

Managing Sign-off Risk



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Some partners, particularly in larger firms, are reluctant to delegate *e-dealing* certify and sign rights to staff solicitors or associates due to perceived risks associated with *e-dealing*.

This information sheet addresses those perceived risks associated with *e-dealing*. It also provides some guidance for firms to help them set up their own internal sign-off protocols around the 'certify and sign' component of the *e-dealing* process.

> **Conveyancing a 'risky business'**

In his article, *e-dealing issues for large firms* (LawTalk Issue 667, 5 June 2006), Duncan Terris acknowledges that conveyancing is a high-risk enterprise.

Added caution is understandable given that conveyancing has the highest professional indemnity insurance claim rate in both volume and quantum. However, he believes that an analysis of the actual versus perceived risk is essential.

Duncan identifies the key areas of risk for conveyancing as follows:

1. Failure to note or advise a client of a detrimental encumbrance on the titles.
2. Failure to note or advise a client of a material aspect revealed in a LIM.
3. Erroneous or mistaken confirmation of an agreement to purchase contrary to client instructions.
4. Buying, selling or charging the wrong property due to error (such as a typo in the title reference on a subdivision where the transferor is the same on all titles).
5. Not complying with mortgagee instructions or solicitor's certificate (for example omitting to effect disclosure correctly as required by statute).
6. Failure to complete registration due to oversight in failing to lodge or failing to resubmit following rejection.

In most firms, the tasks of confirmation, attending to signing of mortgages/loan agreements, effecting disclosure, typing of instruments, etc are

delegated to staff solicitors and legal executives. It is more likely that a firm will be exposed to a claim due to error or omission in relation to these tasks, rather than by updating the register by *e-dealing*.

> **Less risk with e-dealing**

As Duncan points out, safeguards are built into the *e-dealing* system, so there is actually **less risk** than if the registration is processed manually.

1. Registration can occur on the same day as settlement.
2. The use of Landonline's 'pre-validate' functionality virtually guarantees successful registration. That means no risk of failure to meet obligations to mortgagees due to rejected dealings.
3. The system prompts for a section 80A priority amount, so this will not be overlooked.
4. The system will not permit the use of a memorandum number if it is not valid for that bank or mortgagee.
5. The system will not allow the name of the mortgagor to be spelt incorrectly. It automatically matches with the transferor or registered proprietor, as appropriate.

> **Setting up a certify and sign process for your firm**

When partners establish their firm's policy as to who in the firm may have *e-dealing* 'certify and sign' rights, Duncan suggests that they consider the following questions:

1. What other aspects of the conveyancing process are entrusted to staff solicitors and associates in the manual environment?
2. What aspects of the conveyancing process may have resulted in any past professional indemnity claims or 'near misses' in your firm?



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He notes that few professional indemnity claims, if any, relate to the registration component of the transaction (other than a complete failure to lodge*). They usually arise from prior events such as:

- missing aspects on a title search or LIM;
- erroneous confirmations or failure to confirm; or
- incorrect completion of security documents or disclosure.

* If an *e-dealing* is not registered, it remains in the 'my work' and 'supervised work' electronic folders for both the author and supervising partner to see. Automated reminders by way of online messages and emails are sent in response to dormant *e-dealings*.

Duncan suggests that when setting up internal protocols around 'certify and sign' rights, firms review their professional indemnity claim history in conveyancing matters, and apply the test of where

they arose. Duncan believes that in most cases, claims will not have resulted from any facet that is dealt with or affected by *e-dealing*. If firms have a clear record, Landonline's built-in checks should help to maintain this.

He also suggests that once this analysis is completed, firms consider granting 'certify and sign' rights to competent and experienced non-partner conveyancing.