed to promoting innovation and ensuring that policies reflect the digital age and has said that:

“These reforms will save home buyers time and money by reducing settlement delays, removing reams of unnecessary paperwork and preventing fraud,” Mr Dominello said.

“The changes will also benefit business by providing certainty and clear transition timeframes for the implementation of digital conveyancing, and reducing costs associated with settlement.”

As a substantial milestone approaches in the timeline for mandatory Electronic conveyancing (eConveyancing), being the registration of Caveats solely by electronic means from 1 July 2018 onwards, momentum is gaining for eConveyancing.

After this date, legal practitioners who are not subscribers to

PEXA may not be able to act in their client's best interest if they are unable to lodge a Priority Notice or Caveat to protect their client's interest in a property.

Law reforms need to take place to ensure the integrity of the conveyancing process. Current methods available and the rapidly advancing new technologies are being driven by the need to keep up with the demands of the clients.

With the Land Titles register being digitalised in 1983, we have been heading towards eConveyancing for thirty five (35) years now. This process towards eConveyancing commenced in 1983, with the digitalisation of the Land Titles register.

There are a number of barriers to a completely paperless property industry, due to legislative requirements for certain documents to be witnessed. Hopefully this discussion can resolve these issues.

QUESTIONS RAISED BY PAYER

Electronic Contracts have been used in conveyancing transactions since August 2015. The paper questions whether legislation should intervene to regulate their use. Factors that need to be considered will include:

- What is exchange of contracts in an electronic environment?
- Are electronic signatures valid and reliable?
- Do eContracts need to be witnessed?
- Can option deeds be entered into electronically?

We will be interested in seeing the outcomes of these discussion papers and will be contributing to submissions on both.

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