



PROPERTY LAW  
SECTION  
NEW ZEALAND LAW SOCIETY

NZLS EST 1869

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# PROPERTY TRANSACTIONS AND E-DEALING PRACTICE GUIDELINES

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*July 2012*

*Prepared by the New Zealand Law Society's  
Property Law Section*

# PROPERTY TRANSACTIONS AND E-DEALING PRACTICE GUIDELINES

## CONTENTS

	<i>Page</i>
<b>Part 1 Property Transactions Practice Guidelines</b>	
Introduction.....	4
1. Conveyancing Practice .....	5
2. Acting for the Vendor.....	9
3. Acting for the Purchaser.....	19
4. Transfer of relationship property.....	30
5. Undertakings .....	31
6. Settlement and payment of the purchase price .....	32
7. Competence and Client Service .....	37
Schedule 1 Principles of Charging.....	39
Schedule 2 Disputes Over Charges .....	41
Appendix same day cleared payments process flow.....	42
<b>Part 2 E-dealing Guidelines</b>	
8. Specific e-dealing Guidelines.....	47
A E-dealing Prerequisites .....	47
B Nominating a Primary Contact.....	47
C Creating an e-dealing .....	47
D Nominating a Conveyancing Professional.....	48
E Instrument Preparation .....	49
F Back to Back Dealings .....	49
G Mortgagee Separately Represented .....	50
H Digital Certificate Protocols .....	50
I Completion of Authority and Instruction Forms (A & I) .....	51
J Client Identity.....	52
K Format of Authority and Instruction Forms (A & I).....	55

L	Execution of Authority and Instruction Forms (A & I) By Attorney .....	55
M	Capacity.....	56
N	Retention of Authorities .....	57
O	Transaction Ceasing to Qualify as e-dealing .....	59
P	Mortgages .....	59
Q	Discharges .....	60
R	Transfers and other Instruments .....	62
S	Process of Certification .....	63
T	Certification by Lawyer not from firm named on Authority and Instruction (A & I) .....	63
U	Settlement of an e-dealing .....	64
V	Releasing and Submitting.....	64
W	Evidence of Registration .....	65
X	Perfection of Transaction.....	65
	APPENDIX 1.....	67
	APPENDIX 2.....	69
	APPENDIX 3.....	71

## INTRODUCTION

The following Guidelines have been compiled by the Property Law Section of the New Zealand Law Society. The Guidelines are designed to reflect recommended practice for residential property transactions and for e-dealings. They are not intended to:

- be an exhaustive checklist;
- reflect the requirements of every type of conveyancing situation;
- prevent a lawyer from exercising professional judgement;
- be a substitute for the training and education material produced separately for the use of Landonline by LINZ in respect of the functionality of the Landonline system maintained by LINZ and used for e-dealings.

The Guidelines:

- replace the *Property Transactions Practice Guidelines* published in September 2009 and the *E-Dealing Guidelines* published in October 2008;
- are subject to the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008*;
- are subject to all applicable legislation and regulations.

The Guidelines have been endorsed by the NZLS Board and came into effect on 9 July 2012. References to Acts, Regulations, other Guidelines and documentation (including the current version of the Form of Agreement for Sale and Purchase approved by the Real Estate Institute of New Zealand Incorporated and the Auckland District Law Society Incorporated (Ninth Edition 2012) ('ADLS Agreement')) are to the same as at the above date.

It is the responsibility of those using the Guidelines to check for any changes to the same (including changes to any relevant laws or standard forms) after the above date.

A number of the Guidelines in chapter 6 relating to settlement and payment of the purchase price are given contractual force in the ADLS Agreement. Lawyers need to be mindful of the relevant provisions in the ADLS Agreement in this regard.

References to the Standard for verification of identity for registration under the Land Transfer Act 1952 (LINZS20002) are to the standards published 11 February 2011 (effective date 1 April 2011).

The Guidelines in Part 2 are endorsed by the Registrar General of Land for recommendation to lawyers using Landonline.

## **PART 1 PROPERTY TRANSACTIONS PRACTICE GUIDELINES**

### **1. CONVEYANCING PRACTICE**

The following recommendations apply unless the parties agree otherwise:

#### **Preparation of documents**

- 1.1 You should prepare a document if you are acting for the party who receives the benefit (or principal benefit) of the document. For example:
  - a. If you act for the transferee you should set up the e-dealing and prepare the electronic transfer instrument or prepare the transfer if a paper based dealing is required.
  - b. You should prepare the document giving priority if you act for the lender taking priority.

#### **Custody of the Agreement for Sale and Purchase**

- 1.2 The purchaser should hold the signed Agreement for Sale and Purchase if only one copy has been signed. If you act for the purchaser in these circumstances you should:
  - a. Give a copy of the agreement to the vendor's lawyer; and
  - b. Give the other parties reasonable access to the agreement.

#### **Payment of Costs and Disbursements**

- 1.3 Recommended:
  - a. Consents
    - i. The mortgagor pays the costs of obtaining any required consent of any mortgagee or encumbrancee to the transfer or leasing of the charged property.
    - ii. The sub-lessor pays the costs of obtaining the consent of the head lessor to a sub-leasing.
    - iii. The head mortgagor pays the costs of obtaining the consent of a sub-mortgagee to a variation of the head mortgage.
  - b. Mortgage
    - i. The mortgagor pays the costs of variation of the mortgage.
    - ii. The mortgagee pays the costs of transfer or transmission of the mortgage and the change of name of the mortgagee.
    - iii. The sub-mortgagor pays the costs of discharge of the sub-mortgage.
    - iv. The party executing a document in the presence of a notary pays the notary's fees.
  - c. LINZ Requisition/Rejection Fee
    - i. If you are at fault for the incorrect document you should pay the fee.
    - ii. The fee is not to be charged to a client.

- d. Assignment of Lease
  - Unless the lease provides otherwise:
    - i. The assignee pays the costs of preparing the assignment documents.
    - ii. The assignee pays the costs of registering the assignment documents.
    - iii. The assignor pays the costs of obtaining the lessor's consent.

#### **Fee for registration**

- 1.4 Your client must pay the LINZ registration fees on all of the instruments for which registration is the responsibility of your client.

#### **Right to hold loan documentation**

- 1.5 You should hold the loan documentation under a contributory mortgage if you act for a majority (in dollar value) of the mortgagees. In these circumstances you should also be the lawyer who certifies and signs the mortgage instrument.

#### **Transfer under a will**

- 1.6 A beneficiary under a will may choose a lawyer to act for him or her and prepare the e-dealing and transfer instrument. That person must then pay the lawyer's costs.

#### **Consent of Prior Mortgagees**

- 1.7 Take care when dealing with second or subsequent charges. Prior mortgages will almost always require the mortgagor to obtain the prior mortgagee's written consent before registering a subsequent instrument.
- 1.8 If, as is often the case, you are also acting for the subsequent mortgagee make sure that the interests of the subsequent mortgagee are protected as well as those of your client. You should give consideration to taking instruction from the prior mortgagee for a formal deed of priority. A conflict may exist where you have acted for the first mortgagee in the registration of that mortgage (refer Guidelines 3.49–3.51).

#### **Transfers of Properties subject to Mortgages**

- 1.9 Make sure you obtain the mortgagee's consent when you transfer a property subject to a mortgage. This situation can arise, for example, when there is a transfer from proprietors as joint tenants to a tenancy in common. The mortgagors may well be in breach of their obligations under the mortgage if they fail to get consent.
- 1.10 Because of the effect of section 205 of the Property Law Act 2007 on the limitation of liability of trustees, you are likely to find, in the case of a transfer of a property to the trustees of a family trust, that the mortgagee will insist upon the existing mortgage being discharged and a new mortgage being granted by the trustees (with their liability, whether limited or not, being the subject of provisions in the new mortgage or loan facility).

## Place of settlement

### 1.11 Basic Rules

- a. Sale of Land
  - i. Settle at the vendor's lawyer's office when the discharge of a mortgage of the land is not required for settlement purposes.
  - ii. Settle at the (first) mortgagee's office (or the (first) mortgagee's lawyer's office) if a discharge of mortgage is required for settlement purposes.

However, for settlement of land sales, see chapter 6 and Guideline 1.12 below.

- b. Mortgage Advance – no land sale. Settle at the mortgagee's office or the mortgagee's lawyer's office.

### 1.12 Practice

What usually happens in practice is that settlement of land sales is completed by direct transfer of funds (chapter 6) with remote settlement.

## Notice of Sale

1.13 If you act for the purchaser or a qualifying lessee you must give to the vendor's lawyer or the lessor's lawyer or prepare online via QV Sales Direct a Notice of Sale (section 31 Local Government (Rating) Act 2002) as appropriate.

1.14 If you act for the vendor or a qualifying lessor you must send or forward the completed Notices of Sale immediately after settlement to the:

- i. territorial authority
- ii. water rating authority
- iii. regional/district authority.

1.15 If you act for the vendor and are not registered for QV Sales Direct you need to ensure the purchaser's lawyer releases the pending sale notice on settlement where the purchaser's lawyer has prepared the Notice of Sale via QV Sales Direct. It is recommended you obtain a suitable undertaking.

## Certifying documents correct

1.16 Signing a paper instrument correct or certifying and signing an electronic instrument is not a mere procedural step. Read all certifications prior to signing.

1.17 The purpose of the certificate is to assure the Registrar-General of Land that the instrument is correct. If you are not aware of the circumstances surrounding a given transaction then you are not in a position to give the certification. You should read and consider the following material on this subject:

- a. *DLR v Thompson* [1922] NZLR 627 and *De Chateau v Child* [1928] NZLR 63).
- b. *Registrar-General of Land v Marshall* HC, Hamilton AP30\94, 19 December 1994, Hammond J.
- c. Adams Land Transfer Act second edition (1971).

- d. Opinion by BE Hayes for Land Information New Zealand, *The Certificate of Correctness under The Land Transfer Act*, 12 July 2000.

1.18 Rule 2.5 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* states:

*A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.*

**Client Identity**

1.19 Refer to Section J of Part 2 of these Guidelines.

## 2. ACTING FOR THE VENDOR

**Warning:** This chapter identifies some issues which often arise in agreements for sale and purchase of land. **The chapter should not be treated as an exhaustive checklist for all potential problems.**

### Before the Vendor Signs the Agreement

2.1 These matters should, if possible, all be discussed with the vendor before the vendor signs the agreement.

The relevance of some items will depend on when the vendor first contacts you.

2.2 Get suitable ID from the vendor including (if required) a document showing the vendor's name and the physical address of the property (such as a rates demand). (See Part 2 Section J of these Guidelines).

2.3 Costs: see Guideline 7.1 regarding the provision of information to clients prior to commencing work.

2.4 Marketing the Property

- a. Discuss the advantages of obtaining a LIM for marketing and information purposes.
- b. Sole Agency/General Agency. Make sure the vendor understands the implications of the real estate agent's authority to sell.
- c. Check the conditions of sale by tender or auction if the vendor is using one of these means of marketing. The check should be made if possible before the conditions are made available to the public.
- d. If the property is a unit in a unit title development, check and confirm with the vendor the information contained in the compulsory pre-contract disclosure statement required to be given to the purchaser under section 146 of the Unit Titles Act 2010 if the vendor is using this as part of the marketing material.

2.5 Advise the vendor not to sign an agreement without referring it to you first.

Clauses in an agreement requiring the vendor's lawyer's approval are often unsatisfactory. Among other things these clauses give a purchaser an opportunity to withdraw if, as vendor's lawyer, you require some changes.

2.6 If the property is a unit in a unit title development advise the vendor that the agreement (whether conditional or unconditional) must not be signed by the vendor until proper pre-contract disclosure has been made as required under section 146 of the Unit Titles Act 2010. Advise the vendor about the additional disclosure statement which may be requested under section 148 of the Act.

2.7 Get an accurate legal description of the property.

2.8 Search the title and plan to the property. Identify any problems that might prevent the vendor from giving a clear title for settlement purposes. (E.g. a caveat registered by a previous purchaser).

- 2.9 Is the property Maori Land? Make sure that sufficient time is allowed for the relevant statutory requirements to be met if it is.
- 2.10 Get all the details required if you are preparing the agreement (including in the case of the sale of a property in a unit title development the details required to be included in the compulsory pre-contract disclosure statement required to be given to the purchaser under section 146 of the Unit Titles Act 2010). Check those details with the vendor if someone else has prepared the agreement.
- 2.11 What chattels are included in the sale? Is the list of chattels in the agreement correct? Are any of the chattels subject to a charge? (See Guidelines 2.39 and 3.41.)
- 2.12 Has the vendor received any notice or demand, or does the vendor have any knowledge of any requisition or outstanding requirement, or has the vendor given any consent or waiver, which in any of these cases directly or indirectly affects the property and which has not been disclosed in writing to the purchaser? (Clause 6.1 ADLS Agreement.)
- 2.13 Has the vendor made any alterations or additions to buildings on the property without getting the necessary building consent or the consent of co-lessors in the case of a cross-lease title or of the body corporate in the case of a unit title? Have all code compliance certificates been obtained? Get the vendor to confirm that the plan referred to in Guideline 2.8 correctly represents the property.

Carports, garages, garden sheds, decks, conservatories and woodburning installed fires often cause problems here.

- 2.14 Is the vendor able to give all of the warranties or promises made in the Agreement for Sale and Purchase?
- 2.15 Is the property tenanted?

If it is:

- a. Get a copy of the tenancy agreement or lease.
- b. Is the property to be sold subject to the tenancy?
- c. Does the tenant have an option to purchase or right of first refusal?
- d. Is the tenant's consent to the sale required?
- e. Is there any breach of the lease?
- f. Is there anything else relevant to the sale in the lease?
- g. If the property is sold with vacant possession, is there sufficient time to give the necessary notice to quit to the tenant?
- h. Are the vendor's chattels distinct from those of the tenant?
- i. Are there any bonds held?

- 2.16 Are there any mortgages or charges over the property? Will the sale proceeds be enough to repay the mortgage (including any penalty amount for breaking a fixed interest loan)?

Mortgages given in support of a guarantee of a third party's obligations can often cause difficulty.

- 2.17 Does the vendor have to account for GST on the sale? If yes:

- a. On what basis is the vendor registered for GST – namely, invoice or payments?
- b. Should the purchase price be “plus GST” or “GST inclusive”?
- c. When does the vendor have to account for GST?
- d. When should the purchaser pay GST?
- e. Does the sale come within the compulsory zero-rating regime (CZR) for land transactions? This requires vendors who are GST registered to charge GST at 0% on any supply to a registered person involving land, or in which land is a component, **if at the time of settlement:**
  - i the recipient intends to use the goods for making taxable supplies; and
  - ii the supply is not a supply of land intended to be used as a principal place of residence of the purchaser or a relative of the purchaser.

Best practice when acting for a vendor will be to draft agreements on a plus GST (if any) basis where there is potential for the application of the CZR rules.

- f. If the CZR rules don't apply can the sale nevertheless be zero rated?
- g. When is the time of supply?
- h. Does the agreement provide for a nominee? What are the GST implications?

Make sure the agreement accurately reflects the vendor's requirements and that the relevant GST information has been provided (Schedule 2 ADLS Agreement) or, where it has not, that the vendor understands the full implications of the GST clauses.

- 2.18 What are the tax implications for the vendor and are there any associated person issues? The vendor may, for example, have significant tax liability when:

- a. Sub-dividing.
- b. Selling a farm.
- c. Selling a commercial property.
- d. Selling an investment property.

Liaise with the vendor's accountant where appropriate.

- 2.19 Do any legal issues arise from the:
- a. Resource Management Act 1991 (clauses 6.1 and 6.2(5) ADLS Agreement).
  - b. Building Act 1991 and/or the Building Act 2004 (clauses 6.2(5), 6.2(6) and 6.3 ADLS Agreement).
  - c. Overseas Investment Act 2005 (clause 9.4 ADLS agreement). Make sure any conditions of tender or auction include appropriate provisions for tenderers or bidders who are "overseas persons".
  - d. Land Act 1948 (clause 9.5 ADLS Agreement).
- 2.20 Does the vendor need to make the sale subject to any conditions? For example:
- a. The vendor entering into an agreement to buy another property.
  - b. The vendor's tenant agreeing not to exercise an option to purchase.
  - c. The vendor's existing sale agreement for the property being cancelled.
  - d. The consent of any mortgagee, particularly if the sale proceeds may not be sufficient to clear all of the vendor's mortgages.
- 2.21 Does the vendor understand and accept the conditions in the agreement required by the purchaser?
- 2.22 Are there any relationship property issues that might affect the vendor's ability to sell?
- 2.23 Identify any other special issues relating to the sale for which provision should be made in the agreement.
- 2.24 Make sure you have no conflict of interest when the purchaser, or potential purchaser, is identified.
- 2.25 Help your client in negotiating with the purchaser if it is appropriate to do so.
- 2.26 Assign values to chattels, shares, buildings, house section, forestry, lease goodwill, livestock etc when it is appropriate to do so. Make sure the vendor understands the tax consequences (if any) of the values given.
- 2.27 Prepare the sale agreement for your client if a real estate agent or third party has not already done so (and if a unit title property is involved prepare the pre-contract disclosure document required under section 146 of the Unit Titles Act 2010) for execution by the vendor. The vendor should provide you with or confirm the information in the statement. It is usually appropriate (but not compulsory) for a purchaser to sign a sale agreement first and submit it to the vendor as an offer to purchase.
- 2.28 Regardless of who prepares the sale agreement make sure that your client fully understands the basic details, including among other things:

- a. The purchase price.
- b. The adequacy of the deposit. 10% of the purchase price is desirable.
- c. The balance of the deposit that will be left available to the vendor if the purchaser defaults and the real estate agent is entitled to commission.
- d. The position regarding GST including, in particular, the GST date and time of supply (and if applicable the CZR regime).
- e. The possession date and settlement date.
- f. The chattels included in the sale.
- g. Any warranties given in relation to the property and the chattels. Particular care is necessary in respect of warranties relating to:
  - i. work carried out by the vendor; and
  - ii. weather-tightness.
- h. The implications of any clauses included as further terms of sale.
- i. The implications of the general terms of sale particularly if they are of special relevance to the vendor's circumstances.
- j. If the property is a unit title property the types of disclosures which are or may be required, that the body corporate or its manager may charge the vendor to supply the information, the time limits for providing the information and the consequences of failing to make any required disclosure or of making any required disclosure out of time. The cost of 'additional' disclosure can be passed on to the purchaser but disclosure cannot be withheld pending payment.
- k. The implications of any risk and insurance clauses in the agreement, especially if an on purchase is involved.

Your comments should be made in, or confirmed by, a letter to the vendor. Make sure the agreement has been properly signed.

### **After the Agreement is signed**

2.29 Make sure the deposit is paid.

2.30 In many cases the vendor will not contact you until after the agreement has been signed.

In these cases do all of the things you should have done before the agreement was signed, if relevant and if the property is a unit in a unit title development make sure the vendor understands the disclosure obligations placed on the vendor under the Unit Titles Act 2010 including the obligation to rectify inaccuracies in prior disclosures as provided in section 150 of the Unit Titles Act 2010.

2.31 Insurance: Advise the vendor of the need to keep the property fully insured until settlement date.

- 2.32 Advise the purchaser, or the purchaser's lawyer, in writing that you are acting for the vendor and supply the purchaser's lawyer with a copy of any tenancy agreement.
- 2.33 Diarise all important dates, which will include but not necessarily be limited to:
- a. Conditional dates.
  - b. Any dates by which the disclosure of information must be made to the purchaser (for example under the ADLS Agreement or pursuant to the Unit Titles Act 2010).
  - c. Possession date.
  - d. Settlement date (if it differs from the possession date).
- 2.34 Keep your client and the real estate agent informed. Give your client and the real estate agent regular progress reports when it is appropriate to do so.
- a. Advise the purchaser's lawyer and the real estate agent when each condition for the vendor's benefit is satisfied or waived.
  - b. Ask for extensions of conditional dates if it is appropriate to do so.

Remember that conditions for the vendor's sole benefit can be waived, by the vendor, if the condition cannot be satisfied on time. In these cases advise the purchaser's lawyer that the condition is waived rather than satisfied. If the condition is not solely for the benefit of the vendor then the purchaser will need to agree to the waiver of it.

- 2.35 Ensure your client complies with any requests by the purchaser for additional disclosure under section 148 of the Unit Titles Act 2010 within the prescribed time limits set out in that Act and in accordance with that Act's technical requirements.

Remember failure to provide any disclosure information within prescribed time limits may lead to settlement being deferred by the purchaser, and in some cases may allow the purchaser to cancel the agreement.

#### **After conditions have been satisfied or waived**

- 2.36 Collect the deposit or balance deposit. Pay the deposit in accordance with the vendor's instructions and check the real estate agent's commission statement.
- If the purchaser is nominating a third party to complete the purchase, consider whether to seek completion of a Deed of Nomination. However, unless the sale agreement provides for it, the vendor cannot insist on this.
- 2.37 Obtain authority to discharge mortgages from all mortgagees. Mortgagees will usually make authorities to discharge available before settlement against your firm's undertaking:
- a. Not to register the discharge until settlement; and
  - b. To protect the mortgagee's interests after settlement by payment of the moneys required by the mortgagee.

Get authorities to discharge any other encumbrances or charges that must be removed from the title for settlement purposes.

- 2.38 Advise the purchaser's lawyer of particulars of your Primary Contact and Conveyancing Professional for the purpose of the transaction and ask the purchaser's lawyer to set up the e-dealing and advise you of the dealing number (refer to Part 2, Section B of these Guidelines).
- 2.39 Arrange for a Personal Property Securities Register search to check that none of the chattels or any part of the property included in the sale are subject to a security interest and obtain any necessary releases from the security holder.
- 2.40 Contact the purchaser's lawyer concerning how settlement will take place. This will be by direct transfer of funds, except where the purchaser's lawyer in the limited circumstances set out in chapter 6 elects to pay by bank cheque.
- 2.41 Complete a settlement statement and send it to the purchaser's lawyer as soon as possible. Do not leave preparing or sending the settlement statement until the last minute.

You may need the following information to complete your settlement statement:

- a. Details of local rates, regional council rates, water rates, body corporate levies and/or other sums outstanding to any applicable body corporate and other outgoings that have to be apportioned as at the settlement date.
- b. Details of any tenancy, particularly the amount of rent and the date to which it is paid (where the property is sold subject to the tenancy).

Unless previously supplied and if required obtain a GST invoice from your client (or complete one on your client's behalf) and, if appropriate, send it with your settlement statement if the sale is a taxable supply. Care needs to be taken as to when time of supply occurs, particularly if your client is registered on an invoice basis. Consider when to obtain a GST invoice (or complete one on your client's behalf) and when to forward it to the purchaser's lawyer. Consult your client's accountant if necessary.

The settlement statement should clearly state the full amount that is required to be paid on settlement, including any GST or interest.

Provide an appropriate personal undertaking or evidence:

- a. That all rates and other outgoings or incomings which have been apportioned have been paid or received to the respective dates indicated in the settlement statement.
  - b. Concerning payment of water rates for metered properties.
- 2.42 Arrange for a water meter reading as near as possible to the settlement date if the property being sold has a water meter.
  - 2.43 If the property is a unit in a unit title development obtain or prepare a pre-settlement disclosure statement and have it certified by the body corporate as required under section 147 of the Unit Titles Act 2010. As the body corporate may withhold its certificate if the vendor is in debt to the body corporate you should confirm with your client that there are

no outstanding levies. Obtain a copy of the body corporate's insurance policy or certificate and supply this to the purchaser's lawyer in each case within the times specified in the ADLS Agreement and or the Unit Titles Act 2010 (as applicable). Allow plenty of time to obtain the necessary information and certification bearing in mind section 206 of the Unit Titles Act 2010.

- 2.44 Get Notices of Sale from the purchaser's lawyer or, if required, provide to the purchaser's lawyer the vendor's information to enable the purchaser's lawyer to prepare online via QV Sales Direct Notices of Sale (section 31 Local Government (Rating) Act 2002). Check that they are correct.
- 2.45 Get, or prepare, any other documents that are required for settlement purposes, e.g. landlord's consent, resource consent transfers, share transfers, transfer of licences.
- 2.46 Get the vendor's instructions for payment of the net amount due to the vendor after the sale has been completed. Where appropriate, obtain from the vendor a bank deposit slip or written confirmation of the bank account details with instructions to deposit the net proceeds of sale direct into the account.
- 2.47 Get the vendor(s) to sign the Authority and Instruction form and any other necessary documents. Make sure the identity of the vendor(s) is properly verified (including obtaining (if required) a document showing the vendor's name and the physical address of the property (such as a rates demand)) and ensure that all signatures are properly witnessed. (Refer to Section J of Part 2 of these Guidelines and LINZ Standard for verification of identity for registration under Land Transfer Act 1952 (LINZS20002).)
- 2.48 Make sure you get any third party signatures necessary for documents required for settlement.
- 2.49 Ascertain the exact amounts required to repay all mortgages and other charges registered against the title to the property on the settlement date. Check these amounts with your client.
- Make sure you can comply with the mortgagee's or chargeholder's repayment requirements.
- 2.50 Make arrangements for the purchaser to obtain all keys, electronic door openers and security codes ("keys") to the property after settlement. This is usually done by:
- a. Your exchanging the keys for payment on settlement; or
  - b. Your advising your client to give the keys to the purchaser once you have confirmed that settlement has been completed; or
  - c. Your advising the real estate agent or other third party holding the keys that it is in order to release the keys to the purchaser, because settlement has been completed.
- 2.51 Remind the vendor to make the necessary arrangements for power, gas, telephone and other utilities (and if applicable cancellation of insurance – but insurance should not be cancelled before settlement has actually occurred) effective from the date of settlement.

- 2.52 Certify and sign all instruments for which you are responsible in the e-dealing created for the transaction and pre-validate the dealing. Then provide the purchaser's lawyer with your firm's undertaking regarding certification and signature and the release of the instruments on settlement (refer to Part 2 of these Guidelines).
- 2.53 If the property is a unit in a unit title development, following settlement promptly notify the body corporate in writing of the change of ownership.

### Settlement in Person

- 2.54 Where settlement is in person, in exchange for payment of the amount due on settlement:
- a. Release any electronic instruments into the Landonline workspace of the purchaser's lawyer; and
  - b. Give the purchaser's lawyer any other documents required for the settlement (e.g. leases, tenancy agreements).

### Settlement with a conveyancing practitioner

- 2.55 A lawyer should not seek, accept or need to rely on an undertaking from a non-lawyer. The paramount concern for the lawyer must be the protection of the interests of the client concerned. Undertakings given by lawyers can be and are enforced by a Court under its inherent jurisdiction arising from the fact that lawyers are officers of the Court. Conveyancing practitioners are not officers of the Court and their undertakings cannot be enforced by the Court under its inherent jurisdiction. An undertaking given by a non-lawyer may not be enforceable in law.

### Remote settlement

- 2.56 Where the conveyancing practitioner acts for the vendor and the lawyer acts for purchaser, the instruments should be released into the control of the purchaser before the funds are paid. The conveyancing practitioner is protected by the lawyer's undertaking, which he or she could enforce.
- Where a conveyancing practitioner acts for the purchaser, the vendor's lawyer should not release the instruments until settlement moneys are received in cleared funds.

### Settlement in person

- 2.57 The ADLS agreement provides for remote settlement except where payment by bank cheque is permitted under these Guidelines, settlement may then be made by personal delivery.

**Note:** Where a conveyancing practitioner is acting for a party and the sale contract is to be on a form other than the ADLS Agreement, it is suggested that the following provision be inserted in the agreement:

*"Where a conveyancing practitioner acts for a party, the Property Law Section Property Transactions and E-Dealing Practice Guidelines relating to dealings involving conveyancing practitioners prevail over any other provisions in this agreement. Further, despite any other provision in this agreement, a party is not bound to rely on an undertaking or obligation of a conveyancing practitioner."*

### Settlement by Electronic Transfer of Funds

2.58 See chapter 5 *Undertakings* and chapter 6 *Settlement and Payment of the Purchase Price*.

### Settlement with a Private Individual

2.59 Where a private individual (who is not a lawyer or conveyancing practitioner) is self represented the following procedure should be adopted:

2.60 The instruments must be paper based. (If a lawyer is involved in the registration process a letter should accompany the paper dealing advising LINZ that the other party is self represented, necessitating a paper dealing. Refer also to <http://www.linz.govt.nz/survey-titles/land-registration/manual-dealing/index.aspx>.)

2.61 No undertaking should be sought, accepted or relied upon from a private individual.

2.62 All financial arrangements should be conducted in a way that will protect the client's interests. If acting for a vendor an electronic funds transfer should be preferred provided the bank gives confirmation to you in a form satisfactory to you that it is paid in cleared funds and will not be reversed. If this is not possible a bank cheque should be required and payment cleared. If acting for a purchaser, settlement should be in person to ensure all necessary documents are received when the funds are exchanged.

**Note:** Where the ADLS agreement is not used, wherever possible lawyers should ensure a clause is inserted as follows:

“Notwithstanding anything to the contrary in this agreement the Property Law Section *Property Transactions and E-Dealing Practice Guidelines* apply in all respects.”

### 3. ACTING FOR THE PURCHASER

**Warning:** This chapter identifies some issues which often arise in agreements for sale and purchase of land. **The chapter should not be treated as an exhaustive checklist for all potential issues.**

#### Before the purchaser signs the agreement

- 3.1 Get suitable ID from the purchaser (see Section J of Part 2 of these Guidelines).
- 3.2 Costs: see Guideline 7.1 regarding the provision of information to clients prior to commencing work.
- 3.3 Advise the purchaser not to sign an agreement without referring it to you first. Tell the purchaser that lawyer's approval clauses may not fully protect their interests.
- 3.4 If the property is a unit in a unit title development advise the purchaser not to sign the agreement until the purchaser has received a pre-contract disclosure statement pursuant to section 146 of the Unit Titles Act 2010. Also advise the purchaser about the right to an additional disclosure statement under section 148 of the Act.
- 3.5 What entity will purchase the property, e.g. individual(s), company, trust? Get the purchasers' correct names as shown on their photo ID.
- 3.6 Should multiple purchasers purchase as joint tenants or tenants in common? If tenants in common, in what shares?
- 3.7 How will the purchaser pay for the property?
  - a. Is finance required?
  - b. Does the purchaser have to sell another property?

Make sure appropriate conditions are included in the agreement.
- 3.8 Will the purchaser be able to insure the property from the settlement date?
  - a. Is the property insurable on reasonable terms at a reasonable premium?
  - b. What will happen if as a result of a natural disaster or other similar event the insurer declines cover as at the settlement date?

Make sure appropriate conditions are included in the agreement.
- 3.9 Get a search of the title and all relevant encumbrances on it. Some problems associated with titles, particularly leasehold, cross lease and unit titles, cannot be requisitioned. As a result you should, where possible, get searches before the agreement is signed.
- 3.10 Make sure the purchaser identifies the correct property on a suitable plan.
- 3.11 Explain the effect of any relevant interests, restrictions or encumbrances on the title to the purchaser.

### 3.12 Cross lease titles:

- a. Search the title, leases (including where relevant the leases of the other flats) and flats plan. Where there are more than one flats plan, search all of the plans.
- b. Explain to a purchaser who is not familiar with the cross lease concept how the leases work.
- c. Identify any problems created by clauses in the lease, particularly those provisions which add to or amend the standard terms.
- d. Ask the purchaser if all the buildings on the property are on the flats plan. Also, ensure that the purchaser is satisfied that the configuration of the buildings is the same as that described on the flats plan.
- e. Check with the purchaser that the exclusive use areas correspond with the physical layout and usage.
- f. Include an appropriate clause in the agreement, if the purchaser requires the vendor to remedy any defects in the leases or plans.

### 3.13 Unit titles:

- a. Search the title, plans, body corporate rules and, if possible, the body corporate minutes. Include a clause in the Agreement saying the body corporate rules, minutes and accounts must be supplied together with the information that would otherwise be provided in an additional disclosure statement under section 148 of the Unit Titles Act 2010 and consider making the agreement conditional upon the purchaser approving the same. The purchaser may be required to pay for the additional disclosure but its provision cannot be withheld and must be made within the prescribed time limits.
- b. Ensure the purchaser has been provided with and has approved the content of the pre-contract disclosure statement required to be provided by the vendor (pursuant to section 146 of the Unit Titles Act 2010) before the agreement is signed.
- c. Explain to a purchaser who is not familiar with the unit titles concept how a body corporate works.
- d. Identify any problems or potential problems created by clauses in the body corporate rules.
- e. Ask the purchaser if all the buildings on the property are on the unit plan. Also, make sure that the configuration of the buildings is the same as that described on the unit plan.
- f. Include an appropriate clause in the agreement, if the purchaser requires the vendor to correct any unsatisfactory matters in the rules or plans.
- g. It may be necessary or desirable to check:
  - i the minutes of past meetings of the body corporate
  - ii the body corporate's long-term maintenance plan;

- iii whether the body corporate has imposed or proposed levies for a long-term maintenance fund, capital improvements fund, contingency fund, or any other fund
- iv any agreements entered into by the body corporate.

3.14 Leasehold titles:

- a. Search the freehold title, leasehold title and lease.
- b. Include an appropriate condition in the agreement regarding the obtaining of the lessor's consent (and the consent of the lessor's mortgagee, if that should be necessary).
- c. Identify any problems or potential problems created by clauses in the lease.
- d. Include an appropriate clause in the agreement if the purchaser requires the vendor to remedy any defects in the leases or plans.

3.15 Is the property Maori land?

- a. You may have to obtain an historical search to identify Maori land.
- b. It is often difficult to identify Maori land. Get expert advice if in doubt. The following are potential Maori land indicators:
  - i. location of the land in a district where Maori land is prevalent, such as Gisborne;
  - ii. multiple proprietors (e.g. more than 5);
  - iii. one or more proprietors with a Maori name;
  - iv. (f.a) or (m.a) after the name (used to indicate female adult & male adult orders);
  - v. proprietorship in unusual shares (e.g. a 9/876<sup>th</sup> share);
  - vi. Maori land appellation (e.g. Ohutu 2C4B);
  - vii. a status order registered against the title declaring land to be Maori Freehold;
  - viii. a string of historic Maori Land Court orders registered; and
  - ix. land owned by Maori Incorporation.
- c. Make sure the relevant statutory requirements can be met if the property is Maori land and that there is sufficient time to meet these.

See the information on the LINZ website: <http://www.linz.govt.nz/survey-titles/maori-records/>

3.16 Get all the details required if you are preparing the agreement. Check those details with the purchaser if someone else has prepared the agreement.

3.17 What chattels are included in the sale? Is the list of chattels in the agreement correct?

3.18 Is the property tenanted?

If it is:

- a. Is the property sold subject to the tenancy?
  - b. Does the tenant have an option to purchase or right of first refusal?
  - c. Is the tenant's consent to the sale required?
  - d. Who owns the fixtures, fittings and chattels?
  - e. In the case of a residential tenancy
    - i. Is vacant possession required and will it be able to be given by the settlement date?
    - ii. If vacant possession is not required:
      - Are there any unresolved disputes with the tenancy tribunal?
      - Are rents up to date?
      - Are there any bonds?
- 3.19
- a. Is the purchase price 'plus GST' or 'GST inclusive'?
  - b. Is the purchaser registered for GST and on what basis?
  - c. Is the vendor registered for GST and on what basis?
  - d. If the purchaser is registered for GST and the vendor is registered for GST would the sale be subject to the compulsory zero-rating regime (CZR) which requires the vendors who are GST registered to charge GST at 0% on any supply to a registered person involving land, or in which land is a component, **if at the time of settlement:**
    - i. the purchaser intends to use the goods for making taxable supplies; and
    - ii. the supply is not a supply of land intended to be used as a principal place of residence of the purchaser or a relative.
  - e. If d. applies ensure the necessary information is included in Schedule 2 of the ADLS Agreement and advise the purchaser of the consequences of any changes to the purchasers intentions or use prior to the settlement date.
  - f. If d. does not apply can the sale be nevertheless zero-rated?
  - g. If the purchaser is required to pay GST:
    - i. Can the purchaser claim back GST?
    - ii. When is the purchaser entitled to a tax invoice from the vendor?
    - iii. When is the purchaser obliged to pay GST?
    - iv. When is the time of supply?
    - v. If there is a nomination, consider the GST implications.
- Make sure that the agreement accurately reflects the purchaser's requirements and that if applicable the necessary information has been provided in Schedule 2 of the ADLS agreement or, where it has not, that the purchaser understands the full implications of the GST clauses.
- 3.20 Are there any other tax issues for the purchaser? E.g. can borrowing be structured so that interest paid by the purchaser is tax deductible?

- 3.21 What conditions does the purchaser require:
- a. Finance?
  - b. Sale of another property?
  - c. LIM report? (recommended)
  - d. Valuations?
  - e. Building/engineers report?
  - f. Due diligence?
  - g. Resource consents?
  - h. Ability to arrange insurance on reasonable terms and at a reasonable premium?
  - i. In the case of a unit in a unit title development ability to approve the content of any additional disclosure statement which may be requested by the purchaser pursuant to section 148 of the Unit Titles Act 2010?
- 3.22 Does each conditional date give the purchaser reasonable time to satisfy the relevant condition?
- 3.23 Should anything in addition to the property and chattels be included in the sale e.g. shares, resource consents?
- 3.24 What values (if any) should be placed on chattels, shares, dwelling, section, forestry, lease goodwill, livestock, stock in trade etc?
- 3.25 The agreement is usually prepared by a real estate agent or lawyer acting for the vendor. In some cases you will be asked to prepare the sale agreement.
- 3.26 It is usually appropriate (but not compulsory) for a purchaser to sign a sale agreement first and submit it to the vendor as an offer to purchase.
- 3.27 Regardless of who prepares the sale agreement make sure that your client fully understands the basic details, including:
- a. The purchase price;
  - b. The deposit;
  - c. The position regarding GST including, in particular, the GST date;
  - d. The possession date and settlement date;
  - e. The finance, LIM and OIA clauses;
  - f. The chattels included in the sale;

- g. Any warranties given in relation to the property and the chattels;
- h. The implication of the risk and insurance provisions in the agreement and the implications of not being able to arrange insurance from the possession date (especially if finance is required);
- i. The implications of any clauses included as further terms of sale;
- j. The implications of the general terms of sale particularly if they are of special relevance to the purchaser's circumstances;
- k. If the property is a unit title development the implications of purchasing a unit title including the requirements for statutory disclosures and the purchaser's rights, if any, if the disclosure statements in the Unit Titles Act 2010 are not given when required or requested (as applicable) or are given late. In particular make sure the purchaser is aware of the limited time for requesting an additional disclosure statement under section 148 of the Unit Titles Act 2010.

3.28 Your comments should be made in, or confirmed by, a letter to the purchaser.

#### **After the Agreement is signed**

3.29 Make sure the deposit is paid.

3.30 In many cases the purchaser will not contact you until after the agreement has been signed. In these cases do all of the things you would have done before the agreement was signed, if relevant. In particular if the agreement is for the purchase of a unit in a unit title development immediately obtain instructions from the purchaser as to whether an additional disclosure statement is required and ensure it is requested within the time limits prescribed by section 148 of the Unit Titles Act 2010. The purchaser pays for any additional disclosure statement requested but it must still be provided within the prescribed time limits.

3.31 Consider getting a LIM report (with the purchaser's approval) even if the agreement is not conditional on a satisfactory report being obtained, and even if a LIM report has been supplied by the vendor or the real estate agent. In terms of proximity, it is arguable that a council will have a duty of care only to the person who requests a LIM. See *Gascoigne Wicks v Altimarloch Joint Venture Limited Ors* (SC 41/2010, 5 March 2012).

3.32 Once you have a LIM report you should, among other things, check that:

- a. all necessary permits/consents, and
- b. all code compliance certificates

have been granted for the improvements on the property.

3.33 You should discuss this with the purchaser and try to identify any alterations or additions to buildings on the property that have been made without the necessary permit or consent. Carports, garages, garden sheds, decks, conservatories and woodburning installed fires can often cause problems.

- 3.34 Advise the vendor, or the vendor's lawyer, in writing that you are acting for the purchaser.  
Refer to Guideline 8.2.
- 3.35 Diarise all important dates. The dates will include but will not necessarily be limited to:
- a. Conditional dates;
  - b. GST date;
  - c. Dates by which any statutory or contractual disclosures or other information is required to be made to the purchaser;
  - d. Possession date;
  - e. Settlement date (if it differs from the possession date).
- 3.36 Keep the purchaser and the real estate agent informed. Give the purchaser and the real estate agent regular progress reports when it is appropriate to do so.
- a. Get loan approval in writing and check the terms of the loan before advising that a finance condition is satisfied.
  - b. Advise the vendor's lawyer and the real estate agent when each condition for the purchaser's benefit is satisfied or waived.
  - c. Ask for extensions of conditional dates if it is appropriate to do so.
- 3.37 Remember that conditions for the purchaser's sole benefit can be waived by the purchaser, if the condition cannot be satisfied on time. In these cases advise the vendor's lawyer that the condition is waived rather than satisfied.

**After the conditions have been satisfied or waived**

- 3.38 Make sure the purchaser has paid the deposit, or any additional deposit now payable.
- 3.39 Send Notices of Sale to the vendor's lawyer, or prepare online Notices of Sale via QV Sales Direct as soon as possible
- 3.40 Obtain from the vendor's lawyer particulars of the Primary Contact and Conveyancing Professional for the purposes of the transaction, set up the e-dealing and advise the vendor's lawyer of the dealing number (refer to Guideline 8.2 in Part 2, Section A of these Guidelines).
- 3.41
- a. Get loan instructions from the lender (if any).
  - b. Ensure that acting for both the lender and the purchaser would not give rise to any conflicts and obtain any necessary authorities (refer *GE Custodians v Bartle* SC52/2010[2010] NZSC 146). See also Guidelines 3.49 to 3.51 when second or subsequent mortgages are involved.
  - c. Complete all documents in accordance with the instructions. Although some mortgagees may require a paper mortgage to be executed by the borrower, only

the electronic mortgage will be registered (refer Guideline 8.13 and Section P of Part 2 of these Guidelines).

- d. Prepare the relevant Authority and Instruction form (refer Section P of Part 2 of these Guidelines for further information as to the Authority and Instruction requirements when acting for a mortgagee).
  - e. Make sure all of the mortgagee's conditions have been complied with to enable loan moneys to be drawn down.
  - f. Make sure the purchaser understands the loan documents and then get the purchaser to sign them and the relevant securities and/or the Authority and Instruction form.
  - g. A mortgage signed by the borrower in traditional form is not a substitute for obtaining an Authority and Instruction form from the borrower (refer Guideline 8.27). Make sure the identity of the purchaser(s) is properly verified in accordance with the latest [LINZS20002 Standard for verification of identity for registration under the Land Transfer Act 1952](#) and Part 2 of these Guidelines.
  - h. Before you send your solicitor's certificate make sure it is correct and that you can comply with any undertakings given in it.
- 3.42 Make sure any necessary consents are obtained e.g. a lessor's consent to the transfer of a lease.
- 3.43 If the property is a unit title get a pre-settlement disclosure statement (properly certified by the body corporate) under section 147 of the Unit Titles Act 2010 from the vendor or the vendor's lawyer and a copy of the body corporate insurance policy or certificate from the vendor's lawyer. Obtain instructions from the purchaser as to the purchaser's desired course of action if the statement is received out of time or not provided.
- 3.44 Get a settlement statement and, if necessary, a tax invoice from the vendor's lawyer. Check the settlement statement and verify any apportionments. Obtain an appropriate personal undertaking or evidence:
- a. That all rates and other outgoings or incomings which have been apportioned have been paid or received to the respective dates indicated in the settlement statement.
  - b. Concerning payment of water rates for metered properties.
  - c. That where the property is a unit title there are no outstanding body corporate rates.
- 3.45 Prepare a statement for the purchaser and collect the purchaser's cash contribution such that it comprises cleared funds as at the date of settlement. Not all banks consider bank cheques to be cleared funds as they may be dishonoured. Alternatively, arrange for the purchaser to transfer funds directly to your account to be visible prior to or on the settlement date. You will need to ensure any bank cheque provided by your client is received in sufficient time to have cleared by settlement (refer undertakings in Guidelines 6.9(e) and (f)). Make sure that you have made appropriate arrangements with the lender to deposit the loan proceeds as cleared funds to your trust account on or before

settlement date for the purposes of the undertakings required in chapter 6 of these Guidelines.

- 3.46 Get a guaranteed title search:
- a. No earlier than 14 days before settlement, and
  - b. No later than the day before settlement.
- 3.47 Arrange for a Personal Property Securities Register search. Remember that chattels included in the sale, such as carpets, blinds or drapes can be subject to a hire purchase agreement or other security interest.
- 3.48 Make sure, before settlement, that the purchaser has made the necessary insurance arrangements.
- 3.49 Make arrangements for the purchaser to obtain the keys, electronic door openers and security codes (“keys”) to the property after settlement. This is usually done by:
- a. The vendor’s lawyer exchanging the keys for payment on settlement; or
  - b. The vendor’s lawyer advising the vendor to give the keys to the purchaser once confirmation has been given that settlement has been completed; or
  - c. The vendor’s lawyer advising the real estate agent or other third party holding the keys that it is in order to release the keys to the purchaser, because settlement has been completed.
- 3.50 Advise your client to complete a pre-settlement inspection of the property prior to the settlement date and report back to you before settlement.
- 3.51 Remind the purchaser to make the necessary arrangements for power, gas, telephone and other utilities effective from the date of settlement.
- 3.52 Obtain from the vendor’s lawyer an undertaking regarding certification and signature and the release of the instruments immediately on settlement (refer to Part 2 of these Guidelines).
- 3.53 Make sure the purchaser knows where to collect the keys after settlement.
- 3.54 If the property is a unit in a unit title development provide the vendor’s lawyer with any information about the purchaser required for the purposes of section 85(2) of the Unit Titles Act 2010 and obtain an undertaking from the vendor’s lawyer that on settlement the vendor’s lawyer will on behalf of the vendor promptly notify the body corporate in writing of the change of ownership.

### **Acting for Mortgagees**

- 3.55. You need to be diligent when dealing with second or subsequent mortgages (for example where a second mortgage is required as additional security over another property already subject to a mortgage). Your client’s contractual requirements with the prior mortgagee will almost invariably require your client to obtain consent to register a subsequent charge. If consent is not obtained, the client risks having their facilities terminated.

- 3.56. Accordingly, as most mortgages contain a priority amount for the purposes of sections 90 to 94 of the Property Law Act 2007, you could be in breach of your obligations to the subsequent mortgagee if a deed of priority recording the respective rights of mortgagees is not obtained. This would ordinarily be required to ensure that there is a sufficient equity margin for the subsequent mortgagee.
- 3.57 To avoid a breach of the borrower's covenants with the mortgagee(s) the same considerations would apply to a transfer of a property subject to a mortgage (e.g. from the borrower to the trustees of a trust and vice versa or a transfer to a company from the borrower and vice versa or a transfer between the trustees of one trust to the trustees of another trust etc.). The prior consent of mortgagee(s) would be required.

### Settlement

- 3.58 Agree with the vendor's lawyer how settlement will be completed e.g. electronic transfer of funds or bank cheque (see Guidelines 6.1 to 6.5).
- 3.59 Make sure you settle by the time required in the agreement or by the settlement protocol agreed with the vendor's lawyer.
- 3.60 Make sure any paper instruments or documents you receive are the same as any which you have previously approved.
- 3.61 Get the compliance schedule, Independent Qualified Person (IQP) reports and a copy of the warrant of fitness on settlement when these documents are relevant.
- 3.62 Get appropriate undertakings to discharge any PPSR registrations.
- 3.63 Ensure that the vendor's lawyer releases the electronic instruments into your control.
- 3.64 Collect from the vendor's lawyer any other documents required for settlement (e.g. leases, tenancy agreements).
- 3.65 In the case of a transaction where registration will take place by way of paper instruments, collect in exchange for payment of the amount due on settlement from the vendor or vendor's lawyer:
- a. Signed and witnessed transfer.
  - b. Discharges of all mortgages registered against the title(s).
  - c. Discharges of any other encumbrances that are necessary for settlement purposes.
  - d. A cheque for any registration fees and agency charges payable on any vendor documents that are handed over on settlement (e.g. discharges of mortgages).
  - e. Any other documents required for the settlement (e.g. leases, tenancy agreements).
- 3.66 Exchange your payment of the amount required to settle for the settlement documents when settlement is completed in person.

**Note:** See chapter 5 Undertakings and chapter 6 Settlement and Payment of the Purchase Price.

**After settlement**

- 3.67 Tell the purchaser where to collect the keys as soon as settlement has been completed.
- 3.68 The dealing should have been checked and pre-validated before settlement. If you register incorrect instruments:
  - a. You may be liable to both LINZ and the purchaser for any losses incurred, and
  - b. Rejected documents will incur a fee.
- 3.69 Promptly register all documents.
- 3.70 Send the purchaser a complete statement including a tax invoice for your costs immediately after settlement, if you have not already sent them.
- 3.71 Your trust account balance should be zero after all receipts and payments (including disbursements) have been recorded.
- 3.72 You must comply with the *Lawyers and Conveyancers Act (Trust Account) Regulations 2008*.
- 3.73 Report to the mortgagee after registration and send the mortgagee the security and other documents it requires.
- 3.74 Search the title and make sure the register is correct. Send a copy of the title to the purchaser and the mortgagee.
- 3.75 In the case of paper instruments, keep on your file after registration has been completed all documents except the mortgage and any related documents that have been sent to the mortgagee.
- 3.76 Retain documents and records in accordance with the NZLS *Guidelines for the Retention of Records on Termination of Retainer*.

#### 4. TRANSFER OF RELATIONSHIP PROPERTY

**Make sure you comply with the rules relating to conflicts of interest contained in Chapter 6 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008*.**

- 4.1 The parties should decide who is to act on the sale
- 4.2 If the parties cannot agree, the following rules apply:
- a. You should act on the sale of the property, irrespective of its legal ownership if you act for the party in possession of the relationship property.
  - b. You should act on the sale of the property if:
    - i. neither party is in possession of the relationship property; but
    - ii. there is a tenancy or formal form of supervision in place; and
    - iii. you act for the party who manages the tenancy or supervises the property.
  - c. You should reach an agreement with the other lawyer involved if there is uncertainty as to who is in possession of the property or who manages it.
  - d. If you do not act on the sale you should:
    - i. get your client's approval for the other lawyer to act; and
    - ii. give the other lawyer written confirmation that he or she is to act on the sale.
  - e. If you act on the sale you should give the other lawyer a written acknowledgement that you are acting on behalf of both parties.
  - f. You and the other lawyer should appoint an independent lawyer acceptable to both parties to act on the transaction, if:
    - i. you and the other lawyer cannot agree who is to act; or
    - ii. if either party refuses to give approval for one of you to act.
  - g. Make sure you keep the other lawyer fully informed and remember that you are acting for both parties, if you act on the sale.
  - h. You may charge separately for any work you do in connection with the sale whether you are acting on the sale or not. Your fees may be deducted from the settlement proceeds, with your client's agreement. You must however comply with the *Lawyers and Conveyancers Act (Trust Account) Regulations 2008*.
  - i. If you are acting as the independent lawyer you must deal with the settlement proceeds as instructed by the lawyers for the parties. You must hold the proceeds undisbursed on behalf of both parties, if they cannot agree how the proceeds should be dealt with.

## 5. UNDERTAKINGS

- 5.1 Rules 10.3 and 10.3.1 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* state:

*A lawyer must honour all undertakings, whether written or oral, that he or she gives to any person in the course of practice.*

*This rule applies whether the undertaking is given by the lawyer personally or by any other member of the lawyer's practice. This rule applies unless the lawyer giving the undertaking makes it clear that the undertaking is given on behalf of a client and that the lawyer is not personally responsible for its performance.*

- 5.2 Make sure your undertakings are expressed clearly.
- 5.3 Make sure that you do not give undertakings if you are not in a position to ensure they are carried out.
- 5.4 Undertakings bind the lawyer personally, whether or not the lawyer has the client's authority to give the undertaking. They remain binding on the lawyer despite subsequent contrary instructions by a client or the death or incapacity of a client.
- 5.5 Lawyers must always make sure they have the client's authority before giving an undertaking and must ensure performance of the undertaking is and will remain within their control.
- 5.6 Employees giving undertakings can bind a firm – *National Mutual Finance v Haddon Marshall & Co*, HC Palmerston North, C/P 152/90 (31 August and 31 October 1990).
- 5.7 You will probably have to comply with an assurance or promise you give another person even if it is not expressed as a form of undertaking.
- 5.8 In relation to solicitor's certificates, remember rule 2.5 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008*. See Guideline 1.18.

## 6. SETTLEMENT AND PAYMENT OF THE PURCHASE PRICE

A number of the Guidelines in this chapter are given contractual force in the Ninth Edition of the ADLS Agreement.<sup>1</sup> However, this is not the case in the previous edition of that Agreement.

- 6.1 Unless the lawyers for the parties otherwise agree, payment of the amount due in settlement of the purchase must be made in cleared funds from the trust account of the purchaser's lawyer into the trust account of the vendor's lawyer.
- 6.2 Unless the lawyers for the parties otherwise agree, the same day cleared payments system of direct transfer between bank accounts that operates through the Reserve Bank ('SCP') is to be used.

**Note:** It is considered that the SCP system provides the certainty and irrevocability that is necessary for settlement payments. SCPs enable a paying customer to instruct their bank to make a payment in the day, using an electronic network and paying with money settled in real time using the real time gross settlement system led by the Reserve Bank. The process flow for SCPs is set out as an appendix to these Guidelines.

- 6.3 If the SCP system is used, unless the vendor's lawyer otherwise agrees, payment in cleared funds will be deemed to have been made only when the vendor's lawyer has received:
- a. an undertaking from the purchaser's lawyer that they have instructed their bank to pay cleared funds from their trust account into the trust account of the vendor's lawyer by the SCP system and that those instructions will not be cancelled or changed in any respect (accompanied by a copy of the electronic transmission report confirming the payment); and
  - b. fax or email advice from either the purchaser's lawyer's or vendor's lawyer's bank (whichever advice is first received) that cleared funds have been paid into the vendor's lawyer's trust account.
- 6.4 Where the parties' lawyers agree to some system of direct transfer of funds between bank accounts other than SCP, the lawyers must agree on all related arrangements, including an appropriate undertaking from the purchaser's lawyer.

**Note:** Where the lawyers for both parties have trust accounts with the same bank which has the facility to make cleared funds settlement transactions outside the SCP system, it may be appropriate for the lawyers to use their bank's internal process.

- 6.5 Despite Guidelines 6.1 to 6.4, where the purchaser's lawyer acting professionally considers that it is necessary or desirable in the interests of the purchaser to make payment by bank cheque the purchaser's lawyer may do so accompanied by an undertaking from the purchaser's lawyer that:

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<sup>1</sup> See definitions of 'Cleared funds', 'PLS Guidelines' and 'Remote settlement' in clauses 1.1(5), 1.1(14) and 1.1(18) and see also clause 3.10.

- a. the bank cheque derives from cleared funds in the purchaser's lawyer's trust account; and
- b. payment under the bank cheque will not be stopped and the cheque will be honoured.

**Note:** Instances where a purchaser's lawyer might justifiably wish to make payment by bank cheque could include where:

- the purchaser's lawyer considers it is necessary or desirable to make formal tender of settlement
- the purchaser's lawyer reasonably considers that a time deadline for payment may not necessarily be achieved under the SCP system
- cases where computer or technological malfunction or outage may unduly delay payment.

### **When you act for the vendor**

#### 6.6 Send the purchaser's lawyer:

- a. Written confirmation that settlement may be completed by:
  - i. electronic transfer of funds by SCP; or
  - ii. in the circumstances set out in Guideline 6.5 by bank cheque.
- b. A request for the purchaser's lawyer to agree in writing that:
  - i. they will complete the remote settlement process strictly in accordance with this protocol;
  - ii. service of the notice of payment by the purchaser's lawyer occurs when the notice is actually received;
  - iii. compliance with this protocol will be an essential term of the agreement for sale and purchase;
  - iv. any material variation from the protocol will entitle the vendor to decline to accept the purchaser's tender of payment.
- c. An encoded deposit slip or details of your trust account. (The details must be included in the electronic transfer to enable the payment to be identified).
- d. Your undertaking that:
  - i. any relevant documents are in your possession or control, or will be on settlement;
  - ii. you have pre-validated, certified and signed the instruments in the e-dealing created for the transaction;
  - iii. on receipt of confirmation of payment of the settlement funds in accordance with this protocol you will:
    - immediately release the instruments (subject only to the qualification in paragraph (iv));
    - not withdraw or alter any of the instruments prior to their release;
    - send to the purchaser's lawyer any relevant documents; and
    - promptly authorise the release of any keys, electronic door openers and security codes.

- iv. where circumstances beyond your control result in a delay in the release you will:
    - advise the purchaser’s lawyer of the delay and the cause of the delay
    - take all available steps to effect the release as soon as possible
    - not disburse any of the settlement funds until the release has been effected.
  - e. Copies of any other documents required for settlement.
- 6.7 As soon as you receive confirmation of payment to your trust account you must release the relevant instruments or send to the purchaser’s lawyer by a method to be agreed any relevant documents for settlement purposes.
- 6.8 You must also authorise the release of any keys, electronic door openers and security codes.

### When you act for the purchaser

- 6.9 a. Advise the vendor’s lawyer in writing that you agree to the settlement protocol set out in Guideline 6.6.
- b. If you consider it appropriate, advise the vendor’s lawyer when you are ready to settle. You should first have the amount required to settle in cleared funds in your trust account (refer Guideline 3.39).
- c. You must then:
  - i. initiate the electronic transfer of funds in accordance with the agreed protocol through the SCP system. The payment direction must contain the following essential terms:
    - A. the amount of the payment;
    - B. the account to which the payment is being made;
    - C. any reference details provided by the vendor’s lawyer; or
  - ii. where settlement is by bank cheque, deposit the settlement money by bank cheque into the vendor’s lawyer’s trust account using the encoded deposit form. Get a stamped duplicate copy of the deposit form or printed receipt from the bank and a photocopy of the bank cheque. Alternatively, deliver the bank cheque to the vendor’s lawyer accompanied by the undertaking set out in Guideline 6.9f.
- d. If you settle by electronic transfer, give the vendor’s lawyer a written undertaking along the following lines as soon as the electronic transfer has been made:

*Settlement* \_\_\_\_\_ *to* \_\_\_\_\_

*I/we personally undertake that in settlement of the above transaction:*

- *I/we instructed my/our bank at \_\_\_\_\_ am/pm today to pay \$\_\_\_\_\_ to your trust account by SCP (as defined in Guideline 6.2 of the Property Transactions Practice Guidelines promulgated by the Property Law Section of the New Zealand Law Society).*

- *The payment is from cleared funds in my/our trust account and will not be cancelled or changed in any respect.*

*I/we attach a copy of the electronic transmission report confirming the payment.*

*(Name of firm) per*

\_\_\_\_\_ *authorised signatory (or as required by the vendor's lawyer.)*

- e. If you settle by bank cheque by depositing the same directly to the credit of the vendor's lawyer's trust account:
- i. Send written notice to the vendor's lawyer, copies of the stamped duplicate of the deposit form or bank receipt and a photocopy of the bank cheque together with your undertaking as soon as you have made payment.
  - ii. The undertaking should be along the following lines:

*Settlement \_\_\_\_\_ to \_\_\_\_\_*

*I/we personally undertake that in settlement of the above transaction:*

A *I/we have paid \$ \_\_\_\_\_ to your trust account with \_\_\_\_\_ Bank at \_\_\_\_\_ am/pm today by bank cheque.*

B *The bank cheque was drawn on my/our trust account and is not drawn on a third party account.*

C *The bank cheque derives from cleared funds in my/our trust account. Payment under it will not be stopped and I/we will ensure that the cheque will be honoured.*

*I/we attach a copy of the (receipted) deposit form and photocopy of the bank cheque as evidence of the payment.*

*(Name of firm) per*

\_\_\_\_\_ *authorised signatory (or as required by the vendor's lawyer).*

- f. If you settle by bank cheque by delivering the bank cheque to the vendor's lawyer it must be accompanied by your personal undertaking that:
- i. the bank cheque was drawn on your trust account and not drawn on a third party account; and
  - ii. the bank cheque derives from cleared funds, payment under it will not be stopped and you will ensure that the cheque will be honoured.
- g. The undertaking should be sent by fax (or any other agreed method of written communication) and will be binding on your firm without any other confirmation in writing.

- h. Settlement will be treated as having been made on the date and at the time when the vendor's lawyer receives both:
  - i. written confirmation of the payment from the purchaser's lawyer; and
  - ii. faxed or email advice from either the purchaser's or vendor's bank (whichever advice is first received) that cleared funds have been paid into the vendor's lawyer's trust account.
  
- i. If for any reason you are unable to send confirmation of payment by fax, email (or any other agreed method of written communication), then you should contact the vendor's lawyer immediately by some other means (e.g. by telephone) to advise that the payment has been made. It will be for the vendor's lawyer to decide whether to accept as satisfactory evidence of payment such alternative confirmation as you are able to provide pending the transmission of your fax or email or the completion of any other method of communication agreed.

### **Generally**

- 6.10 These Guidelines may be followed for the settlement of other transactions (e.g. relationship property settlements, mortgage advances and repayments) if both parties agree.
- 6.11 Payment should be made either by electronic transfer of funds or by bank cheque unless the other party's lawyer has expressly agreed to accept payment by trust account cheque.
- 6.12 The payment should include any additional interest that may be payable in terms of the agreement to cover the period up to the time at which the confirmation of payment is actually received by the vendor's lawyer. As a matter of courtesy and co-operation, the purchaser's lawyer must endeavour to complete settlement as early on the settlement date as is reasonably practicable in the circumstances.
- 6.13 You must comply with the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008*. In particular, rule 10.6 if you make an incorrect payment to a lawyer. See also rules 10.4 and 10.5 of those rules.
- 6.14 Documents sent to the vendor will be at the purchaser's risk in transit.

## 7. COMPETENCE AND CLIENT SERVICE

- 7.1 See Chapter 3 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* in relation to provision of information to clients prior to commencing work.

The information about the basis on which fees will be charged should include likely fees, disbursements and GST payable.

### Estimates

- 7.2 a. Estimates should be given where it is not possible for you accurately to calculate your fee and disbursements. In some cases, you may be able to calculate the fee and not the disbursements or vice versa. Make sure your client is aware that the figure given is an estimate only. Explain the factors that might affect the total cost when you are not able to give a firm quote.
- b. Summarise the details given by the client and include them with your estimate, if the client has not given you written details.
- c. If you give an estimate to a client orally, then you should tell the client that you will confirm the estimate and the facts on which it is based in writing, if you are instructed to act.
- d. If you receive instructions to act immediately, you should confirm the estimate prior to commencing the work. Copies of all documents relevant to the estimate should be kept on your file.
- e. You should advise your client in writing immediately if it becomes apparent that your original estimate is likely to be exceeded. Give reasons for the increase and the revised estimate figures.
- f. Rule 9.4 *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* provides:

*“A lawyer must upon request provide an estimate of fees and inform the client promptly if it becomes apparent that the fee estimate is likely to be exceeded.”*

### Quotes

- 7.3 a. You cannot charge more than a quote given to a client other than in exceptional circumstances. Any quote you give should be in writing. A quote for fees and an estimate for disbursements may be given where disbursements cannot be accurately quantified.
- b. Your quote should specify:
  - i. professional fees;
  - ii all disbursements and third party charges;
  - iii. GST;
  - iv. the work covered by the quote.
- c. Quotes should be given in writing or confirmed in writing if given orally.

**Generally**

- 7.4 You should emphasise the need for your client (or potential client) to supply all known details of the matter, preferably in writing.
- 7.5 When estimates or quotes are given:
- a. Full details of the transaction should be obtained (preferably at an interview to avoid the misunderstandings that may arise when an inquiry is received on the telephone). A warning should be given that an estimate might be revised if the transaction is more complex or time-consuming than expected.
  - b. Your summary of the details given by the client or potential client should be included with your estimate or quote, if the client has not given you written details.
  - c. A lawyer has a legal and professional duty when estimating likely charges and disbursements. A lawyer, who is careless or negligent when giving an estimate, may later be prevented from charging more than the estimated figure.

## SCHEDULE 1 PRINCIPLES OF CHARGING

- 1.1 You should be familiar with rule 9 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* which states:

*A lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in rule 9.1.*

- 1.2 You should also note the reasonable fee factors in rule 9.1:
- a. The time and labour expended.
  - b. The skill, specialised knowledge, and responsibility required to perform the services properly.
  - c. The importance of the matter to the client and the results achieved.
  - d. The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client.
  - e. The degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved.
  - f. The complexity of the matter and the difficulty or novelty of the question involved.
  - g. The experience, reputation and ability of the lawyer.
  - h. The possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients.
  - i. Whether the fee is fixed or conditional (whether in litigation or otherwise).
  - j. Any quote or estimate of fees given by the lawyer.
  - k. Any fee agreement (including a conditional fee agreement) entered into between the lawyer and client.
  - l. The reasonable costs of running a practice.
  - m. The fee customarily charged in the market and locality for similar legal services.
- 1.3 The relative importance of the factors set out in paragraph 1.2 will vary according to the particular circumstances of each transaction (refer *Callinicos Gallagher v Dobson* [1993] 3 NZLR 611).
- 1.4 Disbursements should not be included in an account unless they are for out-of-pocket expenses either:
- a. Actually incurred, or
  - b. Reasonably and properly expected to be incurred in relation to the transaction.

- 1.5 The *Consumer Guarantees Act 1993* applies. Clients requiring domestic (as opposed to business) legal work are not liable to pay more than a reasonable price for the work unless the price is:
- a. Fixed by the contract.
  - b. Left to be fixed in a manner agreed by the contract.
  - c. Left to be fixed by the course of dealing between the parties.
- 1.6 The *Lawyers and Conveyancers Act (Trust Account) Regulations 2008* govern the deduction of costs from funds held. Care needs to be taken that, where costs are deducted, they are deducted against the funds of the client responsible for those costs (refer *Martin v Christiansen Royfee Partners* May 1994, C/P 734/93, Auckland).
- 1.7 You may charge less than an amount calculated in accordance with the principles set out in paragraph 1.1 above.
- 1.8 Conditional fee agreements are covered in Chapter 9 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* and in sections 333 to 335 *Lawyers and Conveyancers Act*.

## SCHEDULE 2     DISPUTES OVER CHARGES

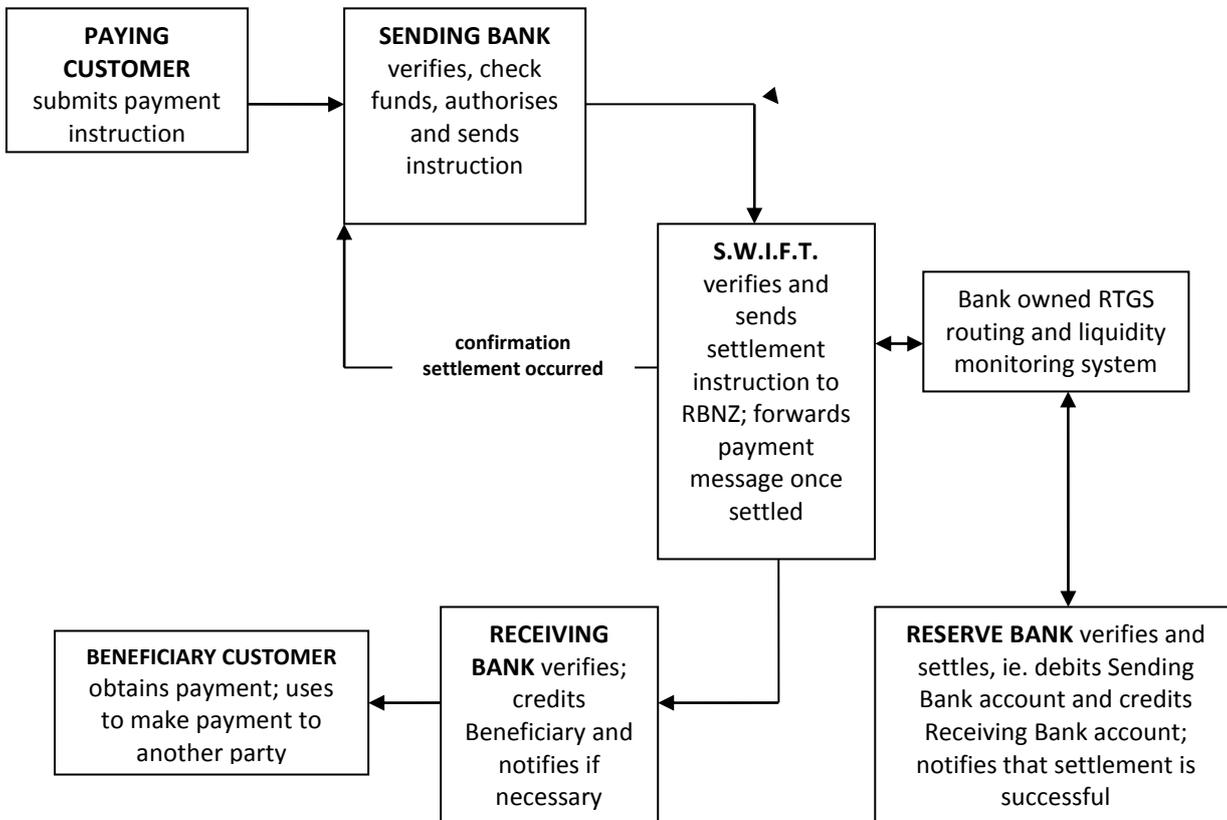
The costs of one lawyer charged to, or payable by, the client of another lawyer are subject to complaint under Part 7 of the *Lawyers and Conveyancers Act 2006* (“the Act”) on the application of the party chargeable, in the same way as any other costs complaint.

### Complaints procedure

Section 132(2) of the Act provides that any person chargeable with a bill of costs, whether it has been paid or not, may complain about the amount of the bill.

- 2.1 The following is a brief summary of the relevant provisions of the Act. It is intended as a starting point only and lawyers concerned with a disputed bill of costs should refer to the Act.
- a. The Act places the primary responsibility for costs complaints on the Standards Committees established by the New Zealand Law Society.
  - b. On receipt of a complaint a Standards Committee may inquire into the complaint. If it decides to do so, it must make its enquiry as soon as practicable.
  - c. If a Standards Committee makes a determination of unsatisfactory conduct in relation to the inquiry, it may order the lawyer to reduce or cancel the lawyer’s fees (and to refund any sum already paid) under s 156(1)(e)-(g) of the Act.
  - d. If the complainant or the lawyer is dissatisfied with the decision of a Standards Committee, they may apply within 30 working days to the Legal Complaints Review Officer for a review of that decision.
  - e. Where a Standards Committee gives notice to a lawyer that it has received a complaint about the amount of a bill of costs, no proceedings for recovery may be commenced or proceeded with until after the complaint has been finally disposed of (s 161).
  - f. Unlike the previous regime under the *Law Practitioners Act 1982*, it will make no difference whether the party chargeable has already paid a bill of costs. A complaint may still be made and the Standards Committee has power to order a refund.
- 2.2 Parties cannot contract out of the complaints procedure, but you can attempt to avoid complaints to the Standards Committee by another lawyer’s client:
- a. By trying to achieve agreement to the costs involved before sending your bill; and
  - b. By trying to settle any dispute over your bill before the other lawyer’s client resorts to the complaints procedure.

## APPENDIX SAME DAY CLEARED PAYMENTS PROCESS FLOW



## PART 2 E-DEALING GUIDELINES

### Glossary to Part 2

In Part 2 of these Guidelines, which relates to e-dealings, the following glossary explains the references to words and expressions used.

**Access Profile:** Access profiles are controlled by the Registrar-General of Land and set by LINZ. For instance a lawyer's profile permits him or her to certify and sign an instrument (subject only to the access privilege granted by the firm).

**Access Privilege:** Access privileges are set by the firm's System Manager to enable users to carry out various tasks – searching, instrument preparation, certifying and signing, releasing and submitting. Access privileges for each user, are set within the constraints of the user's access profile.

**Authority and Instruction (A & I):** The Authority and Instruction form gives the lawyer the necessary authority to change the Register on behalf of the client. This form protects the lawyer from subsequent challenge as to his or her authority to change the Register and will be required in the case of a compliance review of the lawyer by LINZ. Three forms of A & I have been approved by the New Zealand Law Society for use depending on whether the authority is signed by a private individual, a Private Corporate, or a Public Corporate.

**Base document:** A term used in the A & I forms to describe the underlying contractual basis of the transaction. For example, an agreement for sale and purchase or property relationship agreement.

**Certify and Sign:** Each instrument in an e-dealing must be certified and signed by the Conveyancing Professional as meeting all LINZ requirements. The certifications differ slightly for each instrument and are displayed for each instrument.

**Conveyancing Professional:** The Conveyancing Professional is the only person who can certify and sign an instrument prior to its being submitted for registration. A Conveyancing Professional must be a Practitioner.

**e-dealing:** There are three categories of e-dealings:

- a. Automatically registrable e-dealings (AUTO REG) – electronically lodged in Landonline then automatically registered on submission without manual intervention from LINZ;
- b. Lodged e-dealings (LODGE WITH TEMPLATE) - electronically lodged in Landonline then manually processed by LINZ before being registered in Landonline. The template enables limited clauses to be added;
- c. Scanned or attached electronic file to a Lodged e-dealing (LODGE WITH IMAGE) - electronically lodged in Landonline then manually processed by LINZ before being registered in Landonline.

**Institutional chargeholder:** An institutional chargeholder is

- a. an institution, such as a bank, building society, credit union, financier, lawyers nominee company, Private Corporate, Public Corporate or other organisation which regularly lends money or provides credit in the course of its business activities, (but does not include private individuals or contributors under a contributory mortgage advance); or
- b. an institution (excluding a private individual or private individuals) which makes a practice of entering into mortgages as trustee, nominee or as a custodian or custodian bank or global custodian for institutions of the type referred to in paragraph (a) of the explanation of the term Institutional chargeholder notwithstanding the institution does not itself engage in lending money or providing credit; or
- c. a territorial authority, the Legal Services Agency, a government department or government or Crown agency or other similar organisation which registers encumbrances or charges against land in the normal course of its activities.

**LINZ:** Land Information New Zealand which is the government department responsible for the administration of the Land Transfer Act 1952.

**Passphrase:** A type of password that is used by a lawyer for 'certify and sign' of e-instruments with the lawyer's Digital Certificate. The word 'passphrase' distinguishes it from the normal Landonline logon password. The passphrase must be at least 8 characters, have at least one numeral, one upper case and one lower case letter.

**Password:** A password is used by anyone for the initial login to Landonline and signing. The password must be between 6 and 8 characters, and have at least one numeral, one letter.

**Practitioner:** a Practitioner is defined in the Land Transfer Act 1952 as a practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006 (i.e. a lawyer or a conveyancing practitioner).

**Primary Contact:** The Primary Contact is the person responsible for the day to day management of the e-dealing, including preparation of instruments. The Primary Contact would usually attend on settlement (release) and to registration (submit).

**Private Corporate:** This is a term used for a non-publicly listed company or incorporated society etc. The Private Corporate Authority and Instruction form appears as Appendix 2 to this part of these Guidelines.

**Public Corporate:** This is a term used for a publicly listed company (i.e. whose equity shares are listed on the stock exchange), territorial authority, government department, state enterprise (as defined in the State-Owned Enterprises Act 1986), a Trustee company for the purposes of the Trustee Companies Act 1967, Crown agents, Autonomous Crown entities or a Crown entity company each as defined in paragraphs (a) and (b) of section 7 of the Crown Entities Act 2004 (as applicable). The Public Corporate Authority and Instruction form appears as Appendix 3 to this part of these Guidelines. The Public Corporate entity can nominate any authorised signatory for signing the Authority and Instruction form.

**Release:** Each instrument must be released before it can be submitted for registration. A vendor releases the transfer and discharge upon settlement. This is analogous to handing over the transfer and discharge in a face to face settlement or despatching Instruments in a faxed settlement.

**Submit:** Submit is analogous to lodging an instrument for registration in the paper environment.

**System Manager:** The System Manager is the person nominated by each firm to administer access to Landonline within that firm, including what access privileges each user can exercise.

**Workspace:** Workspace is an electronic workspace facility approved by the Registrar for use in the preparation of electronic instruments for presentation to the Registrar. It is the first screen a user will see on Landonline after logging on. It is the “cyberfile” used to create and manage all aspects of each e-dealing including searching, preparing instruments and messaging. LINZ maintains the workspace.

## **INTRODUCTION TO E-DEALING GUIDELINES**

### **Responsibilities**

The responsibility of lawyers certifying e-dealings is subject to close scrutiny.

The certification and signing by a lawyer of each instrument in an e-dealing leads to an alteration of the Register. The responsibility on the lawyer to ensure that all matters are in order to justify a change to the Register prior to certifying a document cannot be overstated.

It is the high level of responsibility arising from certification and signing that justifies a rule requiring lawyers to take all reasonable steps to protect the security of their Digital Certificate and accompanying passwords (refer rule 11.4 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008) reproduced in Section H of Part 2 of these Guidelines.

Responsibility for the consequences of the alteration of the Register (criminally, civilly and professionally) rests with the lawyer whose Digital Certificate is used for the certification.

### **Digital Certificates and their Use**

The registration authority within LINZ will on request issue a Digital Certificate with accompanying passwords and a profile which allows the holder of a current practising certificate to certify and sign instruments as part of an e-dealing. Digital Certificates will be issued to other staff (on the application of the firm concerned) for searching and creating instruments in the shared workspace including the power to submit e-dealings.

It is a matter for each law firm to determine those within its office who are to be the holder of a Digital Certificate, and further to determine the levels of activity that each individual holder of a Digital Certificate is authorised to undertake.

The system permits firms to add and delete the names of those individuals permitted to operate using the licences held by the firm and to control the use of Landonline within their offices.

### **Disbursements/Agency**

Landonline allows for a splitting of registration fees between the parties to a dealing. The vendor’s discharge registration fee will show on the vendor’s lawyer’s account from LINZ and the transfer and mortgage registration fees will show on the purchaser’s lawyer’s account.

Accordingly there is no justification for the charging of any agency in an e-dealing.

**Reliance on Certifications**

The lawyer for the other party is entitled to rely upon the certifications made without the need for further inquiry. For example, in Section L the certifying lawyer is required to be satisfied on matters affecting corporate clients and the use of powers of attorney.

Once registration is effected, indefeasibility of title takes effect in the same manner as if the registration was non-electronic.

**Communication Courtesy**

To receive messages of progress through an e-dealing, the user must be logged on to Landonline. For those less frequent users it can be frustrating having repeatedly to log on to ascertain, for example, if the dealing has been created or if the transfer has been signed. The courtesy of a standard email message to the other side advising when the matter has been progressed is encouraged. For example, a brief message which includes the party reference and 'e-dealing created under #1234567' or 'Transfer is signed'.

## 8. SPECIFIC E-DEALING GUIDELINES

### A E-dealing Prerequisites

#### **Guidelines**

- 8.1 All lawyers have an obligation to their clients and other lawyers to accommodate electronic registration wherever possible. The only exception is where the instrument is not capable of electronic registration. Manual dealings that are technically capable of electronic registration will require LINZ approval.
- 8.2 When the agreement becomes unconditional, a lawyer should assume that the transaction can be performed electronically in Landonline. The purchaser's lawyer should take the initiative and communicate with the vendor's lawyer and seek the name of the vendor's Primary Contact and Conveyancing Professional.

### B Nominating a Primary Contact

#### **Guidelines**

- 8.3 The Primary Contact will usually be the person who prepares the instruments and attends to settlement and registration. (The Primary Contact may be the lawyer responsible for the transaction, but will usually be a Legal Executive or Legal Secretary.)
- 8.4 The Primary Contact must be a registered named user of Landonline and have access privileges to prepare instruments. (Access profiles are set by each firm and can be altered by the firm's System Manager).
- 8.5 Only one Primary Contact can be nominated per e-dealing. However, any other person in the firm with the privileges of Primary Contact can access and work on any e-dealing within that firm. The firm acting for a party can change their Primary Contact for that transaction.
- 8.6 As the purchaser's lawyer needs to nominate their own and the vendor's Primary Contact and Conveyancing Professional, it is essential that the vendor's Primary Contact advise the purchaser's Primary Contact of the name of those parties **exactly as it is shown for their Digital Certificate**. When inserting names into the dealing the system will recognise only exact matches of names. If inserting user ids ensure you have the correct suffix (i.e. asmith004). As there are some users with the same name ensure you have the correct name, user id and firm

#### **Commentary**

The vendor's Primary Contact should advise details of the vendor's Primary Contact and Conveyancing Professional as soon as practicable (within two working days) once the agreement becomes unconditional. The same rationale applies in the case of any third party to the dealing, such as a separately represented mortgagee.

### C Creating an e-dealing

#### **Guidelines**

- 8.7 The e-dealing needs to be created by the purchaser's Primary Contact who should insert the names of the Primary Contact and Conveyancing Professional for each of the parties and reference **all** of the instruments that will form part of the e-dealing, including reference to, but not the preparation of, the vendor's discharge(s). The vendor's Primary Contact will prepare these.

- 8.8 When inserting names into the dealing system it will recognise only exact matches of names (refer Guideline 8.6 above). For example 'Liz Smith' will not be recognized if that person's name is 'Elizabeth Sophia Smith'.
- 8.9 In the creation of the e-dealing the purchaser's Primary Contact should include reference to all instruments in the e-dealing in the Create Dealing screen, including the discharge(s) that the vendor's Primary Contact will prepare.

## **D Nominating a Conveyancing Professional**

### **Guidelines**

- 8.10 The Conveyancing Professional for each party to the transaction is the person who will certify and sign each instrument associated with the transaction. That lawyer takes full responsibility and is accountable for any update or change to the Computer Register effected by the registration of any instrument certified and signed by him or her.
- 8.11 The Conveyancing Professional need not be directly involved in all aspects of settlement or registration. The critical aspect of the Conveyancing Professional's involvement is in certification and signing. The Conveyancing Professional must have sufficient knowledge of the transaction to make informed and factually accurate certifications (refer section 164A Land Transfer Act 1952). Criminal sanctions may flow from any reckless certification made. Professional sanctions apply to negligent or careless verification of the identity of clients and certifications generally. (Refer also to Sections H and J below.)

### **Commentary**

In fulfilling his or her obligations to a client, a sole practice lawyer who wishes to use Landonline must ensure that his or her attorney pursuant to Schedule 1 of the Lawyers and Conveyancers Act 2006, is the holder of a Digital Certificate with certifying and signing privileges.

A sole practice lawyer needs to link his or her attorney to the sole practice lawyer's licence to enable that attorney to access an e-dealing in the sole practice lawyer's absence and to make the necessary certifications to enable settlement to proceed.

As with the need for a sole practice lawyer to have an Attorney in place for contingencies before they arise, it is equally important to have systems in place to complete e-dealings if the lawyer is absent. The Primary Contact can nominate an alternative Conveyancing Professional (lawyer) for any e-dealing prior to submission for registration. There is considerable advantage in the linking of the sole practice lawyer's Attorney (by the firm's System Manager) to the licence, when Landonline e-dealing functionality is first acquired.

If the sole practice lawyer's Attorney is not e-dealing capable, it is possible to link any other e-dealing registered lawyer with the sole practice lawyer's licence for the purpose of certifying an e-dealing if the sole practice lawyer is unavailable.

Internal protocols for the use of an alternate Conveyancing Professional should be clearly documented so that there is no doubt as to what triggers alternative procedures and there is a clear trail on file of the steps taken.

With respect to a locum the licence link will need to be made, as the need arises, by the System Manager.

## **E Instrument Preparation**

### **Guidelines**

- 8.12 The purchaser's lawyer is responsible for arranging the preparation of the transfer, mortgage or any other instrument in the Landonline shared workspace that the lawyer would otherwise have been responsible for preparing in paper. This task may be delegated to a Primary Contact.
- 8.13 Although some mortgagees may require a paper mortgage to be executed by the client, only the electronic mortgage will be registered.

### **Commentary**

Landonline accommodates the registration of all mortgages, including those with non-standard provisions.

Refer Guidelines 3.49 to 3.51 of Part 1 for duty of care when second and subsequent mortgages are involved.

## **F Back to Back Dealings**

### **Guidelines**

- 8.14 The most straight forward method of dealing with a back to back transaction (e.g. an 'on sale' of the same property on the same day) is to set up both transactions in the same dealing as the number of instruments or parties in an e-dealing is for all practical purposes unlimited.
- 8.15 A back to back dealing requires the names of all Primary Contacts and Conveyancing Professionals to be known when creating the e-dealing.
- 8.16 The firm acting for the final transferee should normally submit a back to back dealing and the 'submitting firm' field should therefore be amended as necessary to allow this.

### **Commentary**

Ideally the ultimate purchaser should create the dealing in consultation with the other party(s). The benefit of one dealing is:

- the ultimate purchaser can pre-validate the entire dealing, including the other party(s) instruments;
- there is no issue of waiting for the prior transaction to be submitted and greater transparency.

The subsequent dealing relies on the transferee name in the prior dealing. Accuracy is paramount, as any change to the transferee name will impact on the subsequent dealing.

A less desirable option is to set the transaction up as two separate dealings. If this approach is used the party to the prior dealing must not delay in releasing or submitting that dealing.

The same considerations about appropriate undertakings that would apply for back to back dealings in a paper based transaction should apply to electronic dealings. The wording of the undertakings is extremely important with back to back settlements. Agree with the other side in advance regarding undertakings and settlement procedures. If agreement cannot be reached, settlement should be face to face with all parties. The most appropriate way to exchange settlement funds in a back to back settlement is via SCP (refer Guidelines 6.10 to 6.14 of Part 1 of

these Guidelines). Settlement in person (at the office of the first transferor or as otherwise agreed) may be appropriate.

## **G Mortgagee Separately Represented**

### **Guideline**

- 8.17 Separate third party representation, generally for a mortgagee, requires all of the relevant Conveyancing Professionals and Primary Contacts to be nominated when the e-dealing is created. This will automatically determine the instrument preparation, releasing and submitting responsibilities as well as the certifications that each party is required to make.

### **Commentary**

Any number of different parties (certifiers) may be included in the same dealing. A mortgagee can be separately represented for a discharge or a new mortgage.

The name of the Primary Contact and Conveyancing Professional must be noted for the relevant role for the instrument in the Create Dealing screen.

The check boxes allow the party liable to pay the registration fee for that instrument to be selected if it is different from the default.

Only one party may submit the dealing, in the same way as only one party can lodge a paper dealing. Ordinarily that would be the lawyer for the transferee as that will dictate the recipient of the automated post registration searches.

Alternatively, the new mortgagee could be nominated as the submitting party.

## **H Digital Certificate Protocols**

### **Guidelines**

- 8.18 In accordance with Rule 11.4 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (reproduced below) a lawyer must take all reasonable steps to ensure the security of the passwords for his or her Digital Certificate. It must not be written down and must not be shared with anyone, including partners or any other Conveyancing Professionals in the firm.
- 8.19 The lawyer is personally responsible for all instruments that are registered that have been certified and signed using that lawyer's Digital Certificate.
- 8.20 A lawyer must not give a third party an opportunity to interact with the Computer Register by leaving the computer unattended. While there is an automatic time out termination of a session logged on to Landonline, best practice requires that the lawyer does not leave his or her computer unattended while logged on.

### ***Extract from Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008***

#### **Prevention of crime or fraud**

- 11.4 A lawyer must take all reasonable steps to prevent any person perpetrating a crime or fraud through the lawyer's practice. This includes taking reasonable steps to ensure the security of and access to electronic systems and passwords.\*

\*The protection of passwords and systems will include the protection of digital certificates and associated passwords, and passwords, usernames, and personal identification numbers relating to electronic banking.

### **Commentary**

Any lawyer who has been given the profile to certify and sign an instrument for an e-dealing has the ability to alter the computer Register.

Accordingly, if the security of the Digital Certificate or passwords is compromised there is a risk that an unauthorised person could alter the Computer Register using that lawyer's Digital Certificate. This could include transferring ownership and/or discharging a mortgage. To minimise such risk, the need to keep the passwords absolutely confidential is imperative.

If the designated Conveyancing Professional is not available when certification and signing is required, another Conveyancing Professional linked to the licence of the firm acting for the party, should certify and sign. (The named Conveyancing Professional does not need to be changed in the Roles field. Any other Conveyancing Professional in that firm can sign notwithstanding that there is a different name in the Roles field.)

## **I Completion of Authority and Instruction Forms (A & I)**

### **Guidelines**

- 8.21 The specified Authority and Instruction Forms (A & I) (see Appendices to Part 2 of these Guidelines) completed by the client(s) is the lawyer's proof of authority to implement the e-dealing and provides protection against later challenges to the transaction. It is therefore imperative that the appropriate A & I form be completed in its entirety with all dates and names in full and details of documents properly recorded before execution by the clients.
- 8.22 Where a property is held by the registered proprietors as trustees and there is a change in the trustees, a transfer instrument is required. A & I forms must be completed in the usual way by the transferors and transferees.
- 8.23 The appropriate A & I form to use depends on whether the Authority and Instruction is given by a private individual, Private Corporate or Public Corporate (refer to glossary in Part 2 of these Guidelines).
- 8.24 The client should indicate that they have read and understood every aspect of the A & I.
- 8.25 **The instrument(s) cannot be certified and signed until the A & I has been signed by the client.**
- 8.26 Each client must sign the form personally or by an attorney under a properly completed power of attorney with appropriate certificate of non-revocation. See Section L for requirements in relation to execution by an attorney.
- 8.27 Where a mortgage is included in an A & I the s 90 to 94 Property Law Act 2007 amount and memorandum number should be included. Where the mortgage is for a fixed amount with no accompanying loan agreement the lawyer should include details of the mortgage within the text of the A & I form or attach the details to the A & I form and have it initialled by the mortgagor as evidence of the terms of the mortgage.

- 8.28 **A signed transfer or mortgage document in the traditional form is not an adequate substitute for an A & I form.**
- 8.29 A client cannot sign for and on behalf of a partner or spouse without written authorisation in the form of a power of attorney.

### **Commentary**

The following A & I forms are attached as Appendices to Part 2 of these Guidelines:

- Private Individual A & I;
- Private Corporate A & I; and
- Public Corporate A & I.

An explanation of the institutions which comprise Private Corporates and Public Corporates is set out in the glossary at the beginning of Part 2 of these Guidelines.

The A & I forms in the Appendices to these Guidelines are intended to be identical with the A & I forms within Landonline. A benefit of the Landonline-generated form is that it will include pre-populated information that has already been prepared for instruments in the dealing.

To ensure full protection, lawyers need to be diligent to ensure that clients sign the appropriate A & I form which clearly records the relevant information on which the lawyer will rely to complete the transaction. If any doubt exists as to whether an institution is a Private Corporate or a Public Corporate the Private Corporate A & I should be used. All details must be completed before the form is signed by the clients. If utilising the A & I within Landonline certain information will not pre-populate, such as the property address and underlying document. This information will need to be added manually.

(The disclosure requirements under the Credit Contracts and Consumer Finance Act 2003 must also be considered).

The forms are directed to the law firm conducting the conveyancing transaction. Any lawyer in the firm with certifying and signing privileges can certify and sign the instruments in the dealing. The certifying lawyer (as opposed to the firm) will be responsible for the certifications made.

The A & I forms require a separate form for each individual e-dealing, but in the case of a subdivision a schedule may be annexed to the form noting the relevant transferees (purchasers), lot number and/or title reference (if available) and date of the agreement.

The lawyer need not be concerned about including details of a loan amount in the A & I unless the mortgage is for a fixed sum in which event the procedure set out in Guideline 8.26 should be followed.

Issues of legal capacity are also addressed in the form (refer Section M).

## **J Client Identity**

### **Guidelines**

- 8.30 The lawyer takes responsibility for all certifications made. It is therefore imperative for the protection of both the lawyer and the integrity of the Register to be satisfied that reasonable steps have been taken to establish the **identity, capacity and bona fides** of the client on whose behalf the certifications are being made. There is no independent

checking carried out by LINZ prior to registration and the lawyer's actions directly affect the Register.

- 8.31 Accordingly the lawyer cannot make certifications unless all individuals have signed the A & I. This may be done by a Power of Attorney with the appropriate certificate of non-revocation attached.
- 8.32 In all cases it is essential that the identity of the interested party be verified. All lawyers must be familiar with and comply with the latest Standard for verification of identity for registration under the Land Transfer Act 1952 LINZS20002 ([www.linz.govt.nz](http://www.linz.govt.nz)) which sets out the minimum requirements for verifying identity for the purpose of registering land transactions.
- 8.33 As there is no longer a duplicate Certificate of Title in the case of a landowner transferring or mortgaging a property, evidence linking the client whose ID is established to the property (such as an original copy of a rates demand or power bill) must be obtained and a copy retained in compliance with the requirements in the latest Standard for verification of identity for registration under the Land Transfer Act 1952 LINZS20002 ([www.linz.govt.nz](http://www.linz.govt.nz)). However, see the exception for Public Corporates contained in the LINZ Standard.
- 8.34 It is not necessary for a lawyer personally to witness the A & I being signed. Where the lawyer cannot personally verify the identity of an interested party the lawyer may have identity verification carried out by a delegate who must be an independent person on whom the Conveyancing Professional can reasonably rely.
- 8.35 Compliance with Rules 2.5 and 2.6 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (reproduced below) is critical. Lawyers have a general responsibility to be satisfied as to the identity, capacity and bona fides of a client on whose behalf they make representations or issue certificates. Electronic transactions under the Land Transfer Act 1952, particularly s 164A, place an added responsibility on lawyers.

***Extract from Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008***

**Certificates**

- 2.5 A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.
- 2.6 If a lawyer subsequently discovers that a certificate given by the lawyer was or has become inaccurate or incomplete to a material extent, the lawyer must immediately take reasonable steps to correct the certificate.

- 8.36 The Conveyancing Professional is accountable for the valid establishment of the client's identity, and the discretion rests with the Conveyancing Professional as to the acceptability or otherwise of the person establishing the identity.
- 8.37 A copy of the photo ID must be retained and attached to the A & I in all cases. It is essential that the original is sighted by the person confirming the identity. The requirement to record that the photo ID is a true copy will be met when the person

verifying the identity certifies the Client or Signatory part (Section 5) of a Private Individual or Private Corporate A & I form. This section includes the statements “(b) I have sighted the original form(s) of identities ticked above’ and ‘(c) I have attached a copy of the ID(s) used’. Therefore it is not necessary also to endorse a ‘true copy’ certification on the copy of the photo ID itself (although it would be good practice to do this). The same copy ID may be ‘recycled’ for clients seen on a regular basis. (On the expiration of that photo ID a new one should be obtained.)

- 8.38 Where a land owner’s name as registered on the title differs from that shown on their photo ID the discrepancy should be formally reconciled by having the client give a statutory declaration. The declaration should account for the discrepancy and confirm that the client as named on the title and in the photo ID is one and the same person. Relevant corroborating evidence (for example a copy of the client’s marriage certificate) should be attached as an exhibit. The declaration should be retained as supporting evidence with the client A & I form.
- 8.39 The enabling legislation requires that certification be made as to the identity of the person who authorised a discharge, transfer or mortgage. In most cases of a discharge of mortgage, the lawyer will be acting for the mortgagor and mortgagee and the mortgagee will be an Institutional chargeholder. Subject to normal prudent practice, it is acceptable to rely on the face of the Institutional chargeholder’s authority to discharge without personally establishing the identity of the individual who signed or authorised on behalf of the chargeholder. The lawyer must be satisfied that the authority on the face of it reasonably appears to be from the chargeholder and if not further inquiry must be made as to the bona fides of the documentation provided.
- 8.40 If the lawyer has not initiated the discharge or withdrawal by requesting it from the Institutional chargeholder, then further inquiry must be made as to the bona fides of the authority.
- 8.41 In the case of a mortgagee who is not an Institutional chargeholder standard ID procedures must be followed.

### **Commentary**

In the case of Guideline 8.32 a lawyer who is confident as to the identity of a landowner on the basis of their own personal knowledge may choose to dispense with this requirement, or treat a transaction as not falling under the category of “high risk” for the purposes of the LINZ Standard. However an element of common sense and judgement is required in the application of the LINZ Standard. For example, it may be quite reasonable to claim personal knowledge on the basis that the landowner has been a longstanding client of the firm, notwithstanding that most of the client interaction has been with other lawyers within the firm. It would, however, be inappropriate to claim personal knowledge if the landowner is a stranger, was previously unknown to the firm, and has become a client only very recently ([LINZG20714 Fact sheet - Frequently asked questions about the standard LINZS20002](#)).

Additional vigilance in all cases where identity of the client has been established by someone outside the lawyer’s firm is necessary. A faxed copy of the A & I form and form of identity is acceptable but the identity must comply with Guideline 8.36. However the lawyer takes responsibility for the document that has been witnessed outside the lawyer’s office. It is therefore important that the lawyer has confidence that the person carrying out the identification verification is known by the lawyer to be independent and that the lawyer is satisfied the person can be relied upon. Lawyers, justices of the peace and notaries can reasonably be expected to be independent and relied on. By contrast, it may be questionable to rely upon a delegate who is a

friend or relative selected by the client, as this may not provide an effective independent check or safeguard against forgers or identity fraud. Otherwise the lawyer would generally need to know the delegate. If there is any inconsistency or anomaly the lawyer must make further inquiry as to the bona fides of the documentation provided.

The A & I is not an instrument for the purposes of the Land Transfer Act so there is no need to have it notarised if signed overseas, unless there is some other reason why that level of independent verification is warranted. (For example it would be reasonable for a Conveyancing Professional to rely on an identification verification by a notary public or member of the legal profession in the country concerned.)

Although it is unusual for a person not to have any form of photo ID, this does occur from time to time. In these circumstances the lawyer should consider alternative means of verification. How this can be achieved will depend on the circumstances, but the key points to remember are:

- the purpose is to gain adequate assurance as to the identity of your client;
- the steps taken to verify identity must be documented in some way;
- the requirements of Guideline 8.36 must be met.

In the absence of acceptable photo ID, attestation as to the identity of the client should be by a person who does have adequate photo ID. The same approach should be taken as for someone obtaining a passport, namely, someone who can be positively identified attests to the identity of the person applying for the passport. For additional information see clause 4.2 of the [LINZS20002 Standard for verification of identity for registration under the Land Transfer Act 1952](#) and the guidance material in the standard as to what are and are not acceptable forms of photographic ID.

## **K Format of Authority and Instruction Forms (A & I)**

### **Guidelines**

- 8.42 The format of the A & I forms (see Appendices to Part 2 of these Guidelines) may be changed to accommodate a firm's template but the content of the form must not be reduced.
- 8.43 While the forms can be amended the content required cannot be reduced as the requirements of section 164C(2) of the Land Transfer Act 1952 must be met and the approvals of the form by NZLS and RGL must not be lost.
- 8.44 The A & I form may be generated within Landonline and will pre-populate any information that has already been prepared for the instruments in the dealing.
- 8.45 Reference to instruments that are not part of the transaction or not required to be included in the A & I (such as a bank discharge) may be deleted from the A & I.

## **L Execution of Authority and Instruction Forms (A & I) By Attorney**

### **Guidelines**

- 8.46 Where an A & I is executed by an attorney, the lawyer needs to exercise special care and attention relative to both identity of the attorney and currency of the Power of Attorney.
- 8.47 The lawyer needs to consider the extent to which proof of identify arises in respect of the attorney to ensure compliance with Rules 2.5 and 2.6 (reproduced in Section J above). The obligation to be satisfied as to identity applies equally to the attorney as though he or she were the principal party to the transaction.

- 8.48 Where the lawyer has not previously acted for the principal party or the attorney, the lawyer should make additional inquiries as to the authenticity of the power of attorney.
- 8.49 It is the responsibility of the lawyer to ensure that the appropriate form of Certificate of Non Revocation of Power of Attorney for the particular form of power of attorney being used is attached to the A & I, especially in the case of an enduring power of attorney and powers of attorney from trustees. If the power of attorney has not been deposited with LINZ, then a copy of this document must be attached to the A & I.
- 8.50 It is the lawyer's responsibility to ensure that the transaction is within the scope of the Power of Attorney.

## **M Capacity**

### **Guideline**

- 8.51 The Certifying and Signing lawyer is required to make certifications as to the legal capacity of the client to give the authority (section 164A(3)(a) Land Transfer Act 1952). In order to do this, the lawyer should make the appropriate inquiry in relation to whether or not the client is a minor and has mental capacity and whether or not the client is an undischarged bankrupt.

### **Commentary**

The lawyer is expected to make reasonable inquiries of the client as to legal capacity. The scope and extent of this inquiry will depend on the circumstances.

Legal capacity can be affected by whether or not the client:

- is a minor;
- lacks the necessary mental capacity; or
- is an undischarged bankrupt.

If the answer to any of these certifications is "yes" see the comments below.

In the case of a corporate the lawyer will need to be satisfied that the corporate has been properly incorporated (for example by sighting and holding on file a copy of the certificate of incorporation and if relevant the empowering provision in its constitution).

The test of capacity requires the same professional standards as would be applied to a paper dealing and enquiries that would be necessary to discharge the obligations of capacity in a bank's solicitor's certificate.

### *Minor*

The client makes his or her own statement as to age. If the client is a minor the lawyer must seek the District Court's approval under section 9 of the Minors' Contracts Act 1969. The court order should be attached to the A & I form granting the certifying lawyer the necessary authority to act, and the form should be modified by deleting the word "not" from the "minor" certification. (Such an order would be required irrespective of the transaction being by e-dealing.)

### *Mental Capacity*

In the absence of any background information or obvious behavioural indicators to the contrary, it may be assumed that the client has the necessary mental capacity to authorise the transaction.

This is similar to the threshold that applies where an attesting witness is required to prove execution by statutory declaration (see Form 28 in Schedule 2 of the Land Transfer Regulations). Provided a lawyer has dealt with a client enough, reasonably to form the view that that person is of sound mind, that knowledge should be sufficient. The lawyer or other witness needs to make that assessment at the time of establishing the identity of the client.

If the certifying lawyer has any doubts as to the client's mental capacity, it may be appropriate to make further inquiries or, if necessary, seek the opinion of a qualified health professional.

If the client appears to lack mental capacity, this will not necessarily preclude the client from dealing with their property (by e-dealing or otherwise). If an appropriately qualified health professional provides written confirmation that the client has the capacity to understand the nature of what is being signed, then that is sufficient to meet the lawyer's statutory requirements. Alternatively, a court order can be obtained, as outlined for a minor, or if a Manager has been appointed under the Protection of Personal and Property Rights Act 1988, the Manager may sign the A & I.

A copy of the appointment of the property manager should be attached to the A & I.

### *Bankruptcy*

The lawyer must deal with the Official Assignee in such circumstances. The Official Assignee must sign the A & I directly. A copy of the appointment should be attached.

### *Corporates*

In the case of a corporate the lawyer needs to be satisfied that the corporate has in fact been incorporated and has not been struck off and would want to be satisfied that the constitutional documents of the company did not preclude the capacity to give the authority. Similarly in the case of a Public Corporate where some Public Corporates may be precluded by their originating statute from granting a security for example.

In the case of a corporate the A & I contains a statement from the authorised signatory that the client has passed the necessary resolutions as required by its empowering constitution, rules or statute to authorise the transaction.

In the absence of any background information to the contrary, and assuming the lawyer has (in the case of a Private corporate) taken reasonable steps to identify the persons giving the authority to act, the lawyer can reasonably rely on the authorised signatory's statement.

In the case of a company under the Companies Act 1993 regard should be had to section 18 of that Act.

## **N Retention of Authorities**

### **Guideline**

- 8.52 Lawyers must retain for a period of not less than ten years (or such other prescribed period) from the date on which the instrument is lodged for registration the evidence in support of the certifications made in an e-dealing.

## Commentary

The retention requirement is contained in section 164C(1) of the Land Transfer Act 1952. That links to regulation 14 of the Land Transfer Regulations 2002 which currently specifies 10 years from the date on which the instrument is lodged for registration.

Examples of supporting evidence:

- properly executed A & I form and certified photographic evidence;
- chargeholder's authority to discharge;
- if appropriate, the certificate of non revocation and a copy of the power of attorney;
- if appropriate, in the case of a landowner transferring or mortgaging, a document showing the landowner's name and the physical address of the property (e.g. rates demand, bank statement, or utility account) unless the lawyer knows the landowner personally and can vouch for their identity (*LINZS20002 Standard for verification of identity for registration under the Land Transfer Act 1952*). (See commentary in Section J.)

It is a matter for lawyers to determine whether a particular A & I should be retained to survive beyond the 10-year period, for example if there are actual or pending proceedings. A check should be made of any mortgagee requirement or undertakings given in a Solicitor's Certificate as to a longer retention period.

The A & I is the lawyer's authority to effect e-dealings under Landonline. The certification, signing and submitting of e-dealings by a lawyer disposes of or creates rights in land. A lawyer needs to be able to confirm, if the need arises, his or her authority to act after the transaction has been completed. The action of a lawyer is similar to the execution by an attorney and the paper trail needs to be available for review. In most circumstances the need to verify the client A & I will arise well within the 10-year retention period specified by the Land Transfer Regulations 2002. There may be circumstances which justify retention beyond the minimum period. This is no different from the assessment made before destroying any client file.

Electronic retention of A & Is must be in accordance with the *NZLS Guidelines for the retention of records on termination of retainer* (available on the NZLS website at [www.lawsociety.org.nz/home/for\\_lawyers/resources/guidelines](http://www.lawsociety.org.nz/home/for_lawyers/resources/guidelines)). This should also be cross checked against any mortgagee requirement.

In the event that the client uplifts a file and/or Deeds packet, care should be taken to retain the original A & I form (and any consents) as evidence of the authority for the lawyer effecting registration.

Similar considerations apply for lawyers who have certified and signed electronic instruments when leaving a firm. Although the A & I is generally addressed to the law firm, the lawyer who certified and signed remains personally responsible for its retention for 10 years in accordance with that specific certification on each instrument. While it would be usual for the recipient firm to retain the A & I (and associated documentation referred to in the A & I), it would be prudent for the departing lawyer to obtain an indemnity and agreement from the firm that the retention period and any requests made pursuant to a Compliance Review will be complied with. Ideally these are matters that should be incorporated in any employment or partnership agreement.

Given the firm's contingent obligations for A & I retention in the case of undertakings provided to mortgagees in Solicitor's Certificates, the firm should retain the original and co-operate with any compliance review request.

## **O Transaction Ceasing to Qualify as e-dealing**

### **Guideline**

- 8.53 Where a transaction commenced as an e-dealing cannot proceed as an e-dealing because of an unexpected instrument not capable of e-dealing, the lawyer can either agree to revert to a paper transaction or to have the additional instrument(s) as a separate e-dealing if qualifying (e.g. second mortgage) to be queued immediately behind the first e-dealing.

## **P Mortgages**

### **Guidelines**

- 8.54 The purchaser's lawyer is responsible for preparation of the mortgage in the Landonline shared workspace, unless there is a separate lawyer for the mortgagee who elects to prepare it. While it may be prepared in anticipation of receipt of the mortgagee's authority, certification and signing cannot occur until such authority is actually received (Rule 2.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 applies).
- 8.55 If the mortgagee is an Institutional chargeholder the letter of instruction from the mortgagee to prepare and register the mortgages is all that will be prima facie required to be produced on an audit as authority from the mortgagee.
- 8.56 As outlined below an A & I form is not required from an Institutional chargeholder (including in respect of a caveat, withdrawal of caveat, variation of mortgage, priority of mortgage, transfer of mortgage or transfer in exercise of power of sale) but is required from the mortgagor or transferee of a mortgage or any party which is not an Institutional chargeholder. A signed mortgage, caveat, withdrawal of caveat variation of mortgage, priority or transfer of mortgage in the traditional form is not an adequate substitute for an A & I form for the mortgagor or any party to the instrument which is not an Institutional chargeholder.
- 8.57 Where a mortgagee makes reference to the sections 90 to 94 Property Law Act 2007 priority amount, that amount together with the memorandum number must be included in the appropriate place in the A & I.
- 8.58 Under no circumstances can the lawyer certify and sign the mortgage until all of the documentation (as outlined below) is held. This includes any annexed mortgage details which must be signed by the client.

### **Commentary**

#### *Institutional Mortgagees*

Mortgagees' letters of instruction traditionally contain the same fundamental information and requirements. The exact content of the mortgagee instruction according to requirements of the banking sector and the Registrar-General of Land may vary from time to time.

The following criteria for the mortgagee's authority should generally be sufficient.

It should:

- be on the letterhead of the mortgagee;
- identify the recipient law firm/lawyer authorised to certify and sign the mortgage;
- state CT reference(s) or otherwise clearly identify the subject property (e.g. by street address);
- state the registered memorandum number to be used;
- show the name(s) of the mortgagor(s); and
- specify any priority amount applicable.

Not all banks provide all of the above information in their letter of instruction. It is acceptable if the omitted information is contained in the associated loan agreement.

### *Private Mortgagees*

In the case of a private (non-institutional) mortgagee (such as a vendor mortgage) the completion of an Authority and Instruction (A & I) form is required by the mortgagee.

### *Fixed sum Mortgages*

Where a mortgage is for a fixed sum the memorandum number should be included in the A & I form. Where the mortgage is for a fixed amount with no accompanying loan agreement the lawyer should include details of the mortgage within the text of the A & I form or attach the details to the A & I form and have it initialled by the mortgagor. (The disclosure requirements under the Credit Contracts and Consumer Finance Act 2003 must also be considered).

## **Q Discharges**

### **Guidelines**

- 8.59 Unless there is a separate lawyer for the mortgagee (or other chargeholder), the vendor's lawyer is responsible for preparation of the discharge in the Landonline shared workspace. While it may be prepared in anticipation of receipt of the mortgagee's (or other chargeholder's) authority, certification and signing cannot occur until such authority is actually received. (Rules 2.5 and 2.6 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 apply.)
- 8.60 The lawyer should ensure that the correct option is selected in the discharge as to whether the mortgagee (or other chargeholder) requires a reservation of the personal covenant.
- 8.61 If a discharge is the only instrument in an e-dealing, specific authorisation from the mortgagee (or other chargeholder) is all that will prima facie be required to be produced on a compliance review. An A & I form is not required from an Institutional chargeholder.
- 8.62 In the case of a non Institutional chargeholder (mortgagee) the appropriate Authority and Instruction (A & I) form is required to certify and sign the discharge.

### **Commentary**

Discharge for e-dealing is a generic term used to include withdrawals, releases and satisfactions. Virtually all discharges and partial discharges may be registered via e-dealing.

The vendor's discharge(s) should be in the same dealing as the purchaser's transfer and mortgage. This allows the purchaser's lawyer to pre-validate the whole dealing, including the vendor's discharges. It also puts the purchaser's lawyer in control of the whole dealing, the same as it would have occurred in paper.

### *Institutional Chargeholders*

An A & I is not required from an Institutional chargeholder. See the Glossary for a definition of "Institutional chargeholder". If there is doubt as to whether a particular mortgagee is an institutional chargeholder, the lawyer should have the mortgagee complete an A & I form in the usual manner.

The mortgagee's (or other chargeholder's) authority may be in the form of a signed full discharge (as used in non-electronic dealings), letter or facsimile. An emailed authority will also be sufficient authority provided it is the lenders policy/practice to provide this e-mail and **that there is an electronic sender name contained in the email** and the sender address details show that it was dispatched by the mortgagee (or other chargeholder).

**If an authority to discharge is received that has not been initiated by the law firm then further inquiry must be made to verify its bona fides.**

The exact content of the mortgagee authority according to requirements of the banking sector and the Registrar-General of Land may vary from time to time.

The following criteria for the mortgagee's authority should generally be sufficient.

It should:

- be on the letterhead of the chargeholder, or in the case of an email have the sender detail clearly as being from the chargeholder;
- identify the recipient law firm/lawyer authorised to certify and sign the discharge;
- state CT reference(s);
- identify the type of instrument e.g. mortgage, caveat etc;
- state the registered number of the instrument to be discharged;
- show the name(s) of the signatories for the chargeholder and include a statement that such signatories have the appropriate authority;
- specify whether to release or retain the mortgagor's personal liability.

Only the chargeholder's authority to the lawyer is required to establish the lawyer's authority to create, certify and sign the discharge.

If settlement is being effected remotely, the vendor's lawyer should include in their undertaking the following:

- 1 I/we undertake that I/we have prepared, certified, signed and pre-validated Discharge of Mortgage number '12345' as e-dealing number '12345'; and
- 2 that immediately following receipt of confirmation of deposit of settlement funds to my/our trust account to submit the above discharge(s) in the Landonline Workspace for registration.

If settlement is in person the vendor's lawyer (or his or her assistant as appropriate) would submit the discharge and supply the purchaser's lawyer with a print out noting registration of the discharge at the time of settlement.

#### *Transfer in Exercise of Power of Sale*

When an Institutional chargeholder has exercised its power of sale under a mortgage held by it, the letter of instruction to its lawyer should (in addition to meeting the requirements set out above) state that following default by the mortgagor, the requisite default notice under the Property Law Act was served and expired with the default remaining unremedied, and that the power of sale has been validly exercised.

#### *Delegated Authorities*

Where a lawyer is to certify on behalf of a client of another law firm, the lawyer certifying needs to hold an A & I direct from the client of the other law firm.

## **R Transfers and other Instruments**

### **Guidelines**

- 8.63 The purchaser's lawyer is responsible for preparation of the transfer (or any other 'purchaser' related instruments) in the Landonline shared workspace. While these instruments may be prepared in anticipation of receipt of the transferee's (or transferor's) client Authority and Instruction form, certification and signing cannot occur until this authority is actually received (Rules 2.5 and 2.6 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules apply).
- 8.64 The vendor's lawyer must also have the necessary client Authority and Instruction form prior to certification and signing.
- 8.65 The same principles apply for most other electronic instruments where the lawyer makes certifications on the client's behalf.

### **Commentary**

Both the transferor and transferee are signed for in an e-dealing. The transferee certifications are effectively a codification of the signing correct for the purposes of the Land Transfer Act 1952 for paper instruments.

As a general rule, for any other instruments the minimum information on the A & I should be the instrument type, the title reference (unique identifier) and the other party, if applicable. A copy of the instrument need not be attached to the A & I. It would be prudent to have an acknowledgement from the client as to the content of the instrument. For example, for an easement instrument the client may acknowledge the content by way of e-mail with the instrument attached or alternatively have the client initial a paper copy.

While all the common conveyancing instruments require the standard e-dealing certifications and supporting authority under ss 164A to 164C of the Land Transfer Act 1952, there are other instrument types which do not. The exceptions are generally administrative items (e.g. notices, consents, certificates and applications mainly lodged by territorial authorities) authorised by other legislation which do not require the same level of identity verification or execution. Such instruments may be completed and signed in the traditional paper format and lodged for registration using the e-dealing "lodge with image" functionality. More detailed guidance on these matters is available on the Landonline website ([www.landonline.govt.nz](http://www.landonline.govt.nz)).

## *Caveats and Withdrawals of Caveats*

### **Guidelines**

- 8.66 An A & I is not required for a caveat if the certifying lawyer signs as agent and has a letter, file note, or other record of the client's instructions. It is however good practice to obtain an A & I from the client so that the certification made by the lawyer is effectively attributed to the client.
- 8.67 A withdrawal of caveat must have the direct authority of the caveator, even where the caveat was signed by an agent. The authority must be in the form of an A & I except in the case of an Institutional chargeholder where a written authorisation of the withdrawal of caveat will suffice.

## **S Process of Certification**

### **Guideline**

- 8.68 Every lawyer certifying and signing an instrument needs to be satisfied **personally** that the authorisation from the client(s) is in order, that the identity of the client(s) has been established to the lawyer's satisfaction and that all certifications relating to that instrument are true and correct.

### **Commentary**

Lawyers need to establish systems for inspection and checking of all documents necessary to support the certification.

For example the:

- properly executed A & I form;
- chargeholder's authority to discharge;
- if appropriate, the certificate of non-revocation and a copy of the power of attorney; and
- if appropriate, any consents or other documents for which a certification is made.

Where the evidence to support the identity of the client has been verified by a staff member or someone outside the firm, the lawyer is still personally responsible for all certifications made in each signed instrument.

## **T Certification by Lawyer not from firm named on Authority and Instruction (A & I)**

### **Guideline**

- 8.69 If the attorney for a sole practice lawyer (pursuant to the Lawyers and Conveyancers Act) is making the certifications pursuant to that power of attorney, there is no need to obtain a new A & I from the client, but otherwise a new one will need to be obtained. This cannot be obtained retrospectively.

### **Commentary**

In order for the attorney to have access to all of the sole practice lawyer's dealings it is necessary to have the attorney linked to the sole practice lawyer's e-dealing licence. This should be done at the time of appointment of the attorney. The linking enables access in an emergency without the need for any action by the sole practice lawyer. It is too late to arrange the linking when the sole practice lawyer is incapacitated as he or she needs to authorise the linking process via LINZ.

Refer also to Section D. It is not necessary to change the named Conveyancing Professional in the Roles field if another Conveyancing Professional from within the firm (or the sole practitioner's attorney) certifies and signs.

## **U Settlement of an e-dealing**

### **Guideline**

8.70 An e-dealing does not preclude a face to face settlement. As there are no physical instruments or documents associated with an e-dealing, there is less need to attend on a settlement in person than for a paper transaction.

### **Prior to settlement the purchaser's lawyer will have:**

- a. created the e-dealing;
- b. prepared the instrument(s);
- c. certified and signed the instrument(s). The purchaser's lawyer must then not amend the instruments in any way without first advising the vendor's lawyer of the proposed amendment;
- d. prepared and dispatched the Notice of Change of Ownership to the vendor's lawyer, or prepared the notice on-line via QV Sales Direct;
- e. pre-validated the whole dealing (including any discharges) as close as possible to settlement;
- f. obtained a guaranteed search; and
- g. advised the vendor's lawyer when they are ready to settle.

### **Prior to settlement the vendor's lawyer will have:**

- a. provided the settlement statement (which should occur no less than 3 working days prior to settlement or as otherwise required in the agreement);
- b. prepared the instrument(s);
- c. certified and signed the instrument(s);
- d. provided an undertaking to the purchaser's lawyer to 'Release' the instruments upon completion of settlement and not to do anything that would prevent registration.

The undertaking must be along the lines set out in Guideline 6.6d. of Part 1 of the Guidelines.

## **V Releasing and Submitting**

### **Guidelines**

- 8.71 Lawyers need to have in place protocols governing their staff relating to authorisation to release instruments and to submit e-dealings.
- 8.72 Release should occur immediately after settlement in accordance with the undertaking given. At the same time, the purchaser's lawyer should be advised by telephone, email or facsimile that release has occurred. The only qualification in respect of immediate release

is delay through circumstances entirely beyond the control of the vendor's lawyer as set out in the form of undertaking contained in Guideline 6.6d. of Part 1 of the Guidelines.

- 8.73 The purchaser's lawyer (or such other party who was recorded as the 'party responsible for submitting') is responsible for registration of all instruments in the e-dealing.
- 8.74 Submit should occur as soon as reasonably possible after release of the instrument has occurred. This should be on the same or next working day.

### **Commentary**

These protocols need to be similar in effect to the processes historically used in manual transactions in permitting staff to attend at physical or a remote settlement and subsequent dispatch of settlement documents or registration. The same staff who attended to those tasks in the paper environment should attend to the equivalent tasks in e-dealings. (e.g. 'settle' = 'release' and 'submit' = 'lodge/register').

Release gives effective possession and control to the purchaser. Even if the purchaser cannot submit the dealing until the next business day this does not negate the obligation on the vendor to release immediately after settlement.

Advice to the other side confirming release is necessary to avoid repeated logging on to ascertain if it has been released.

(The basis of enforcement of undertakings by lawyers arises from them being officers of the High Court of New Zealand. Confirmation of this is found in the High Court decision in *National Mutual Finance v Haddon Marshall & Co*, HC PN C/P 152/90. An undertaking may be oral but should be confirmed in writing when ever possible. Other jurisdictions have confirmed that standard email may be used for transmission of binding undertakings.

The Supreme Court in South Australia issued a Practice Direction in February 2002 stating: '*undertakings given, in an email communication, by a party or their representative to the Court or other parties are binding as if they were given in an ordinary courtroom*'.)

## **W Evidence of Registration**

### **Guideline**

- 8.75 Lawyers are recommended to make provision for the cost of and to obtain a search of the title immediately following receipt of the message from LINZ that registration has been effected.

### **Commentary**

Lawyers are recommended to obtain a current search (no diagram) as physical evidence of the status of the title following registration. This is an automated process if the option of 'provide post registration search' is nominated at the time of submit ('registration'). Mortgagees will generally require a copy of the title. Lawyers should also forward a copy of the title to the client evidencing the registration.

## **X Perfection of Transaction**

### **Guideline**

- 8.76 If after settlement and possession, as a result of for example a system failure, certified and signed instruments are no longer available or, because of some minor typographical error, rectification

and re-signing of instruments is required, every lawyer has an obligation to co-operate with the other parties to a transaction to achieve registration.

**Commentary**

In a paper based transaction one lawyer can authorise another, either orally or by letter, to amend and re-submit documentation. In the case of an e-dealing, after re-creation of the instruments or the amendments that are necessary have been agreed, all parties need to certify sign and release the e-dealing again. A lawyer has an obligation to lawyer colleagues to co-operate in perfecting the dealing by certifying, signing and releasing a registrable instrument.

**APPENDIX 1**

LINZ Dealing Number: \_\_\_\_\_  
 Client Reference: \_\_\_\_\_

**PRIVATE INDIVIDUAL CLIENT AUTHORITY AND INSTRUCTION FOR AN  
 ELECTRONIC TRANSACTION**

*(This form is approved by the New Zealand Law Society and Registrar-General of Land)*

**1. TO LAW FIRM:**

*(Firm name)*

**2. CLIENT:**

*(Full name(s). If tenant in common state share.)*

**3. TRANSACTION:**

**Property Address:**

**Date and Nature of Base Document:**

**Instruments (examples):**

- *Transfer*  
*Name of other party*  
*Transferee(s) proprietorship*  
*Title Reference(s)*
- *Mortgage*  
*Chargeholder Name*  
*Priority Amount*  
*All Obligations or Fixed Sum*  
*Memorandum No*
- *Easement*  
*Name of other party*  
*Title Reference(s)*  
*Nature/Purpose*  
*DP number*



**APPENDIX 2**

LINZ Dealing Number: \_\_\_\_\_  
 Client Reference: \_\_\_\_\_

**PRIVATE CORPORATE CLIENT AUTHORITY AND INSTRUCTION FOR AN  
 ELECTRONIC TRANSACTION**

*(This form is approved by the New Zealand Law Society and Registrar-General of Land.  
 For use by a non-publicly listed company or incorporated society, etc.)*

**1. TO LAW FIRM:**

*(Firm name)*

**2. CLIENT:**

*(Registered name of corporate as per Certificate of Incorporation. Referred to as 'the Client'.)*

**Full Names of Authorised Signatory(s):**

\_\_\_\_\_  
 Authorised Signatory A

\_\_\_\_\_  
 Authorised Signatory B

\_\_\_\_\_  
 Authorised Signatory C

**3. TRANSACTION:**

**Property Address:**

**Date and Nature of Base Document:**

**Instruments (examples):**

- *Discharge*  
     Registered Number  
     Chargeholder Name
- *Transfer*  
     Name of other party  
     Transferee(s) proprietorship  
     Title Reference(s)
- *Mortgage*  
     Chargeholder Name  
     Priority Amount  
     All Obligations or Fixed Sum  
     Memorandum No
- *Easement*  
     Name of other party  
     Title Reference(s)  
     Nature/Purpose  
     DP number

#### 4. AUTHORITY AND INSTRUCTION:

I confirm that:

- (a) I am properly and duly authorised by law to sign this Authority on behalf of the Client;
- (b) this authority is binding on the Client;
- (c) this form is for the transaction noted above;
- (d) I am 18 years of age or over;
- (e) the Client is not subject to any statutory management order, the appointment of a receiver or liquidator, or similar;
- (f) the Client has passed the necessary resolutions as required by its empowering constitution, rules or statute to authorise the transaction noted above;
- (g) as required by s164A of the Land Transfer Act 1952 I irrevocably authorise and instruct you to register the instruments above as an e-dealing;
- (h) I understand that by signing this form the Client is legally bound by the electronic instruments certified and registered on its behalf pursuant to this authority and instruction as if such instruments had been signed by me personally on behalf of the Client;
- (i) I understand that the authorised transaction will become a matter of public record upon registration.

\_\_\_\_\_  
Signature of Authorised Signatory A

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signatory of Authorised Signatory B

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signatory of Authorised Signatory C

\_\_\_\_\_  
Date

*(Important note: Each Signatory named must sign personally. 'For and on behalf' is not acceptable.)*

#### 5. SIGNATORY IDENTIFICATION: *(Tick applicable ID. Person establishing identity to complete.)*

	Passport	NZ Driver Licence	NZ Firearms Licence	Other NZ government- issued photo ID
Signatory A	_____	_____	_____	_____
Signatory B	_____	_____	_____	_____
Signatory C	_____	_____	_____	_____

*(Attach copy of ID used or details (e.g. passport number) where copying not practicable.)*

I certify that:

- (a) I have witnessed the signatory(s) sign this form;
- (b) I have sighted the original form(s) of identity ticked above;
- (c) I have attached a copy of ID(s) used;
- (d) the photo(s) name(s) and signature(s) match the signatory(s) name(s) and identification provided.

\_\_\_\_\_  
Signature of person establishing identity

\_\_\_\_\_  
Full name of person establishing identity

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Phone/Email

\_\_\_\_\_  
Address

#### Notes:

1. The requirements for client identification specified in LINZS20002 Standard for verification of Identity must be complied with.
2. With the exception of foreign Passports, only NZ government issued photo ID may be relied upon for identity verification purposes.
3. Where the person who is signing this form is doing so under a Power of Attorney the identification required to be established is that of the attorney.
4. Attach certificate of non-revocation of power of attorney if required.
5. The full legal name of the corporate as registered must be used.
6. A faxed copy of this form is acceptable (refer to NZLS e-dealing Guideline J).
7. The consent of prior mortgagees, lessors, etc may be necessary to avoid a breach of covenants.
8. This form is derived from the New Zealand Law Society's Property Transactions & e-dealing Guidelines, Part 2, Appendix 2.

**APPENDIX 3**

LINZ Dealing Number: \_\_\_\_\_  
 Client Reference: \_\_\_\_\_

**PUBLIC CORPORATE CLIENT AUTHORITY AND INSTRUCTION FOR AN  
 ELECTRONIC TRANSACTION**

*(This form is approved by the New Zealand Law Society and Registrar-General of Land.  
 For use by a publicly listed company, territorial authority or government department etc.)*

**1. TO LAW FIRM:**

*(Firm name)*

**2. CLIENT:**

*(Registered name of corporate as per Certificate of Incorporation. Referred to as 'the Client'.)*

**Full Names of Authorised Signatory(s):**

\_\_\_\_\_  
**Authorised Signatory A**

\_\_\_\_\_  
**Authorised Signatory B**

\_\_\_\_\_  
**Authorised Signatory C**

**3. TRANSACTION:**

**Property Address:**

**Date and Nature of Base Document:**

**Instruments (examples):**

- *Discharge*  
     *Registered Number*  
     *Chargeholder Name*
- *Transfer*  
     *Name of other party*  
     *Transferee(s) proprietorship*  
     *Title Reference(s)*
- *Mortgage*  
     *Chargeholder Name*  
     *Priority Amount*  
     *All Obligations or Fixed Sum*  
     *Memorandum No*
- *Easement*  
     *Name of other party*  
     *Title Reference(s)*  
     *Nature/Purpose*  
     *DP number*

#### 4. AUTHORITY AND INSTRUCTION:

I confirm that:

- (a) I am properly and duly authorised by law to sign this Authority on behalf of the Client;
- (b) this authority is binding on the Client;
- (c) this form is for the transaction noted above;
- (d) the Client is not subject to any statutory management order, the appointment of a receiver or liquidator, or similar;
- (e) the Client has passed the necessary resolutions as required by its empowering constitution, rules or statute to authorise the transaction noted above;
- (f) as required by s164A of the Land Transfer Act 1952 I irrevocably authorise and instruct you on behalf of the Client to register the instruments above as an *e-dealing*;
- (g) I understand that by signing this form the Client is legally bound by the electronic instruments certified and registered on its behalf pursuant to this authority and instruction as if such instruments had been signed by me personally on behalf of the Client;
- (h) I understand that the authorised transaction will become a matter of public record upon registration.

\_\_\_\_\_  
Signature of Authorised Signatory A

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signatory of Authorised Signatory B

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signatory of Authorised Signatory C

\_\_\_\_\_  
Date

*(Important note: Each Signatory named must sign personally. 'For and on behalf' is not acceptable).*

Notes:

1. Where the person who is signing this form is doing so under a Power of Attorney the identification required to be established is that of the attorney.
2. Attach certificate of non-revocation of power of attorney if required.
3. The full legal name of the corporate as registered must be used.
4. A faxed copy of this form is acceptable (refer to NZLS *e-dealing* Guideline J).
5. The consent of prior mortgagees, lessors, etc may be necessary to avoid a breach of covenants.
6. This form is derived from the New Zealand Law Society's Property Transactions & *e-dealing* Guidelines, Part 2, Appendix 3.

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