

Solving the Settlements Problem - Notes

LIXI Evening Series - Tuesday 26 May 2009

Hosted by LIXI

Kindly sponsored by Commonwealth Bank

Industry delegates included lenders, mortgage processors, lawyers, information brokers, IT suppliers

Speakers included Simon Libbis (NECS) and Brett Hayton (247legal)

Summary. There was a robust discussion of the issues in Settlement and several macro-level problems were looked at in some detail. Debate briefly covered the elimination of the duplicate title; the importance of critical takeup; shared documents; and need for electronic registration of mortgages with the LTO's, leaving plenty of scope for identifying other areas of concern and debating the ranking of importance of which problems industry should be tackling.

There will be a second Evening Series meeting, in Sydney, to follow up on identifying and ranking other areas of concern. An email will follow with those details.

Introduction

Erik introduced the forum where industry participants could discuss the settlements problem, defining the problems and seeing what solutions could apply and the role LIXI can play, emphasising that LIXI has already done a lot of work with NECS from the Land Registry end of the transaction and settlements - LIXI is currently fulfilling a vital role in the NECS project by developing the standards for the transactions into and out of the NECS platform.

Simon Libbis: NECS is defining requirements definitions for national settlements model and this work should be finished by year end. COAG decision to support national electronic conveyancing was made last year but the new entity is waiting on government funding. There are still ongoing issues between jurisdictions.

Additional introductory comments included what electronic conveyancing means. By definition electronic conveyancing means paperless conveyancing: paperless loan contracts; paperless communications; paperless instruments; paperless settlements; and paperless titles which was a good point to start talking about the settlements problems.

Brett Hayton: Two major issues confront the industry

1. Duplicate Title
2. Takeup

Duplicate Title

If you are going to replace paper based systems with paperless electronic systems, you need to get rid of the duplicate title. The first step in paving the way for electronic conveyancing is eliminate the paper duplicate certificate of title. To do this, you need strong policy, legislation and implementation.

Question - What is the duplicate title and why do we need it?

Despite the Land Register being the "definitive record" for land ownership and record of security interests, all states with the limited exception of Queensland, have retained the paper duplicate certificate of title. The duplicate title is evidence of the "right to deal". With some exceptions, you cant sell, you cant buy, you cant mortgage, you cant discharge without the duplicate title. To date, the conveyancing system is underscored by the extensive use of the duplicate title.

Question. If the duplicate is eliminated, what methodologies replace it?

If the duplicate title represents "the right to deal" with the land, and the duplicate is removed, the "right to deal" now becomes the issue of identity. Clients need to be properly identified to prove they and only they have the right to deal with the land on the Register.

Instead of the duplicate, it will be replaced with a methodology of identification requirements and security numbers or PINS.

Government and industry have to take a hard look at the issues of identity and security numbers. The systems will have to be robust, have the appropriate safeguards and workable at the same time. The problem is if the replacement systems are worse than the current system we already have, know and which works.

Industry will have to take a lead role in establishing policy in this area and not just leave it to government

Takeup

A long recognised problem with 4 party transactions such as ECV or NECS is getting takeup. KPMG study estimated takeup of 10% in year 1 and increasing by 10% per annum. The problem is this is not fast enough when you need critical takeup of at least 70% of all conveyancing practitioners participating and 100% of lenders and mortgage processors. 10% participation only equals 1 in 100 transactions being electronic and 99 paper based. This is not good enough for lenders or conveyancers.

The Maths

The government model

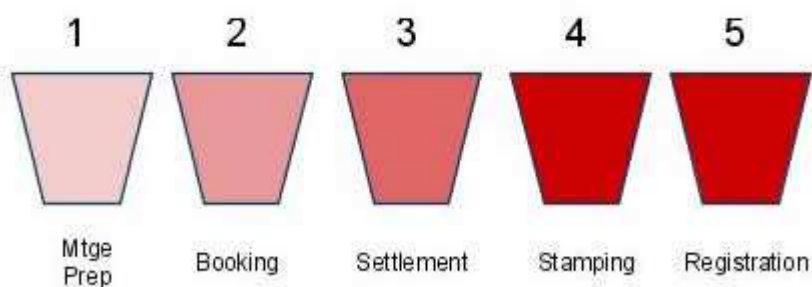
	Year 1	Transactions	Year 2	Transactions
Conveyancers	1/10		2/10	
Settlement	$1/10 * 1/10$	1/100	$2/10 * 2/10$	4/100
Chained Settlement	$1/100 * 1/10$	1/1000	$4/100 * 2/10$	8/1000

The issue of takeup needs to be addressed. There appears to be a widely held assumption if the NECS model is built, usage will start out small but steadily grow. But the maths works against this theory because there is not a lot of benefit for the early adopters trying to seek out transactions for the sake of seeking out transactions. There needs to be real tangible benefits for the early subscribers. One in 100 or 1 in 1000 does not cut it for conveyancers and it certainly doesn't cut it for lenders. The danger is the early adopters will simply lapse back to existing work flows and many won't make the required investment in the first place.

The Mortgage Process

There are 5 distinct processes for settling a mortgage from Unconditional Loan through to Registration. The incoming mortgagee generally has separate distinct ways to deal with these processes. Some are dealt with internally with separate departments. Sometimes they are outsourced, other times they are offshored or a combination of the above. This is a complicating factor in dealing with disparate processes and systems.

5 stages of a Mortgage Settlement



The incoming mortgagee is generally the party that has to deal with all 5 stages. The incoming mortgagee is the party providing the funds, collecting the title and transfer at settlement, and registering their security interest.

The other three parties to the transaction have a much greater interest in the first three stages and more or less has little to do with the final stages. ie stamping and registration. Thus in short most of the problems in the settlement process, have less to do with stamping and registration, but more to do with all the pre-settlement functions.

<u>Party</u>	<u>Stage</u>	<u>Mortgage Prep</u>	<u>Booking</u>	<u>Settlement</u>	<u>Stamping</u>	<u>Registration</u>
Incoming Mortgagee		YES	YES	YES	YES	YES
Purchaser		YES	YES	YES		
Outgoing Mortgagee		YES	YES	YES		
Vendor		YES	YES	YES		
Government					YES	YES

Alternate Viewpoints

At the forum there were some strongly voiced opinions.

Why is government getting involved with settlements?

Governments role lie in land registry and revenue collection. Land registries have been in business of land registration administration for the past 150 years. That is 150 years of experience in what works best for managing the Register Book for land titles and subdivisions of existing titles. It is a simple observation, but land registries have no experience and no involvement in settlements nor in the rest of the conveyancing process or mortgage and loan processing.

Registration is the most important part of the process to resolve

An alternate view put forward was the incoming mortgagee plays the most important role in the settlement process and the most important stage to resolve was registration and eliminating the delays in registering the DTM.

The point was made that resolving issues with registration should be dealt with first, even though this is the last stage in the process.

The problem is not settlement or registration but communication issues

A lot of the problems lie around the fact that the majority of existing communication channels are the phone, fax and post (especially between the major lenders and conveyancing practitioners). More emphasis should be on developing industry standard communications and messaging systems that complements and can replace the existing communication channels.

Industry Problems - what are they?

What are the problems that plague the conveyancing and mortgage industry?

It is only natural to identify the problems first before suggesting the solution or solutions. What may be a problem for conveyancers is not a problem for lenders; and what may be a problem for government may not be the same problem for conveyancers or lenders.

Second in importance is to rank the problems and prioritise which problems ought to be dealt with first.

Should it just be government developing solutions or should industry be taking a lead? It is not mutually exclusive that solutions will evolve that deal with problems within the different stages, industry taking a lead in some areas and government in other. An emerging idea was that lenders (industry) need to take a more active role and lead on these issues.

Debate only scratched the surface of identifying the problems and no time was available to ranking, prioritizing or discussing potential solutions.

Unconditional Contract / Loan	1 Mtge Prep	2 Booking	3 Settlement	4 Stamping	5 Regn
Problems	Lost Faxes - Contract and Transfer	20 minutes on hold	Attendance	Supporting Docs	Requisitions
	Delays	Outstanding Requirements?	Fall over	Retaining supporting docs	Delays and the Registration gap
	Errors	Ready / Not Ready?	Wrong Cheques	Carrying risk if in error	Failure to register
	No email	Available Funds / Payout?	Missing title		
	Paper loan contracts	Settlement Date Order even if ready for month	Execution errors discovered		
			Bank Cheques - no EFT		

Follow-up Meeting

LIXI will host a second Evening Series on solving the settlement problem, in Sydney on 16th June. This will continue from the first meeting, to identify other issues in the settlement process and prioritise their solutions.

Invitations to this meeting will follow shortly

Erik Fenna
CEO, LIXI Limited
erik.fenna@lixigroup.com
0409 771 652