



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

Performance Management for SETTLEMENT AGENTS

*Including a look at e-conveyancing
and off-the-plan sales.*

Distance Learning Student Manual

Acknowledgment

This educational material was prepared by the Australian Institute of Conveyancers Western Australia (AICWA) and Tom Morris for the Western Australian Department of Commerce, Consumer Protection Division. It has been developed to satisfy the prescribed educational activity requirements of the Compulsory Professional Development Program (CPD) for Settlement Agents.

This material should not be taken to be legal advice or to pre-empt government policy.

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1. Introduction

The purpose of this distance learning unit is to explore the performance management responsibilities of Settlement Agents. This unit builds on the discussion of the *Job and Person Requirements* of Settlement Agents in the companion CDP unit, Duties of Settlement Agents. It is recommended that the module on “Duties of a Settlement Agent” is completed before undertaking this module.

Structure of the module

The module begins with information on the *Agency Performance Pyramid (the Pyramid)*. The Pyramid highlights the fundamental importance of compliance and staff satisfaction in achieving the higher level objectives of client satisfaction and profit through innovation and continuous improvement.

Referencing the supervisory responsibilities outlined in the *Code of Conduct*, the module explores the need for the supervision strategy (instruction, coaching, mentoring or delegation) to be adjusted to the skills, understanding and motivation of the person being supervised. The key policy and process requirements of performance management are outlined and an opportunity for a self-evaluation provided.

The *Pyramid* is then used as a framework to explore the impending introduction of electronic conveyancing for your agency. This section also includes a draft *Action Plan* of various strategies that may be useful in preparing for electronic conveyancing.

From an exploration of the agency level implications of the roll out of electronic conveyancing, the focus shifts to the conveyancing implications of working with a client buying land or property off-the-plan. The Department of Commerce’s Consumer Protection Division recently produced a nineteen-page brochure on the subject. This section also demonstrates how a published document may be incorporated into performance management and supervision processes.

The unit wraps up with a four-step checklist for performance management.

Activity 1 – Orientation

The material in this Student Manual and the online evaluation activities have been specifically modified for Settlement Agents undertaking their CPD by distance learning. The intention is that you read through the manual and complete each of the online activities as you proceed.

Having read section one, it is recommended that before you attempt Activity 1 online that you skim read the rest of the Student Manual (at least flick through the pages and read the headings and have a look at the diagrams). This will orientate you to the material and the tasks ahead of you.

All the best...

2. What does success look like?

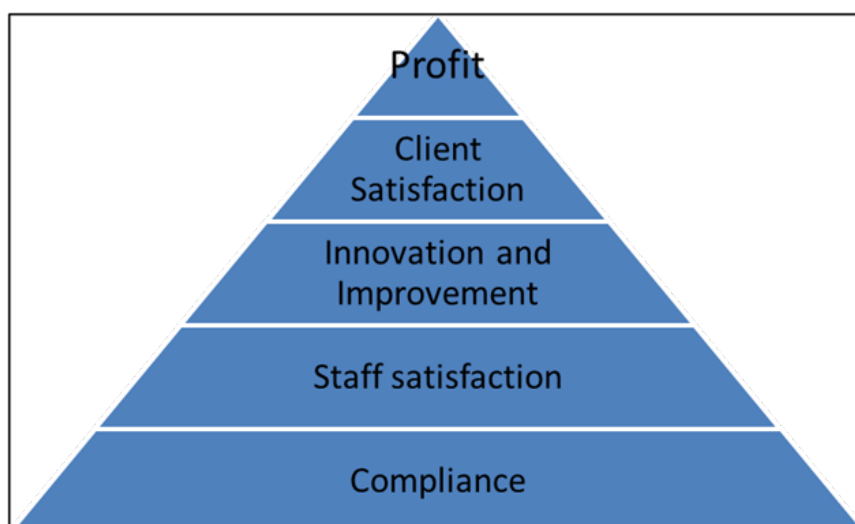
At the end of the day, arguably the most important measure of success in a settlement agency, like any private business, is profit. But while profit is important, there are a number of fundamental objectives on which sustainable profit must be built.

The purpose of this section is to explore the hierarchy of agency level performance management. The performance objectives of almost any business may be summarised as:

1. Profit
2. Client Satisfaction
3. Innovation and continuous Improvement
4. Staff Satisfaction and
5. Compliance

In the Pyramid, profit is at the top of the hierarchy and is the most important outcome requirement. It could be argued that without profit, this pyramid of business success is 'point less' (note the pun).

Diagram - Agency Performance Pyramid



On the other hand, compliance requirements may be seen as the fundamental foundation upon which a business is built. If a business fails to be compliant, it fails to have a foundation, and the business becomes unstable. If the foundation is not strong enough, the rest of the pyramid is at risk of collapsing.

The diagram above suggests that staff satisfaction is the next most fundamental building block for a successful business. What is being suggested is that without staff satisfaction, the next layer, innovation and continuous improvement is unlikely. And continuous improvement is necessary in any business – just to maintain client satisfaction and profit levels. To understand the full meaning of this hierarchy for your agency, it is necessary to understand that the objectives embraced at each higher level in the hierarchy include the

objectives addressed in the layer below. Each higher level goes beyond, and yet includes, all the considerations below it (Wilber, 2001).

The Pyramid is suggesting that profit is built on client satisfaction, which in turn rests on innovation and continuous improvement, which arises from staff satisfaction, which must be built on a solid foundation of compliance. While the focus in this session is on compliance with the legislative requirements administered by the Department of Commerce, the compliance foundation should be seen to include all legislative requirements; from taxation and superannuation, to the environment and privacy rules.

3. Compliance and performance management

In the module “Duties of Settlement Agents,” the *Job and Person Requirements* of three settlement agency job roles were explored: Settlement Agent Managers, Settlement Agent Conveyancers and unlicensed conveyancers.

You may recall that rule 17 of the *Code of Conduct* makes explicit the supervision and control responsibilities of the Settlement Agent Manager.

17 Licensee responsible for employees – Code of Conduct, Rule 17.

A licensee is at all times responsible for his actions, and those of his employees in business relations with other settlement agents, solicitors, clients and the public.

Every settlement agency must have a nominated Settlement Agent Manager, who is in bona fide control on behalf of the licensee.

The ideal Settlement Agent Manager is therefore someone with the knowledge, skills and motivation to take responsibility for the actions and their employees at all times. Combining this with the direction provided in Rule 18. it may be said that the Manager is responsible for the appropriate supervision of employees to ensure all work is done quickly and well, using due care and skill. Unpacking the nature of this supervisory responsibility is the focus of this session.

18 Work to be done quickly and well – Code of Conduct, Rule 18.

A licensee shall make all reasonable efforts to complete work for the client as soon as is reasonably practicable and shall use due care and skill.

Furthermore, everyone who works in the agency is required to ensure that they understand the *Code of Conduct* and have the knowledge, skills and motivation to observe them in all that they do.

20 Ignorance no excuse - Code of Conduct, Rule 20.

Neither a settlement agent nor any of his employees shall be excused from non-observance of the terms of this Code by reason of claimed ignorance of the terms of the code.

There is no doubt that the ideal Settlement Agent Conveyancer is also someone who has the knowledge, skills, and motivation to comply with the *Code of Conduct*.

Activity 2 – Performance Objectives

Activity 2 includes three questions that examine the nature and relevance of the Agency Performance Pyramid and the above discussion of compliance and performance management.

4. Supervision

The purpose of this section is to explore how to build staff satisfaction while ensuring compliance. The diagram on the next page provides a framework within which the challenge of supervision may be understood.

We need to be aware that different people require different levels and types of supervision. One very useful and relatively simple distinction to make when supervising staff is the distinction between *ability* and motivation.

The diagram explores the implications of how staff are supervised depending on whether they are ready and willing to do their job.

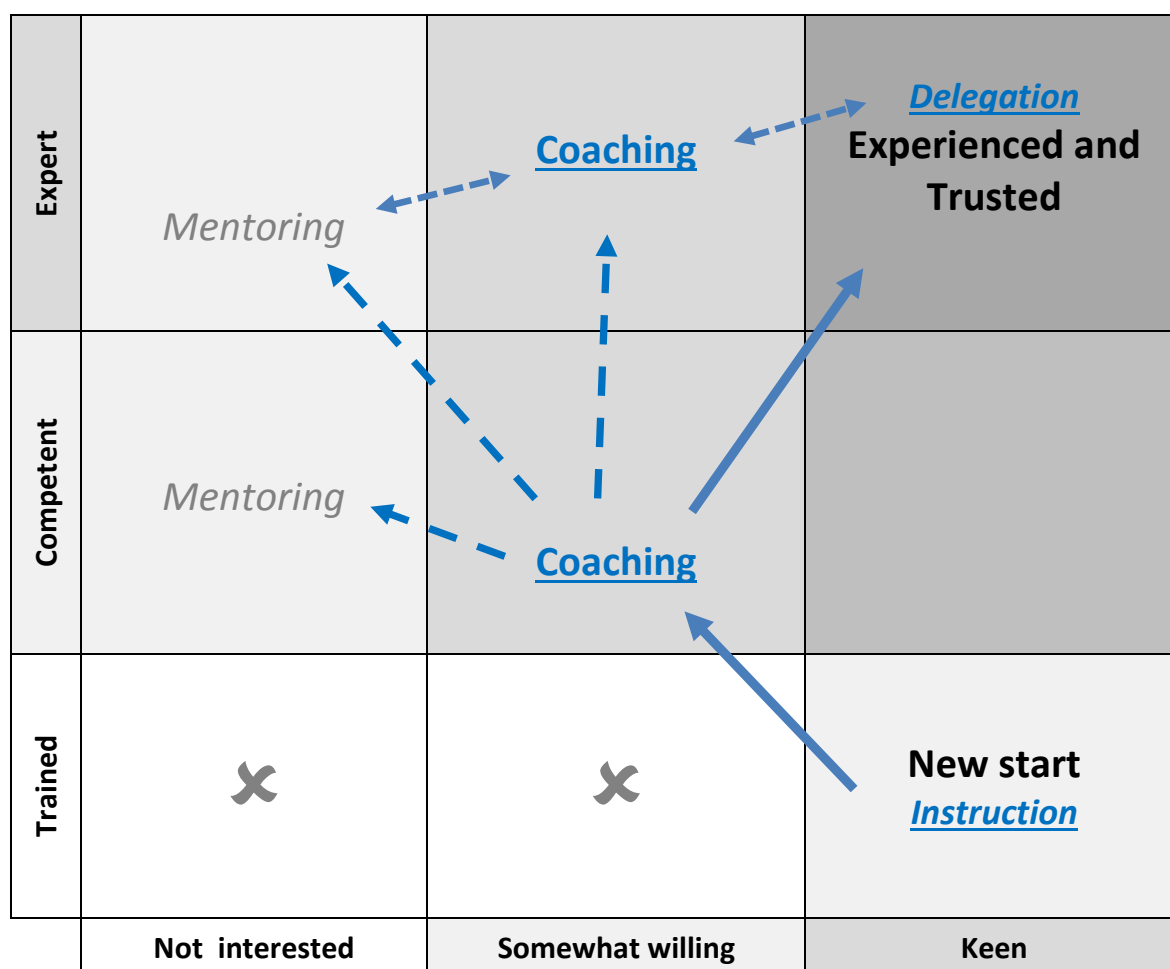
It is important to focus on strategies for the supervision of employees to ensure that they not only have the understanding and skills to the job, but that they also have the motivation.

Ready, willing and able

The phrase ‘ready, willing and able’ is one that all conveyancers like to be able to say, and like to hear. In the following section, this phrase will be applied to the performance management and supervision process.

The peak performing employee is someone who is ready, willing and able to do their job. The peak performer is someone who has the knowledge, skills and motivation to do their job quickly and well – jobs can be delegated to them and they can be trusted to follow through. It takes time and effort for a new-start employee to reach this peak level of performance, delegation, experience and trust. The diagram below shows the typical path of supervision from new start, to peak performer.

Diagram - From ready and willing to experienced and trusted



Source: adapted from the Hersey-Blanchard's *Situational Leadership* model, see Blanchard (1985).

The diagram above also traces the path from new start to experienced and trusted delegate through a process of appropriate instruction, coaching and mentoring. The new start entry point assumes the selection process would exclude or reject (✕) any applicant that was not keenly motivated at this stage. However, if such a person was employed then the appropriate supervision strategy will be coaching and/or mentoring to get them on track. If not, then with appropriate performance management they should not be retained beyond the probation period.

4.1. New Start - instruction

If the selection of a 'new start' employee has been successful, the new employee will start the job 'ready and willing' but they are unlikely to be able to fully do their job quickly and well. Even a highly competent person will need to adjust to new processes and systems before they are fully able to do their job quickly and well.

All as it should be, the new start is 'ready and willing', but not yet able. This initial stage of supervision may be seen to be a 'honeymoon period'. The new start does not need 'geeing-

up'. They are ready and willing to build on what they know and get on with doing the job. The most appropriate type of supervision is direct instruction: explain the requirements, explain policy and procedures, demonstrate skills, monitor and review.

Unfortunately, it is not likely to be a smooth transition from this initial enthusiasm to peak performance. What happens in most cases is that the initial enthusiasm wains. The new start may find that the job is not all they thought it would be. The job is different, perhaps more complex, less exciting, more difficult and maybe not as interesting or rewarding as they imagined it would be.

The 'honeymoon' period is over, and the supervisor's approach needs to change. There is no set time-frame within which the 'new-job honeymoon' comes to an end. It depends on the job, the context, the individual, the relationships and culture of the organisation.

Activity 3 – Enthusiasm drops-off

This Activity asks you to reflect on any past job or experience where, over time, you lost some of your initial motivation and enthusiasm.

4.2. Coaching – motivation and ability

The end of the 'new-job honeymoon' typically leads to the coaching phase of supervision. This phase requires the supervisor to take account of the need to motivate the employee as well as to improve their skills and understanding.

The term 'coaching' is being used here, in the same way as it is used in the fields of athletics and sports. The job of the coach is to motivate as well as to provide instruction and practice opportunities that improve understanding and skill.

The motivation component of supervision is sometimes referred to as a 'carrot' and 'stick' process. This unfortunate metaphor is based on the 'motivation' or supervision of a donkey: carrots as an incentive to move forward and the stick as a disincentive to standing still.

This simple approach may work well for donkeys, but is not satisfactory in the complex world of knowledge based work like conveyancing. What the supervisor needs to understand is their role as the creator of understanding. It may be expressed as the process of 'making the invisible visible'. This is the technique of exploring the consequences that the person is not seeing or not remembering on their own (Patterson 2005, p127). The job of the supervisor is to assist the employee to increase their skills and understanding. This includes making sure the employee understands the positive consequences of doing their job quickly and well; and the down side or negative consequences of not following company policy and procedures and of not complying with legislation, such as the *Code of Conduct*.

4.3. Experienced and trusted

All going well, with experience and coaching, the employee matures in their understanding of their job role, continues to gain skills, regain motivation, and can be trusted to do their

job. They become a highly valued employee who has embraced their delegated duties. It should be noted that this does not mean the Managers supervisory role is over. Everyone needs positive feedback, some more than others. A failure to provide appropriate feedback and recognition can lead to the experienced and previously trusted employee losing interest and motivation. A regular and scheduled performance review can be a great opportunity to recognise and thank people for their work and their support.

A failure to demonstrate respect for the experienced employee may be very detrimental to the employee's performance and the supervisor's relationship with the employee. There is an important balance to be achieved. One of the most effective ways to undermine the motivation of an experienced and capable person is to micro-manage them. Micro-management is likely to be taken as evidence of a lack of trust. Effective delegation requires that the delegate has the knowledge, skills and motivation to do the work. It also requires that the delegate has access to appropriate resources and systems. The best and most effective way to determine if all three conditions have been met is to ask the delegate, engage them in problem solving and listening to their views.

It should be noted that experienced and trusted employees can make excellent coaches, instructors and even mentors of others. Done well, they can be an invaluable supervisory assistant to the Manager. Furthermore, the appropriate delegation of supervisory responsibilities may be an excellent form of reward and recognition of the delegate's knowledge, skills, experience, motivation and trust.

4.4. From Coaching to Mentoring

Experienced and trusted employees may nevertheless lose motivation, despite having the required skills, knowledge and experience and knowing the consequences.

On the one hand, there is the possibility that as the employee becomes competent they become bored or disillusioned with their job role. On the other hand, a loss of motivation may be due to factors external to the workplace.

The ability and responsibility of a supervisor to take on performance influences that are external to the workplace needs careful consideration. Some external issues impacting on the employee may require outside expertise and assistance. The role of the supervisor might appropriately be restricted to helping the individual access external expertise.

There is, however, an appropriate level of help and support that a supervisor can provide without getting too involved, and without straying outside their field of expertise.

Sometimes the personal mentoring support required by an employee takes the form of guidance on how to change jobs, how to perform better at interviews, or how to take the next step in their career. This may well be something the supervisor can assist with. It should be noted that while this may just be a nice thing to do it may also benefit the agency by assisting a dissatisfied employee whose life circumstances have changed to move on.

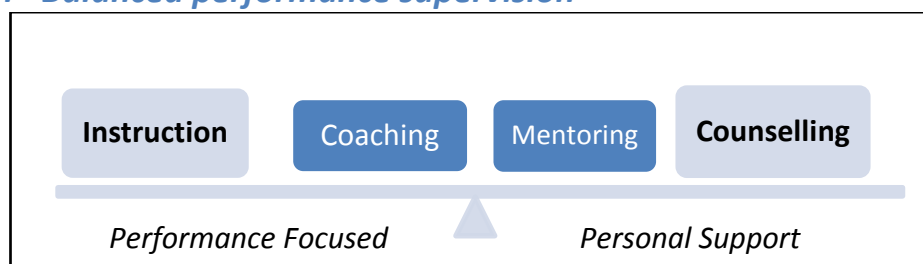
Moving on to a different job can be a win-win situation for all concerned: the dissolution employee, their work colleagues and the manager.

A key distinction that is being drawn out here is between coaching for job performance and mentoring to provide personal support.

It may be useful to reflect on the fact that professional athletes and sportspersons have mentors and counsellors, in addition to their performance coaches. These professional mentors and counsellors are chosen because they have the skills, knowledge and experience required to support the individual's personal development.

One way to clarify the distinction being made between coaching and mentoring is to visualise a 'seesaw' balance beam. This concept is depicted below.

Diagram - Balanced performance supervision



At left-hand end of the balance are the techniques of instruction, at the right-hand end counselling. The diagram is suggesting that coaching is more like instruction than it is like counselling; it is task and performance oriented, so it sits on the performance side of the balance. Mentoring, on the other hand, shares with counselling a focus on the personal support of the individual. It is less concerned with the contribution of the individual to the organisation's performance; the focus is the well-being of the individual. Therefore, it sits on the personal support and counselling side of the balance.

To summarise this section

In summary, this model has been adapted and significantly modified the Hersey-Blanchard's Situational Leadership framework (see Blanchard 1985). Its purpose is to draw attention to two things that are useful when supervising or indeed when you are being supervised.

1. There are three questions supervisors need to be able to answer to provide effective supervision for peak performance:
 - a. Does the person being supervised have the knowledge and skills required?
 - b. Do they have the required motivation and understanding of consequences?
 - c. Do they have access to the required resources and systems?
2. The supervisor needs to adapt their supervision approach to the needs of the person being supervised; from instructor to coach, to mentor and ideally to appropriate delegation.

Activity 4 – Misjudged supervision

This activity asks you to reflect on a time when your supervisor misjudged your knowledge and skills, your motivation, or the resources and systems required for you to do your job. What were the consequences?

Important: be discrete - remember to protect the privacy rights of all involved.

5. Performance Review Process

The purpose of the above discussion has been to explore how differences in the employees knowledge and skills on the one hand, and level of motivation on the other, lead to differences in the appropriate approach to supervision.

All this said; we now need to turn our attention to how Settlement Agent Managers can use knowledge of this strategy to provide for the appropriate supervision of staff. (i.e. how staff can use it to better understand their own needs, and the processes involve).

The starting point for a job performance review is a documented and agreed statement of the *Job and Person Requirements* – as per the companion session Duties of Settlement Agents. In the companion session we consider a *draft* of the *Job and Person Requirements* for Settlement Agent Managers, and looked at how these requirements might need to be modified for Settlement Agent Conveyancers and unlicensed conveyancers.

In the following section, we will explore how the *Job and Person Requirements* can be used in the performance review process.

The process uses essentially the same draft *Job and Person Requirements* used in the Duties of Settlement Agents session, see Appendix 1. The version below includes - optional statements - to take into account differences in the *Job and Person Requirements* between Managers and Conveyancers. You will need to choose the statement appropriate to your job role.

5.1. Self-evaluation

The purpose of this exercise is to explore the role of the self-evaluation process in performance planning. As was suggested above, the ideal / peak performing employee is one that is experienced and can be trusted to do their job quickly and well, with due diligence and skill. The ideal peak-performer is also someone who is skilled in monitoring and reviewing their own performance. The self-evaluation process establishes this as an expectation and supports the development of the knowledge and skills required by employees to move to this ideal as an experienced and trusted delegate.

5.2. Performance review policy and process

The performance review process may be seen to have six steps.

1. Document and agree on the *Job and Person Requirements*.
2. Self-evaluation of the person being reviewed *Job and Person Requirements*.
3. Self-evaluation provided to the reviewer for consideration.

4. The reviewer considers the self-evaluation and prepares for the review meeting.
5. The reviewer facilitates an open and safe discussion designed to leave the person being reviewed motivated and clear about what is required.
6. Creation of a *Professional Development Plan* with clear responsibilities for specific next steps.
7. Monitor progression of the steps identified in the *Professional Development Plan*.
8. Start over - Review the *Job and Person Requirements* and Professional Development outcomes, and redo the evaluation and professional development plan. This should be done at least annually and more regularly for a new start or during a process of significant change.

Activity 5.1 – Performance Review Policy and Procedure

This activity asks you to think about how often and the risks associated with doing too many or too few performance reviews.

Activity 5.2 – Self-evaluation of performance

Activity 6 is an opportunity to use the draft Job and Person Requirements to review your own performance as if you were preparing for a performance review with your supervisor. It will help you to evaluate the draft Job and Person Requirements as well as to have a look at how the review process might work in practice.

Activity 5.3 – Self-reflection

This activity asks you to look at the factors that might affect the accuracy of your self-evaluation.

6. Electronic Conveyancing

Towards the middle of 2015, the roll out of electronic conveyancing will commence in Western Australia. The objectives of this national initiative include greater flexibility and cost reduction.

The following section explores the performance management responsibilities of Settlement Agents in relation to the introduction of electronic conveyancing to the Western Australia settlement industry.

The *Electronic Conveyancing Act 2014* has been enacted in Western Australia to correspond with the *Electronic Conveyancing National Law*. Amendments to provide for electronic conveyancing have also been made to the *Settlement Agents Act*, the *Duties Act*, *Transfer of Land Act* and the *Taxation Administration Act*. The most significant document for Settlement Agents to understand in the lead up to the introduction of electronic conveyancing is the *Participation Rules*.

Activity 6.1 – electronic conveyancing

This activity includes five questions that ask you to look at the introduction of electronic conveyancing using the five areas of the Agency Performance Pyramid discussed in Section 2.

6.1. Individuals differ in their response to Change

The nature of any significant change process is: ‘we do not know what we do not know’. It is impossible to get everything right first time because the landscape is new – it is an action learning process. Some people enjoy and adjust ‘quickly and well’ to change; others are less ready to change and are less comfortable with the inevitable uncertainty. These individual differences between staff have implications for the approach to supervision: instruction, coaching, mentoring or delegation. The job of the supervisor is help employees achieve their best, and the best way to do this is for the supervisor to talk to the people they supervise and get to know them - what motivates them and what demotivates them.

6.2. Some terminology

Landgate has published the electronic conveyancing *Participation Rules* for Settlement Agents (March 2014). However, before we look at these participation rules, we will need to clarify some of the terminology that is being used.

The process of electronic conveyancing is currently being referred to in three ways.

PEXA – Property Exchange Australia, which is the agency responsible for the electronic platform that at this stage will be used throughout Australia appears to favour the term **e-Conveyancing**. PEXA is an important agency in the process that has a significant role in promoting and supporting the transition to electronic conveyancing in all States and Territories.

Landgate’s *Participation Rules* based on the *Electronic Conveyancing Act 2014* consistently refer to the **ELN**. Defined in the *Act* as the **Electronic Lodgement Network**.

On the other hand, Landgate’s website, and it’s very useful Frequently Asked Question uses the acronym **NECS** as a reference to the **National Electronic Conveyancing System**.

While there may be subtle differences in the scope and meaning of these terms, they are essentially all referring to the same thing - the introduction of a computer system that allows settlements to be conducted digitally using a computer and an electronic platform administered by PEXA.

Activity 6.2 – Terminology

This activity asks you to match the different terminology used to refer to electronic conveyancing to the Agency – sources that use that terminology.

6.3. A bit more about PEXA

The Landgate website explains that Property Exchange Australia Ltd (PEXA) will implement and operate the first NECS. Information about PEXA can be found at: www.pexa.com.au (see Appendix 2 below).

PEXA (originally known as National e-Conveyancing Development Limited) was formed in 2010, to fulfil a Council of Australian Governments (COAG) agenda item to deliver a national electronic conveyancing solution to the Australian property industry.

PEXA is a company in which the key financial stakeholders are the Governments of Victoria, New South Wales, Queensland and Western Australia as well as a number of Australia's largest Financial Institutions.

There is one more important term that you may hear and find useful to know when talking about PEXA. It is the fact that PEXA is an ELNO, and for the foreseeable future PEXA will be the only **ELNO**. This acronym as used in the *Electronic Conveyancing Act*, and the *Participation Rules* means it is an **Electronic Lodgement Network Operator**.

6.4. A bit about Alliance Partners / Sponsors

PEXA has taken on four partners to 'sponsor' the process of providing online support, billing, and training to the agencies that take on e-Conveyancing.

Note that there has been a name change – originally referred to as alliance partners these companies are now being referred to as Sponsors. This term may be seen to reflect their role more accurately from the perspective of the settlement industry. Their role is to support or sponsor the settlement industry with its transition to electronic conveyancing.

The four Sponsors (in alphabetical order) are:

- GlobalX Information
- Info Track
- SAI Global Property
- Veda.

These four sponsors provide 'conveyancing software' that links directly to the PEXA electronic platform to save staff time and data entry effort. At the time of writing the Western Australian 'conveyancing software', vendor C-Solutions had just publicly announced that it has aligned itself with GlobalX Information.

While e-Conveyancing can be conducted directly through PEXA, without a Sponsor, direct access to the PEXA platform will entail additional data entry.

6.5. The participation rules

As previously mentioned, the *Participation Rules* published by Landgate are the Western Australian enactment of the national *Electronic Conveyancing Act 2014*.

The *Participation Rules* are a must read and understand for Settlement Agent Managers. In order for a settlement agency to become a Subscriber to the ELN (as Licensee or on behalf

of the Licensee) the Settlement Agent (Subscriber/Manager) must understand and accept the obligations and responsibilities as set out in the *Participation Rules*. This means that as the Subscriber the responsible Settlement Agent must fully understand the *Participation Rules* and their responsibility for all User and Signers. (The meaning of these terms as defined in the participation rules are reproduced in the box below.)

Extract from Section 2 of the Participation Rules - Definitions and Interpretation

User means an Individual authorised by a Subscriber to access and use the ELN on behalf of the Subscriber.

Signer means a User authorised by the Subscriber to digitally Sign, and where it is required, certify, electronic Documents on behalf of the Subscriber.

6.6 Eight-point summary of key Participation Rules

1. take reasonable steps to ensure Signers are persons of good character;
2. ensure that only persons authorised by the Subscriber digitally Sign documents;
3. ensure that only authorised persons access and use the ELN;
4. comply with the security policy, including the security of digital certificates (the device – known as a token, that is a bit like a USB);
5. ensure all Users are trained;
6. ensure information provided to any authority is correct;
7. promptly revoke the authority of Signers or Users no longer authorised by the Subscriber;
8. take immediate action if a security item like a digital certificate has been compromised or used improperly, to unsign any affected document and notify the ELNO.

In summary:

Settlement Agent Managers will generally have the role and responsibilities of the **Subscriber** as set out in the Participation Rules. Settlement Agent Conveyancers and unlicensed conveyancers who authorise and finalise settlement will be **Users and Signers**. Other staff who assist by imputing information and following up on progress to support the conveyancer will be **Users** but not necessarily Signers.

Activity 6.3 – Key participation rules

You are asked to increase your familiarity with the participation rules by filling in the missing words in a summary of the key rules.

6.6. Preparation and Planning for e-Conveyancing

One way to prepare for the implementation of electronic conveyancing in Western Australia is to create an action plan. A draft action plan is included at Appendix 4 in this document.

If you think any or all of the actions useful then you can use this table as the basis for an action plan for you or your agency. Please be aware that this is not a definitive list of actions – merely a starting point for your consideration.

7. Buying land or property off-the-plan

In this section, we explore the performance management implications of a publication like the Department of Commerce's nineteen-page brochure on *Buying Land or Property off-the-plan* (April 2014). The Department produced the brochure in its consumer protection role. The brochure is a useful resource for Settlement Agents and can be a very useful document for Settlement Agents to refer their clients to, either by way of providing a hard copy or a link to the Department of Commerce's website.

As the brochure explains buying "off-the-plan" can mean many things but generally involves signing a contract with a developer before the developer has obtained final approval to subdivide land that is being purchased or, in the case of a building, before building has commenced or been completed.

The brochure explains that perhaps the main attraction of buying off-the-plan is that it provides buyers with an opportunity to obtain property at the current market price on payment of a deposit (generally no more than 10%). A one to two year time frame would not be unusual for an off-the-plan development.

The extended timelines and special considerations related to buying off-the-plan may give rise to specific risks that need to be understood and managed. The Department's brochure outlines these risks from the perspective of the buyer. The following sections present a summarised version of these risks from a Settlement Agent perspective: you are nevertheless encouraged to access and read the Department's full brochure.

By virtue of consumer expectations, licensed Settlement Agents have a responsibility to ensure that they draw their client's attention to issues that may impact on the timely settlement of the property they are buying off-the-plan. The *Settlement Agents Code of Conduct* sets out the responsibilities of Settlement Agents in respect to the service they provide. Australian Consumer Law sets out the rights of consumers in respect to any service they receive, including from Settlement Agents (see Appendix 3).

The Department's brochure draws attention to a range of risks for clients who buy land or property off-the-plan. The following explores these issues as they specifically relate to the responsibilities of Settlement Agents.

7.1. Standard contracts

Developers often have contracts pre-prepared by lawyers on their behalf principally to protect their interests. In some cases, the developer may choose to use the Joint Form of General Conditions for the Sale of Land which is part of the standard offer and acceptance contract produced jointly by the Real Estate Institute of Western Australia and the Law Society of Western Australia.

With strata-titled properties, the developer is required by the *Strata Titles Act 1985 (WA)* to provide certain information about the scheme before the buyer signs the contract to buy the property. A developer must provide specific disclosure statements and information about the proposed strata/survey-strata plan and by-laws, amongst other things. Where a developer fails to comply with the *Strata Titles Act 1985 (WA)*, the buyer may have a right to void the contract by notice in writing given to the developer before settlement of the contract.

Landgate administers the *Strata Titles Act 1985* and has produced *A Guide to Strata Titles*. It is a good idea for buyers to be made aware of this guide and encouraged to gain an understanding of their rights and responsibilities before entering into a contract.

Contracts should always be clear about what has to be done, by whom and by when, and the consequences should be transparent if any conditions are not met. It is a good idea for the buyer to obtain legal advice about the meaning of any terms they do not understand and whether any terms can be inserted or modified before they sign an off-the-plan contract.

By the time the Settlement Agent sees the contract it has usually been signed. It is not too late for the client to seek legal advice, have the contract explained and any ambiguous wording of clauses clarified.

Activity 7 – Buying property or land off-the-plan

Activity 7 includes seven questions (a through g). The activity reviews the special considerations and risks that apply to clients and Settlement Agents conveyancing property or land that has been brought off-the-plan. It is recommended that you first 'skim-read' the whole section before re-reading the relevant section and answering each question. This section is a summarised version of the brochure prepared by the Department of Commerce - Buying Land or Property off-the-plan (April 2014).

7.2. Unfair contract terms and the Australian Consumer Law

A contract to purchase land or other property off-the-plan may be subject to the unfair contract terms provisions of the *Australian Consumer Law* if it is a 'standard form consumer contract'.

A standard form consumer contract is a contract for the supply of goods or services or the sale of land for personal use only, where the contract is typically prepared by one party to the contract and is not subject to negotiation – usually offered on a "take it or leave it"

basis. The unfair contract terms provisions of the *Australian Consumer Law* will not apply if the off-the-plan purchase contract is made for business or investment purposes.

If a standard form consumer contract contains an unfair contract term, then that term may be voidable. A contract term is likely to be unfair if:

- it causes a significant imbalance in the parties' rights and obligations arising under the contract;
- it is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term; and
- it would cause detriment (financial or otherwise) to a party if it were to be enforced or relied upon.

A contract will generally be able to proceed if an unfair term is struck out by a court. However, if the unfair clause is so central to the contract that it cannot be struck out, the contract may be unenforceable.

Only a court can decide if a term in a standard form consumer contract is unfair. However, the *Australian Consumer Law* makes it clear that terms that define the main subject matter of a contract or set the upfront price, or any term that is required or permitted by law, cannot be considered unfair.

7.3. Price

Some off-the-plan contracts have a fixed price clause where the price of the property will not change during the life of the project or for some other fixed period. However, some contracts may have terms that allow for increases in building costs. Potential buyers should consider what will happen if building costs increase and whether they are prepared to accept the risk of price increases.

7.4. Deposits

Although deposits are generally cash, EFT or cheque, an off-the-plan contract may provide for the payment of a deposit by deposit bond or bank guarantee. A deposit bond is an insurance policy that provides for the insurance company to pay the requisite deposit to the developer in any of the circumstances where the deposit would ordinarily be forfeited. Developers are under no obligation to accept deposit bonds or bank guarantees.

With a cash deposit, the buyer should ensure that the money is safeguarded by asking the developer to place their deposit in trust until settlement and for this requirement to be included in the contract.

Many developers engage a real estate agency and in these cases, the deposit money must be held in the real estate agent's trust account or in the trust account of the settlement agent or solicitor who is settling the transaction.

A check can be made on www.commerce.wa.gov.au/ConsumerProtection/licencesearch to ensure the real estate and settlement agents are licensed (all agents displayed on the

Department's website hold a valid Triennial Certificate). Deposits should not be released until settlement occurs.

If the deposit is being held by a real estate agent or settlement agent, and settlement is more than 60 days away or your deposit is more than \$20,000, the client can request (in writing) that the funds be placed in an interest-bearing trust account, with the interest payable to them.

This does not have to be part of the initial contract, but can occur at a later date. If the deposit is held with a solicitor, the buyer would need to make it a condition of the contract that the money be held in an interest-bearing trust account.

7.5. Special laws for strata developments

With sales of proposed strata properties, the *Strata Titles Act 1985 (WA)* requires contracts to include provision for deposits, and any other money payable by a buyer prior to the registration of the strata or survey-strata plan, to be paid to a solicitor, real estate agent or settlement agent, who must also be named or specified in the contract.

The deposit must be held in the trust account of the solicitor, real estate or settlement agent until the strata or survey-strata plan is registered with Landgate. The registration of a plan is the point at which separate lots are created for which individual certificates of title can be issued. The developer can access deposit money after registration of a plan unless there is a term in the contract to preclude this.

An off-the-plan contract for a strata property that includes any term that allows the developer to access deposit monies prior to the registration of the strata or survey-strata scheme, would not comply with the *Strata Titles Act 1985 (WA)*.

If the person to hold the deposit is not named or specified, or the buyer is asked to pay the deposit to someone other than a solicitor, real-estate or settlement agent, they may cancel the contract and recover their deposit money, and any other monies paid, at any time prior to the strata or survey-strata plan being registered.

7.6. Timetable for completion

Developers use sunset clauses to set a contract's end date. In deciding whether the time frame is acceptable, buyers should consider how far advanced the development is when they sign the contract and what the required future steps are. Matters that should be considered include:

- whether the developer has obtained all the necessary approvals to commence and, if not, what still needs to be approved;
- whether the developer is required to secure a minimum number or proportion of unconditional contracts before they can obtain funding to allow the project to proceed and, if so, how many contracts have already been secured; and
- the extent of progress of the development made to date (to check on progress, a proposed buyer could ask their solicitor, the developer or the developers

representative whether the milestones are being met within the necessary time frames under the contract.)

With strata-titled developments, an off-the-plan contract may provide for the developer to complete the 'common property' either before or after the settlement date. "Common property" is any space or feature used or shared between all of the owners, e.g., driveways, visitor parking, landscaping, pools and fences.

It is important that buyers consider what would happen if the common property is not completed within the agreed time frame and what recourse they would have. To avoid any doubt, a contract should clarify exactly what recourse the buyer has if time frames are not met. Importantly, if no time frame is specified a buyer could still have recourse under the *Australian Consumer Law* if common property is not completed within a reasonable time.

7.7. Specifications and features

When signing the contract, the buyer may not know exactly how the property will look when construction is finished nor the precise quality or standard of fixtures and fittings. As a safeguard when purchasing off-the-plan, it is important to ensure the contract stipulates the required features of the property and check that there is sufficient detail of these specified in the contract, including timeframes for completion of any "packaged" inclusions, particularly with house and land packages.

It is open to the buyer to take legal action if a developer fails to deliver on a promise.

7.8. Variations by the developer

Some contracts allow the developer to change specifications in a contract without getting the buyer's approval. Such changes may be necessary to satisfy architectural or engineering adjustments to meet local government requirements. However, changes may also be made simply to cut costs.

Generally a contract will set limits on the extent of such changes. For example, the developer may include a term in the contract that allows for minor changes to be made within specific tolerances (e.g., a five percent increase or decrease in the balcony area). Sometimes the contract includes a clause that states that the buyer cannot make compensation claim if the developer makes variations.

7.9. Withdrawal from the contract

Generally, an off-the-plan contract will provide for the developer to carry out and complete a development in accordance with plans (that are usually annexed to the contract). There is usually a defined period for construction, unless the contract provides for the period to be extended to meet particular conditions along the way.

Withdrawal clauses are those that allow either the developer or buyer to withdraw from the contract if particular conditions are not met. Issues to be considered include:

- What are the obligations of the developer to progress the project within an agreed time frame?
- Does the contract require the developer to use their best endeavours to obtain the necessary approvals for the project to ensure timely completion? (Best endeavours mean that the developer is taking all reasonable steps required to secure such approvals.)
- Does the contract include clear milestones/actions to ensure that the project progresses in a timely manner?
- What recourse does the buyer have if the development does not progress within the agreed timeframe? Is there any difference between the rights of the buyer to cancel the contract and the developer's right to do so? How soon will the buyers deposit be returned?

Importantly, with strata title developments, buyers have a statutory right under the *Strata Titles Act 1985 (WA)* to cancel a contract if the deadline to register the strata/survey strata plan is not met. This may occur if the buyer and developer have agreed upon a date in writing when the strata/survey strata plan must be registered, and it is not met. The buyer also has the right to cancel the contract if a date has not been agreed upon, but it is more than six months since the date of the contract, and the plan is not yet registered.

Some contracts have a clause that prevents buyers from seeking damages from the developer if a contract is cancelled for any reason. Generally, such clauses provide only for the return of the deposit, and they preclude buyers from seeking financial compensation for lost opportunities while their money was committed to the development. However, despite such clauses, buyers may still be able to seek a remedy under the *Australian Consumer Law*.

Buyers should consider seeking independent legal advice if their contract includes a clause that limits their right to claim damages where a developer cancels a contract.

7.10. Disclaimers

Disclaimer clauses are sometimes included in an attempt to prevent a buyer from claiming in court that they were misled by the developer. For example, enticing images in marketing material that do not accurately portray the finished product.

The *Australian Consumer Law* not only makes it an offence to engage in misleading or deceptive conduct, it also contains provisions that allow consumers to take action if they suffer loss as a result of false or misleading conduct. **The right to claim damages cannot be excluded by a term of a contract.**

A term of a contract that attempts to restrict or modify a person's rights under the *Australian Consumer Law* may also be void if it is an "unfair contract term" (see section on unfair contract terms at section 7.1-7.8).

7.11. Defects liability

Buyers should be aware of their rights if faults are identified after completion. Except for freehold land, an off-the-plan contract should include a 'defects liability' clause stating that it is the developer's responsibility to repair any major or minor defects. In addition to any rights under a contract, there may also be remedies available under the consumer guarantee provisions of the *Australian Consumer Law*.

7.12. Rental guarantees

Some off-the-plan contracts aimed at investors have a 'rental guarantee' clause where the developer guarantees the property, when finished, will be tenanted for a set period, for a specified level of rent. The guarantee may also be dependent on the continuing financial viability of the developer.

If things go wrong, the buyer should be recommended to consider seeking legal advice.

7.13. Choice of property manager

With strata title developments, a developer may seek to include a term into the contract giving them the right to choose the property manager for the development. This removes the buyer's rights to nominate their own property manager to act on their behalf.

It is worth noting that the *Strata Titles Act 1985 (WA)* does, however, provide for management contracts to be shortened or terminated by order of the State Administrative Tribunal in certain circumstances.

Again the buyer should be advised to consider seeking legal advice.

7.14. Settlement

Once a property is completed it is likely to proceed fairly quickly to settlement. As the Settlement Agent, you need to be aware of the settlement clause and follow progress so that you are ready to finalise matters.

With freehold land, a developer will be in a position to settle as soon as a Certificate of Title has been issued by Landgate.

With strata developments, generally a contract will provide for settlement to take place at a specific time after the last of the following events occurs:

- the registration of the Strata/Survey Strata Plan;
- the issue of a separate Certificate of Title for the strata lot; or
- the local authority issues the Certificate of Occupation.

As the Settlement Agent acting in the best interests of their client, it is important to be aware of the specific nature and risks associated with buying off-the-plan. It is also important to recognise that under Australian Consumer Law, the Strata Act and in accordance with other rights in law and in equity your client may have options that allow

them to cancel the contract or seek compensation. Knowing that your client may have options it is important to encourage them to seek legal advice if they have any concerns with the contract or how the development is progressing.

As a Settlement Agent Manager, you have a responsibility to ensure all conveyancing staff are aware of the specific nature and risks associated with buying off-the-plan. It is also important that they are aware of the need to bring matters to your attention and that they are aware of their duty to always act in the best interest of their clients.

This section of this session on Performance Management is something that may be useful to bring to the attention of any staff that deal with agency clients buying off-the-plan. It is also important that they are aware of their responsibility to bring any concerns they become aware of to your attention so that an appropriate course of action can be developed.

8. *Wrapping it up*

This session has explored some key aspects of performance management at the agency and individual level.

The *Agency Performance Pyramid* was used to demonstrate the hierarchical nature of performance objectives. It demonstrated how an integrated view of performance objectives recognises that compliance, staff satisfaction, innovation and continuous improvement work together to underpin client satisfaction and profit.

The supervision of individual performance was seen to require an understanding of three factors: (1) knowledge and skill, (2) motivation, and (3) access to the required resources and systems. It was suggested that while knowledge and skill may grow with on-the-job experience, motivation may not be so consistent over time. Appropriate supervision requires an understanding of the requirements of the person being supervised and of when and how to engage in instruction, coaching, mentoring or delegation.

An understanding of the knowledge, skills and motivation that staff bring to a change management process may also be very useful to the supervision of employees in the transition to electronic conveyancing. For some employees direct instruction will be adequate, for others more time and effort will be required to motivate acceptance of the change process. This may require relatively straight forward coaching, but others may need more support and mentoring to make the transition. Experienced and trusted staff can be invaluable in supporting the process and could be delegated some instruction, coaching and mentoring responsibilities.

The specific considerations and risks associated with clients buying land or property off-the-plan provided an opportunity to explore the value of sourcing government publications and reinforcing understanding and performance through a question and answer format.

Activity 8 – Wrap up

In wrapping up this unit you are asked to identify the key ideas and practices that this unit has either reinforced or brought to your attention.

8.1. Summary/Checklist for Performance Management

The development and maintenance of effective supervision through appropriate performance management may be seen to be a four-step process: plan, discuss, monitor and review.

The following checklist has been adapted from the Fair Work Ombudsman's website: <http://www.fairwork.gov.au/employee-entitlements/types-of-employees/probation>

Step 1: Plan

- ☐ Look at your businesses objectives and think about individual performance development options for each employee that will help your business reach its goals.
- ☐ Create and review the *Job and Person Requirements* with the key stakeholders – including current job holders.
- ☐ Communicate and discuss the performance review process and the role of the important role of the employees' self-evaluation in the process.

Step 2: Discuss

- ☐ Meet with each employee to discuss their self-evaluation and their individual goals.
- ☐ Agree and record the professional development outcomes of the meeting.
- ☐ Set realistic timeframes and be specific about the outcomes of the discussion – who is responsible for doing what by when?

Step 3: Monitor

- ☐ Monitor progress – don't leave this follow-up until it is too late.
- ☐ Seek regular feedback from the employee on how they think they are going – are they motivated, do they know what is required and do they have the skills, and access to the resources and systems required.
- ☐ Give positive and constructive feedback and use an appropriate mix of instruction, coaching, mentoring and delegation.

Step 4: Review

- ☐ Conduct a performance and professional development review every 6 to 12 months.
- ☐ Make sure the employee understands the process, completes the self-evaluation and provides it to you with sufficient time before the review meeting for you to consider it. Think about the feedback you want to provide to the employee.
- ☐ Arrange to meet with the employee at a time and in a place where you won't be interrupted, overheard or rushed.

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Find out more

For more information about managing performance and providing feedback to staff consider having a look at the distance learning material at www.fairwork.gov.au/learning.

BONA FIDE REAL ESTATE SETTLEMENTS

SETTLEMENT AGENT – MANGER / CONVEYANCER

At November 2014

The following is a draft statement of the *Job and Person Requirements* developed for use in the 2015 CPD program – Performance Planning for Settlement Agents. It is not to be taken as legal or contractual advice.

The following worksheet is designed to demonstrate how this document may be used in a performance review process. This document has been developed as a draft summary of the *Job and Person Requirements* of a Settlement Agent – Manager and a Settlement Agent - Conveyancer. In the case of the SA Conveyancer some of the *Job and Person Requirements* of the SA Manger have been modified. The suggested changes have been indicated in two ways. The suggested deletions to adapt the statement for a Conveyancer have been underlined, and the additions put in **[bold font and in square brackets]**.

Use the following rating scale to evaluate your personal performance in respect to both the Job Requirements and Personal Requirements either as the SA Manager or SA Conveyancer.

- 5 = Excellent skills and understanding - supervisory level expertise.
- 4 = Very Good skills and understanding - consistent high-level performance.
- 3 = Good skills and understanding - consistent application.
- 2 = Some gaps in skills, understanding or application.
- 1 = Significant gaps in skills, understanding or application.

Job Requirements

The following is a *draft* summary of the functions, responsibilities and specific duties of the position.

1. Real Estate settlement transaction – responsibilities:	Self	Reviewer
1.1. Promptly respond to the vendor or purchaser to formalise the appointment to act or to decline the appointment (CC6A).		
1.2. As soon as practicable (CC10) search land titles and dealings and search for caveats against any of those dealings.		
1.3. As soon as practicable (CC10) obtain certificates and make inquiries with respect to adjustment of rates, taxes and other outgoings.		
1.4. As soon as practicable(CC10)prepare a settlement statement and an authority for the payment or receipt of moneys; and		
1.5. Arrange the payment of duties and any other imposts/fees.		

	Self	Reviewer
1.6. Arrange and provide for the exchange of documents and receive and disburse moneys.		
1.7. Lodge and provide for the required certification, receipt and registration of documents.		
1.8. Ascertain and communicate all pertinent facts to clients (CC16); including the prompt notification of the receipt of money, documents or securities (CC25).		
1.9. Promptly and willingly provide cash accounts, payment of moneys, delivery of securities or a client's papers - whenever asked by the client or by another settlement agent/solicitor instructed by the client (CC25 and 26).		
1.10. Whenever necessary or prudent, recommend clients seek legal advice (CC11).		
1.11. Draw or prepare documents, including: <ul style="list-style-type: none"> a) offer and acceptance form in the format and subject to such conditions as are prescribed; b) requisitions on title in the format and subject to such conditions as are prescribed; c) documents for the purposes of the — <ul style="list-style-type: none"> (i) <i>Land Act 1933</i>, (ii) <i>Registration of Deeds Act 1856</i>, (iii) <i>Strata Titles Act 1985</i>, (iv) <i>Transfer of Land Act 1893</i>; d) statutory declaration to support any of the above documents e) powers of attorney in the form and subject to the conditions prescribed; f) a declaration to confirm that a power of attorney remains unrevoked. 		
2. Business practice and financial responsibilities.	Self	Reviewer
2.1. Act in the utmost good faith to the client (CC6) and if a conflict of interest or foreseeable conflict of interest could arise [immediately recommend to the manager or another representative of the licensee of the requirement to] terminate the appointment (CC9).		
2.2. Make full and frank disclosure to clients of any interest in the transaction and if such interest is adverse to the client [immediately recommend to the manager or another representative of the licensee of the requirement to] terminate the appointment (CC6).		
2.3. Maintain confidentiality in accordance with the provisions of privacy legislation and as instructed by the client (CC14).		

	Self	Reviewer
2.4. Work for clients to be completed as soon as reasonably practicable with due care and skill (CC18). Including: a) providing all services efficiently, honestly and without concealment or any form of deception or misleading representation (CC15); b) avoiding conduct likely to bring settlement agents into disrepute (CC19); and c) avoiding unnecessary steps or work while taking all steps advisable in the client's interest (CC27).		
2.5. Create and maintain proper accounts and keep such records available for inspection by the client and authorised officers of the Department of Commerce (CC21).		
2.6. Promptly pay all clients' money received to the client or into a trust account as per the Act (CC22).		
2.7. [Immediately advise the manager or another representative of the licensee if a deficiency in the trust account is identified.] <u>Maintain a positive balance in the trust account and if the account is deficient provide for the balance to be restored and all persons who could be affected informed (CC23).</u> Never pay client's money into a trust account that is deficient (CC24).		
2.8. Accept that a client is entitled at any time to change settlement agent (or instruct a solicitor to act) without explanation and that this needs to be facilitated in a friendly and helpful manner (CC28).		
2.9. <u>Oversee</u> [Maintain] the security of allocated digital certificate (token).		

NB Duty 2.9 added to the JPR used in Session 1 as an example of a duty arising from e-conveyancing.

3. Leadership and Professional Development responsibilities:	Self	Reviewer
3.1. <u>Provide for the development and</u> [Contribute to the] implementation of the strategic and operational priorities of the business.		
3.2. Provide for the supervision and control of <u>all</u> [specifically identified positions and] employees (CC13&17).		
3.3. <u>Provide for</u> [Actively participate in] the professional development and performance [review process.] <u>reviews of all employees</u> (CC13).		
3.4. Manage own work priorities and professional development (including required Continuing Professional Development) to comply with and maintain a complete knowledge of the Act, the <i>Regulations</i> and the <i>Code of Conduct</i> (CC4).		
3.5. Convene and participate in internal and external meetings as required by the role.		
3.6. Prepare written reports and oral presentations as required.		

Skills, Understanding and Experience

	Self	Reviewer
1. Complete knowledge of the <i>Settlement Agents' Act, Regulations, and Code of Conduct</i> (CC4) and the duty to act in 'utmost good faith' to clients (CC5).		
2. Sound working knowledge of the Real Estate and Business Agents Act, Australian Consumer Law, Equal Opportunity legislation, Workplace Health and Safety, Privacy and other legislative requirements (e.g. the Building Amendment <i>Regulations</i> 2009, <i>Electricity Regulations</i> 1947, and corporate law, taxation, superannuation, and workers compensation policy and procedures).		
3. <u>Highly</u> [Well] developed conveyancing skills including the computing skills required for electronic conveyancing.		
4. <u>Highly</u> [Well] developed interpersonal communication, negotiation and client liaison skills.		
5. Highly organised with a demonstrated ability to manage competing priorities to meet required timelines.		
6. Excellent attention to detail and transcription accuracy.		
7. Good written communication skills as required, for example, in the preparation of explanatory letters to clients and other parties to settlement transactions.		
8. Ability to work in a team environment to achieve organisational goals.		

Qualifications, licences and other prerequisites.

	Mgr	Cov	UnL
1. Diploma of Conveyancing (FNS50410).			
2. Compulsory Professional Development – current and up-to-date.			
3. Current Triennial Certificate.			
4. Other			

Space for your notes and observations:



Appendix 2 - PEXA's overview of e-conveyancing

PEXA Video overview of electronic conveyancing process.

<http://www.pexa.com.au/how-pexa-works>

Video length = 9.5 minutes

e-Conveyancing provides an electronic business environment for completing property transactions including electronic lodgement with Land Registries and the electronic settlement of funds.

This includes providing an electronic environment to:

- Lodge the Land Title documents needed to register changes in property ownership and interests;
- Allow the different and accredited parties involved in the transaction to view and complete the documents to conclude the property exchange or transaction; and
- Allow for the electronic settlement of all financial transactions at a nominated date including settlement monies, duties, taxes and any other disbursements.

Through PEXA, the following transactions can be completed (subject to conditions):

- Mortgage
- Discharge Mortgage
- Caveat
- Withdrawal of Caveat
- Transfer Title
- Nomination
- Withdrawal of Nomination
- Consent
- Form 24, Form 25
- Notice of Acquisition
- Notice of Sale

Combinations of the above can be completed in one transaction.

Source: <http://www.pexa.com.au/about-e-conveyancing> accessed 5 November 2014.



Appendix 3 - Australian Consumer Law – consumer service guarantees

Australian Consumer Law guarantees the consumer that services will be provided with ‘due care and skill’, the service will be ‘fit for purpose’ and ‘supplied in reasonable time’. These consumer guarantees are also explicitly reflected in the Settlement Agents *Code of Conduct*. Due care and skill are explicitly mentioned in rule 18 of the *Code of Conduct* along with the need to do things in a reasonable time frame. The Guarantee as to service being fit for purpose is embraced by both rule 18 and rule 27. Rule 27 covers the need to ‘take any steps’ considered advisable in the client's interest while avoiding ‘unnecessary work’.

To assist in understanding the ACL and its provisions the Australian Government Treasury has prepared the following documents:

- *The Australian Consumer Law: An Introduction*, which briefly explains the content and context of the ACL; and
- *The Australian Consumer Law: A Guide to Provisions*, which contains a detailed explanation of the provisions of the ACL.

Source: http://www.consumerlaw.gov.au/content/Content.aspx?doc=the_acl/legislation.htm accessed 6 November 2014.

Table 3.2: Consumer guarantees relating to the supply of services

Guarantee	Description
Guarantee as to due care and skill Section 60	Services must be rendered with due care and skill. Exclusions, which already exist in the TPA, for transport and storage of goods for the purpose of a business and contracts of insurance will be retained.
Guarantees as to fitness for a particular purpose Section 61	Services must be reasonably fit for a purpose that a consumer, expressly or by implication, makes known to the supplier. Services must also be of a nature, quality, state and condition such that they can be expected to achieve a result that the consumer makes known to the supplier. There is an exception for situations where it is not reasonable for the consumer to rely on the skill or judgment of a supplier. The current TPA exception for services of a professional nature provided by a qualified architect or engineer from the guarantee as to fitness for purpose will be maintained, pending a review of that exemption three years after the commencement of the ACL.
Guarantee as to reasonable time for supply Section 62	Services must be provided to consumers within a reasonable time if the time is not otherwise fixed in a contract or agreed between the consumer and supplier. The time period that is reasonable would depend on the particular type of services and the circumstances applicable to the agreement.
Guarantees not to be excluded by contract Section 64	A person may not exclude any of the guarantees provided for in the ACL. Suppliers may exclude liability in respect of personal injury or death that results from the supply of recreational services. Recreational services include sporting activity or similar leisure-time pursuit, or any other activity that involves a significant degree of physical exertion or physical risk that is undertaken for the purposes of recreation, enjoyment or leisure.
Application of consumer guarantees to supplies of gas, electricity or telecommunications Section 65	This provision allows the Minister to make regulations for exemption of supplies of gas or electricity or telecommunication services. Due to the special policy considerations that apply to these essential services, industry-specific legislation has been developed at both the Commonwealth and State and Territory levels to deal with consumer issues in relation to these supplies.

Source: http://www.consumerlaw.gov.au/content/the_acl/downloads/A_guide_to_provisions_Nov_2010.pdf accessed November 2014.

Appendix 4 - Electronic Conveyancing Action-Plan Considerations

#	Action task	Who	By when
	Decide whether agency is going to implement electronic conveyancing and when will it start the process?		
	Ensure all staff understanding what is meant by electronic conveyancing. Address concerns and explain timelines and training opportunities.		
	Develop an implementation timeline/action plan, consult with staff and other key Agency stakeholders.		
	Subscribe to PEXA newsletter and review PEXA's website including the Frequently Asked Questions (FAQs).		
	Register an interest in being kept up to date by PEXA in preparation for what they call 'on-boarding'.		
	Read and explore the <i>Participation Rules</i> published by Landgate and available on their website.		
	Access Landgate's website including the Frequently Asked Questions (FAQs)		
	Agency 'Manager' to register as a Subscriber with PEXA - note this requires an agreement to abide by the <i>Participation Rules</i> . It requires the applicant to meet VOI requirements, be of good character and hold a current Triennial Certificate.		
	Develop and communicate to staff agency policy and procedures related to electronic conveyancing and security requirements.		
	Decide which staff will be Users of the electronic conveyancing system and who the Signers will be.		
	Modify job role descriptions to include responsibilities related to the security and safe storage of the digital certificates – token.		
	Ensure all Users and Signers are skilled and understand their responsibilities when using their digital signature, including security responsibilities.		
	<i>Other:</i>		
	<i>Other:</i>		
M	Monitor the implementation timeline/action plan and staff progress in relation to any learning and implementation tasks.		
R	Review the implementation plan and staff engagement – performance. Ensure any identified remedial action is followed through and monitored.		