

Guidelines for trust account operations

**PEXA Electronic
Settlement System**

Guidelines for trust account operations

This document has been prepared by the ACT Law Society as a general guide for Canberra law firms.

The Society acknowledges the assistance of the Queensland Law Society, whose “*Direct Debit Authorities Property Exchange Australia (PEXA): Guidelines for trust account operations*” of January 2018 is the source for this document.

The Society acknowledges that PEXA is currently the only Electronic Lodgement Network Operator (ELNO) used by the legal profession in the ACT.

In the future there are likely to be other ELNOs and this document will be updated accordingly at that time.

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1. PEXA Electronic Settlement System

1.1. Registering as a PEXA subscriber

When the law practice enters into the agreement with PEXA it registers as a user of the PEXA system to the effect that PEXA will accept instructions for the withdrawal of money from the law practice's ACT solicitor trust bank account if the law practice has given specific authorisation to PEXA to issue instructions to the law practice's ADI to withdraw the money from the law practice trust bank account.

The law practice will provide to PEXA all the required details of the ACT solicitor trust account. The law practice shall also provide to PEXA details of all authorised trust account signatories who shall be recorded as Trust Account Authorised Signer (TAAS) with the PEXA system.

PEXA will provide details of the trust account and signatories to the relevant ADI to ensure that the trust account can be used for property transactions within the PEXA system.

The ADI must verify to PEXA that the list of TAAS are signatories to the law practice trust account as per the ADI's records.

Once the law practice's trust account has been verified by the ADI, PEXA will include the law practice's trust account details in the Subscriber's Profile.

1.2. PEXA registered source account

If the law practice does not already operate an ACT solicitor trust account, the law practice can utilise the PEXA Registered Source Account. This is an ADI account in the name of PEXA that can be used to deposit source funds.

PEXA shall verify that Source Funds are cleared and available from that account.

The law practice is still required to create a line item and digitally sign the transaction for Financial Settlement to occur.

When depositing funds to the PEXA Source Account, funds must be deposited and cleared at least 3 business days before the Scheduled Settlement date.

The PEXA Registered Source Account becomes a power money account for the law practice that does not operate an ACT solicitor trust account.

It should be noted that the directions to disburse funds from the PEXA Registered Source Account must be made by a person that meets the qualifications to be a TAAS, e.g. principal of the law practice, employed solicitor of the law practice or two other employees of the law practice jointly.

It should also be noted that the law practice that operates on a power money account is required to lodge an external examiner's report for the period ended 31 March each year, by 31 May, unless an exemption has been granted by the Council of the ACT Law Society.

1.3. PEXA users

PEXA provides for Subscriber Users. Within the Subscriber Users there can be different user levels:

- a. A **Subscriber User** who can create records (workspace), invite participants to the workspace, prepare and save electronic documents and submit them and the Financial Settlement Schedule records to another user within the law practice for approval. This type of user cannot authorise payments or electronically sign documents for lodgement with the Titles Office.
- b. A **Trust Account Authorised Signer (TAAS)** is a Subscriber User who is also an authorised signatory in respect of the law practice trust account and can authorise Financial Settlement Schedule payments in respect of transactions that have been prepared. This type of user is providing authorisation for transaction instructions to be provided to the ADI to debit source funds from the law practice trust account for the purposes of the conveyancing transaction. This type of user can be restricted so that they cannot create records, or save them as draft records or the amount that can be authorised.
- c. A **Financial Settlement Statement Signer (FSSS)** is a Subscriber User who is also authorised to sign the Financial Settlement Statement. This type of user is providing authorisation for transaction instructions to be provided to the ADI for the disbursement of settlement funds. This user is similar to the AAS in that they are authorised signatories in respect of the law practice trust account. This type of user can be restricted so that they cannot create records, or save them as draft records of the amount that can be authorised.

- d. An **Electronic Document Signer** can sign and verify electronic documents for lodgement with the Titles Office. This type of user must be suitably qualified to sign transfer documents e.g. an Australian Legal Practitioner. This type of user can be restricted so that they cannot create records, save them as draft records, submit them for approval or authorise a Financial Settlement Schedule.

A user can be authorised to do more than one of the above.

- e. A **Subscriber Administrator** maintains subscriber details for the law practice, including maintenance of the law practice's ACT solicitor trust account registered with PEXA, submit TAAS (for verification by PEXA with the ADI), maintain Electronic Document Signer details, maintain non-signer user details. This type of user could be a practice manager of the law practice.
- f. A **Subscriber Manager** can do everything that each of the above users can do and can also set financial signing limits, verify the trust and fee-paying accounts. This user would be the principal of the law practice.

The law practice controls, via the Subscriber Manager, which users have which access levels.

2. Providing funds for financial settlement

2.1. Adding source financial line item

the law practice will complete 'Add Source Financial Line Item' by:

- Identifying the category of funds (e.g. Purchaser's Equity, Loan Proceeds)
- Source account (Law Practice Trust Account or PEXA Registered Source Account)
- Amount of funds required for the PEXA Financial Settlement
- Client Name
- Transaction Description — this is what will appear on the Law Practice Trust Account Statement.

It should be noted that:

- a. A separate Source Financial Line Item shall be created for each separate source of funds, e.g. funds being sourced from law practice trust account, funds being sourced from the incoming financier.
- b. The Transaction Description in PEXA creates the link between the law practice trust account cashbook and trust account ledger, trust account bank statement and the PEXA Workspace. It is suggested that the Transaction Description in PEXA include the client name and the client matter number.

Once the law practice has added the Source Financial Line item, the law practice will need to verify the availability of the source funds. The verification confirms that the law practice has received settlement funds from its purchasing client and that the funds are available for settlement. This verification can be performed by a Subscriber User.

A Source Financial Line Item will be unverified if the details of a verified Source Financial Line is modified by a Subscriber User. All Source Financial Line items must be verified in order for Financial Settlement to proceed at the Scheduled Settlement date and time, e.g.:

Law practice must verify that it holds the purchaser's equity funds

+

Incoming financier must verify that it holds loan proceeds

=

Financial Settlement.

2.2. Procedure for authorising a payment

The Source Financial Line Item must be verified in order for a TAAS to authorise the payment of the source funds. The authorisation by TAAS is really providing instructions to the law practice's ADI to debit source funds from the law practice's trust account for the purposes of the conveyancing transaction.

A TAAS must meet the following conditions:

- a. The TAAS profile must have been given permission by the Subscriber Manager, in the Subscriber Profile
- b. The Source Financial Line Item Amount is equal to or lower than the TAAS source signing limit, and
- c. The TAAS is an authorised user for the law practice trust account referenced in the Source Financial Line Item (the account that shall provide settlement funds).

Authorisation must be provided for each Source Financial Line Item with a digital signature by a TAAS. Funds being sourced from the incoming financier will be authorised by the financier.

Once the Source Financial Line Item has been verified and authorised, the PEXA system will allow the law practice to digitally sign the Settlement Schedule.

A Source Financial Line Item may only be unauthorised by a Subscriber User that has the appropriate permissions to authorise payment, e.g. TAAS.

A Source Financial Line Item will be unauthorised if:

- a. The details of an authorised Source Financial Line Item have been modified, or
- b. The Source Financial Line Item has been unverified.

The Subscriber Manager may set up TAAS as either single or dual authorisations for each Source Financial Line Item.

If dual authorisation is required, the Subscriber Manager must also define the threshold above which dual authorisation is required. The threshold can be determined or it can be set to "unlimited" which will require dual authorisation for all Source Financial Line Items.

This means that if a law practice wishes to allow a TAAS to authorise payments on his/her own the TAAS limit needs to be determined. If a TAAS is required to authorise the payment jointly with another TAAS, the limit should be set to "unlimited" given the dual authorisation is required within the PEXA profile.

2.3. Trust account authorisation record

when a TAAS authorises a Source Financial Line Item, a Trust Account Authorisation Record is generated. This document records the Signer's approval for PEXA to instruct the ADI to debit the amount of funds specified in the Source Financial Line Item from the law practice's trust account into their ADI's nominated internal account (ADI PEXA Clearing Account) for the purposes of a PEXA property transaction.

The Trust Account Authorisation Record is available to Subscribers before and after settlement as documentary evidence of the transactions performed for the relevant Source Financial Line Item.

The Trust Account Authorisation Record includes:

Details of the PEXA electronic workspace, including:

- Subscriber Name (law practice name)
- Subscriber Reference (law practice's reference e.g. matter number and client name)
- PEXA Workspace Identification

Details of the transaction, including:

- Payment Category (Purchaser's Equity or Loan Proceeds)
- Client Name
- Trust Account Name
- Trust Account BSB
- Trust Account Number

- Amount
- Receiving ADI
- Receiving Account Name (ADI PEXA Clearing Account)
- Receiving Account BSB
- Receiving Account Number
- Transaction Description (as entered by law practice and creates the link between the law practice trust account cashbook and trust account ledger, trust account bank statement and the PEXA Workspace)
- Transaction Identification (PEXA Financial Line Item Id)
- Date of Transaction (settlement date)
- Authorised by (TAAS)
- Authorised on (date TAAS approved).

Trust account authorisation record example:

Workspace details	
Subscriber	XYZ Lawyers
Subscriber Reference	8754785Smith
PEXA Workspace ID	PEXA141234567
Transaction Details	
Payment Category	Purchaser's Equity
Client Name	Peter Smith
Trust Account Name	XYZ Lawyers Law Practice Trust Account
Trust Account BSB	013100
Trust Account Number	008721424
Amount	\$350,000.00
Receiving Financial Institution	ANZ
Receiving Account Name	ANZ PEXA Clearing Account
Receiving Account BSB	013058
Receiving Account Number	874013654
Transaction Description	8754785Smith21
Transaction ID	PEXA141234567SO4
Settlement Date	03/06/2021
Authorised by	Joe Bloggs
Authorised on	30/05/2021

Rollback of source funds

If a PEXA Financial Settlement fails (eg due to Lodgement Failure), all source funds successfully debited from the law practice's trust account and credited into their ADI's nominated internal account (ADI PEXA Clearing Account), will be returned to the law practice's trust account.

The Source Financial Line Item will be unverified, therefore removing all authorisations that had been performed by the Subscriber User and TAAS.

The Subscriber User and TAAS must re-verify and re-authorise the Source Financial Line Item in anticipation of the rescheduled settlement. This means that the Subscriber User must re-verify that the funds returned to the law practice's trust account are ready and available. The TAAS must re-authorise PEXA to instruct the ADI to debit the amount of funds specified in the Source financial Line Item from the law practice's trust account into their ADI's nominated internal account (ADI PEXA Clearing Account) for the purposes of a PEXA property transaction.

3. Receiving funds from financial settlement

3.1. Creating destination financial line items

All Subscriber Users with access to the Workspace have the ability to create a Destination Financial Line Item, including the law practice for both the purchase and vendor.

The Subscriber Manager may set the Subscriber Profile that only allows the disbursement of Destination Financial Line Items to the law practice trust account. This restriction does not apply to Destination Financial Line Items payable to Third Party Beneficiaries including for example Utilities, Local Council or body corporates.

The law practice will complete “Add Destination Financial Line Item” by:

- Identify the category of funds (e.g. Vendors Funds, Third Party Beneficiary)
- Destination Account
- The amount of funds to be disbursed
- Transaction Description.

The law practice will have the ability to nominate the Destination Account, this could be:

- a. The law practice’s trust account (based on the Subscriber’s profile set up), or
- b. The bank account as supplied by the Vendor.

If funds are to be paid to a destination other than the law practice’s trust account, the law practice needs to ensure that the Account Name, BSB and Account Number details are correct. PEXA only validate that the BSB is a valid BSB. PEXA does not validate the Account Number or the Account Name. The Receiving ADI will not validate the BSB and Account Number to the Account Name.

Any error in recording the Destination Account (excluding the law practice trust account) may result in the loss of funds.

The Subscriber User has the ability to include a Transaction Description in each Destination Financial Line Item in the PEXA system. The Transaction Description will appear on the law practice’s trust account or the Recipient’s bank account statement when funds are credited to the account. If no description is provided by the Subscriber User, PEXA will insert the unique identifier for the Destination Financial Line Item as the description.

If funds are to be paid to a Third Party Beneficiary for unpaid adjustments, the law practice for both the purchaser and the vendor will have the ability to create the Destination Financial Line Item, based on their role in the Workspace. Funds will be paid by BPAY or bank transfer. A Subscriber User with Financial Settlement Schedule Signing (FSSS) permissions from the law practice of both the purchase and vendor needs to authorise the Third Party Beneficiary payments.

3.2. Authorising destination financial line items

a Destination Financial Line Item may only be unsigned by a Subscriber User that has the appropriate permissions to sign a Financial Settlement Schedule. Additionally, if the Line Item is edited by any Subscriber User, it will automatically become unsigned.

A FSSS must meet the following conditions:

- a. The Subscriber User must have been given permission to sign the Financial Settlement Schedule by the Subscriber Manager
- b. The Destination Financial Line Item Amount is equal to or lower than the FSSS authorisation limit.

The Subscriber Manager may set up FSSS as either single or dual authorisations for each Destination Financial Line Item.

If dual authorisation is required, the Subscriber Manager must also define the threshold above which dual authorisation is required. The threshold can be determined or it can be set to “unlimited” which will require dual authorisation for all Destination Financial Line Items.

This means that if the law practice wishes for the FSSS to authorise payments on his/her own the FSSS limit needs to be determined appropriately within the profile (by setting the appropriate threshold limits that suit your risk profile/business requirements).

If the law practice wishes a FSSS to authorise the payment jointly with another FSSS, the limit should be set appropriately within the PEXA profile.

4. Financial settlement statement

4.1. Preparation

The Financial Settlement Statement is automatically generated based on the Subscriber's financial details in the PEXA Electronic Workspace. The Financial Settlement Statement includes the following details:

- Subscriber
- Subscriber Reference
- PEXA Workspace ID
- Subscriber Role
- Settlement Date
- Lodgement Override
- Electronic signature (including date and time) of FSSS with permission to sign the Financial Settlement Schedule
- Certification
- All Source Financial Line items created by the Subscriber
- All Destination Financial Line Items created by the Subscriber
- All System Generated Destination Financial Line items owned by the Subscriber
- Any Destination Financial Line Items of category 'Third Party Beneficiary' that has been created by another Subscriber and associated with your Subscriber.

The Financial Settlement Statement is specific to each Subscriber and does not display any private details (ADI account numbers) of the transaction created by the other Subscribers (with the exception of Third Party Beneficiaries which are unpaid adjustments).

The Financial Settlement Statement contains a certification from the law practice that:

- a. All financial information included in the financial settlement statement is accurate
- b. It agrees to the details included in the financial settlement statement schedule
- c. It agrees to the fees that will be charged as a result of this settlement transaction
- d. It understands 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
- e. A user will then be able to stop settlement in the financial settlement schedule if they wish.

4.2. Signing

Each Subscriber that is a participant in the Financial Settlement Statement must digitally sign the Financial Settlement Statement.

By signing the Financial Settlement Statement, the Subscriber is providing their acceptance of the financial instructions provided to PEXA as part of the conveyancing transaction.

A Source Financial Line Item can only be authorised by a TAAS as detailed above in *2.2 Procedure for authorising a payment*.

A Destination Financial Settlement Item can only be authorised by a FSSS as detailed in *3.2 Authorising Destination Line Items*.

4.3. Un-signing rules

A Financial Settlement Statement will be un-signed if:

- a. If any notices have been lodged on title (e.g. Caveat), the Title Activity Checks would un-sign the Financial Settlement Statement
- b. Subscriber Users with the "FSSS" permission un-signs the Financial Settlement Statement for the PEXA Workspace
- c. Any details of a Source or Destination Financial Line Item owned by that Subscriber is modified
- d. Financial Settlement Execution failure, causing the Settlement date and time to be cleared from the PEXA Workspace.

5. Settlement completion record

The Financial Settlement Statement is automatically generated based on the Subscriber's financial details in the PEXA Electronic Workspace.

The Financial Settlement Statement includes the following details:

- Subscriber (XYZ Solicitors)
- Subscriber Role (Incoming Proprietor)
- Subscriber Reference (8754785Smith)
- Description of the property being transferred (1 Parliament Avenue, Barton)
- Land Title Reference (SP12/1675)
- Total Funds Settled via PEXA (\$550,000.00)
- Funds not required for settlement (\$38,000.00)
- Net Adjustments (\$-625.00)
- PEXA Workspace ID (PEXA141234567)
- Settlement Date (03/12/2021)
- Signature on Settlement Statements (Peter Parker 01/12/2021 13:16AEDT)
- Signature on Trust Account Debit Authorisation (John Adams 02/12/2021 14:24AEDT)
- All Source Financial Line Items (created by the Subscriber and Incoming Financier), includes PEXA Transaction Id, Category, Source of Funds, Client Name, Owner of Source Financial Line Item e.g. law practice or incoming financier and amount
- All Destination Financial Line Items (created by the Purchaser Subscriber, Outgoing Financier and Vendor Subscriber), includes PEXA Transaction Id, Category, Destination of Funds, Name of Account (ACT Revenue Office, PEXA, local government body), Owner of Destination Financial Line Item e.g. purchaser's law practice or Outgoing Financier, vendor's law practice and amount).

The Financial Settlement Statement is specific to each Subscriber.

The Purchaser's Financial Settlement Statement clearly identifies:

- a. The name of the source of funds (e.g. law practice trust account, account number and client name)
- b. The destination of funds e.g. Stamp Duty, PEXA fee, Third Party Beneficiary (local government body) and in the case of payments to Third Party Beneficiaries – account name (ACT Revenue Office) account details and amount, and
- c. Does not display any details of Account Name or Account Details of the transaction created by Vendor's Subscribers (Outgoing Financier and Vendor's law practice).

The Vendor's Financial Settlement Statement clearly identifies:

- a. The name of the source of funds (e.g. Purchaser's equity but does not disclose law practice trust account, account number and client name)
- b. The destination of funds (e.g. Stamp Duty, PEXA fee, Third Party Beneficiary (local government body), account name (ACT Revenue Office), account details and amount, and
- c. Details of Account Name and Account Details of the transaction created by Vendor's Subscribers (Outgoing Financier and Vendor's account name and account details).

6. Does the law practice need to maintain trust records when no money is received to the law practice trust account?

Yes, the law practice for the vendor directs where the “pool of funds” is to be disbursed and it is the interpretation of the ACT Law Society that this is “Power Money” as explained in section 226 of the *Legal Profession Act 2006* (LPA).

Pursuant to section 226 of the LPA a law practice must account for the money in a way prescribed under a regulation.

Section 60 of the *Legal Profession Regulation 2007* (Regulations) requires a law practice to keep a record of all dealings with the money and all supporting information in relation to the dealing. The record and supporting information must be kept by the law practice as part of the law practice’s trust records.

The law practice acting for the vendor will be required to retain the “Settlement Completion Record” which records the destination of the funds that have been disbursed at the direction of the law practice acting for the vendor as a trust account record.

If the law practice acts for the purchaser and utilises the PEXA Source Account where the “pool of funds” are to be disbursed from, it is the interpretation of the ACT Law Society that this is “Power Money” as explained in Section 226 of the LPA (see 1.2 *PEXA Registered Source Account* above).

7. Protection of user identification information and password

It is absolutely imperative that the PEXA user digital signature identification information and password of each user are kept secure. An authorised user of the PEXA system must not, under any circumstances, advise these details to another person. Nor is an authorised user to store them in a way that another person may easily gain access to them.

The password should consist of at least seven characters, including letters of the alphabet and numbers and not be capable of being easily determined by a third party. Further, the password should be changed on a regular basis.

8. Numbering of payment instructions

All Source Financial Line Items (payment instructions) are assigned a unique transaction identifier. The law practice needs to generate a payment reference which is to be recorded in the Transaction Description field (recommend client name and matter number) before, or at the time, a payment is authorised.

This PEXA Transaction Identifier generated payment reference number is to be recorded in the law practice’s trust accounting records as the payment reference.

Transaction Identifier generated by PEXA would be as follows:

PEXA141234567S02F – this being
Workspace: PEXA141234567
Source Financial Line Item: S02

9. Information recorded on bank statement

Payments made via PEXA will result in the following information being recorded in the law practice trust account bank statement:

- The date the payment is made
- The name of the payee (the recipient ADI) or the remitter (PEXA Settlement)
- The PEXA transaction number (141234567S02)
- Transaction Description (Smith8754785)
- The amount of the payment.

10. Recording payments in trust account records

Details of payments are to be recorded in the trust account cash payment book and the relevant trust account ledger no later than 4 working days after the day the payment was made, in accordance with section 45 of the Regulations.

The details to be recorded in respect of each payment are as follows:

- The date the payment is made
- The name of the payee (the recipient ADI) (PEXA settlement)
- Number of the account and BSB to which the amount was transferred
- The payment reference number that will appear on the trust account bank statement (the PEXA transaction number (141234567S02)), or an appropriate transaction number that identifies the particular transaction appropriately
- The law practice internally generated Transaction Description (Smith8754785) and matter description
- Reason for payment (settlement moneys)
- The amount paid.

11. Recording receipts in trust account records

Details of receipts are to be recorded in the trust account cash receipts book and the relevant trust account ledger no later than 4 working days after the day the payment was made in accordance with section 44 of the Regulations.

The details to be recorded in respect of each receipt are as follows:

- The date the receipt is made
- The name of the payor (the providing ADI)(PEXA settlement)
- The receipt reference number that will appear on the trust account bank statement (the PEXA transaction number (141234567S02)), or an appropriate transaction number that identifies the particular transaction appropriately
- The law practice internally generated Transaction Description (Smith8754785) and matter description
- Reason for receipt (settlement moneys)
- The amount received.

12. Random inspections

The Society's random inspectors will ask to review the Settlement Completion Record, referred to earlier in point 5, as part of their investigations. Law practices acting on behalf of purchasers and vendors using PEXA should ensure a copy of the Settlement Completion Record is placed on the client file on completion of the matter. This will ensure the random inspectors are in a better position to examine the flow of a conveyance transacted using PEXA.



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