



**PROPERTY LAW SECTION**

*New Zealand Law Society*

***e-dealing* Workflow guidance for Solicitors**

**Prepared as a joint project between NZLS and LINZ**

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## Introduction

The purpose of this document is to outline the *e-dealing* process and to highlight the key workflow changes that e-dealing users may need to make in their practices in order to maximise the benefits of using *e-dealing*.

Part 1 describes the 11 steps involving workflow processes

Part 2 presents suggestions for checklists to assist in the workflow process steps

Readers should use this document as a summary of workflow changes. There are templates and guidelines provided at the end of this document, but bear in mind that changes will need to be incorporated into the work practices of each firm and the templates adjusted accordingly.

## Terminology

Common terms used throughout this document are detailed below.

### **Primary Contact (PC)**

This is the person responsible for the day-to-day management of the *e-dealing*. Normally, this would be a Legal Executive.

### **Conveyancing Professional (CP)**

This is the person responsible for certifying and signing a specific instrument. They must be legally authorised to perform conveyancing services and hold a current practising certificate or be a licensed land broker. Normally, this would be the solicitor responsible for the dealing.

### **e-dealing Workspace**

The Landonline *e-dealing* Workspace provides users with access to different parts of Landonline – depending on security settings for each user.

### **Authority and Instruction (A&I) form**

A form that provides authority for the lawyer to act on behalf of a client in the *e-dealing* environment.

### **Digital Certificates**

A digital certificate is used to identify who you are as you travel around the Internet. LINZ uses digital certificates to authenticate each person using Landonline.

## High Level Process

The high level process for both multi-party and single party *e-dealings* is shown in the two diagrams on the following pages. The format of this report follows the flow of the key steps in both diagrams.



# High Level eDealing Process - Single Party Transaction

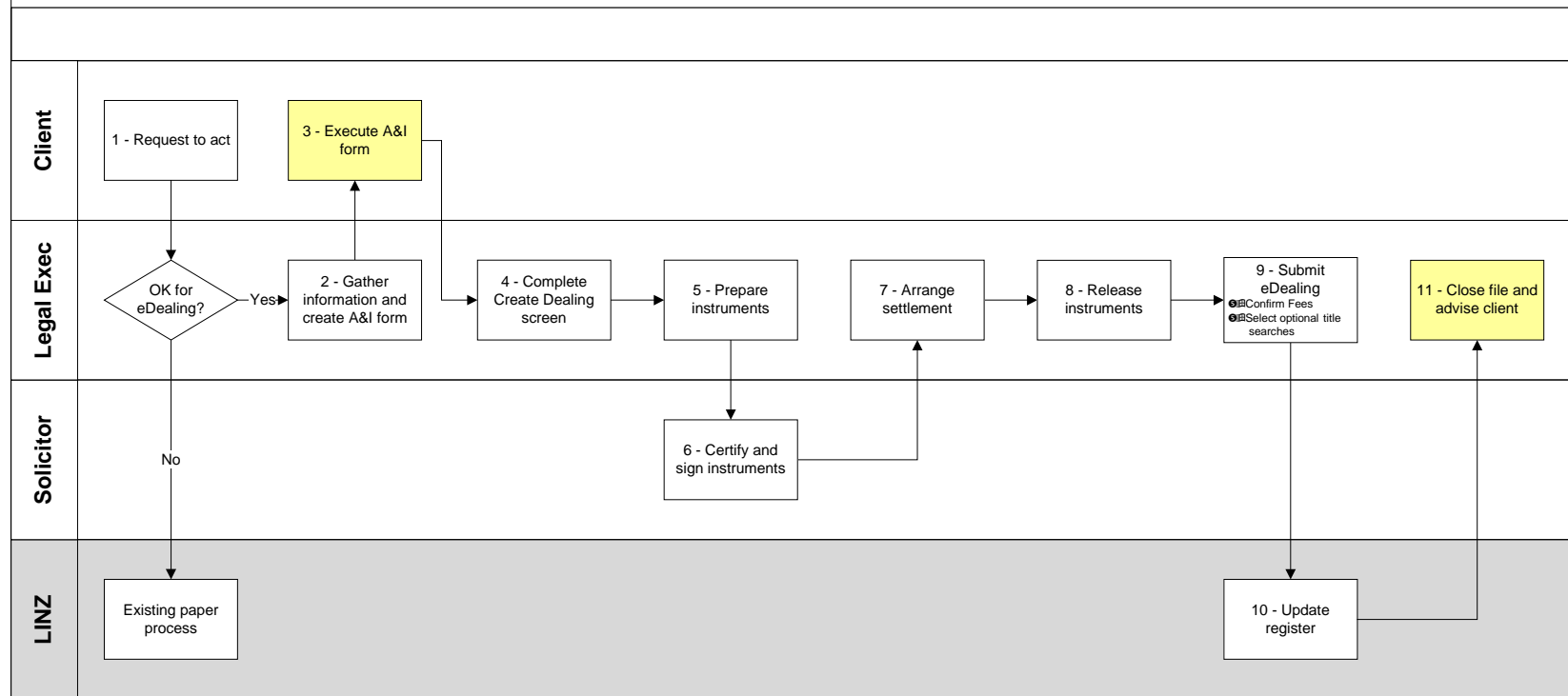


Figure 2 - High Level Single Party e-dealing process



## PART 1 Steps of Workflow Guidance

### Step 1 – Request to act

The process of client's instructions will not differ between the manual and electronic dealing environments.

The key change when moving from manual dealings to *e-dealing* at this point in the process, is to determine whether a transaction can be processed as an *e-dealing*.

#### Determine if transaction can be an *e-dealing*:

- Does the transaction meet the criteria for an electronic transaction? Only certain instruments are eligible to be part of an e-dealing transaction. For example, is it a Discharge, Transfer or Mortgage instrument<sup>1</sup>?
- Can part of the transaction be processed as an *e-dealing*, for example, a DM only? If this is not a standard DTM transaction, consideration should be given to whether there are ways to have any part of the transaction completed as an *e-dealing*.
- If this is a multi-party transaction, is the other party *e-dealing* capable? If the other party is not *e-dealing* capable, can any part of the transaction be completed as an *e-dealing*? For example, a discharge only for the vendor.
- A checklist may assist in determining whether the transaction is *e-dealing* capable. The key points in a checklist are outlined in the process flow diagram above
- There may not be enough information to accurately determine whether the transaction can proceed as an *e-dealing* at this point in the process. The Landonline website has details of who is currently signed up for *e-dealing*. Parts of this process may need to be repeated at a later stage when all information is available.
- A request to carry out *e-dealing* should be incorporated in the first communication with the other party's representative.

### 1.1 Process Description

This process starts when a request is received to represent a client for a conveyancing transaction. The transaction is then determined to be processed as an e-dealing or a manual dealing.

The process ends when either:

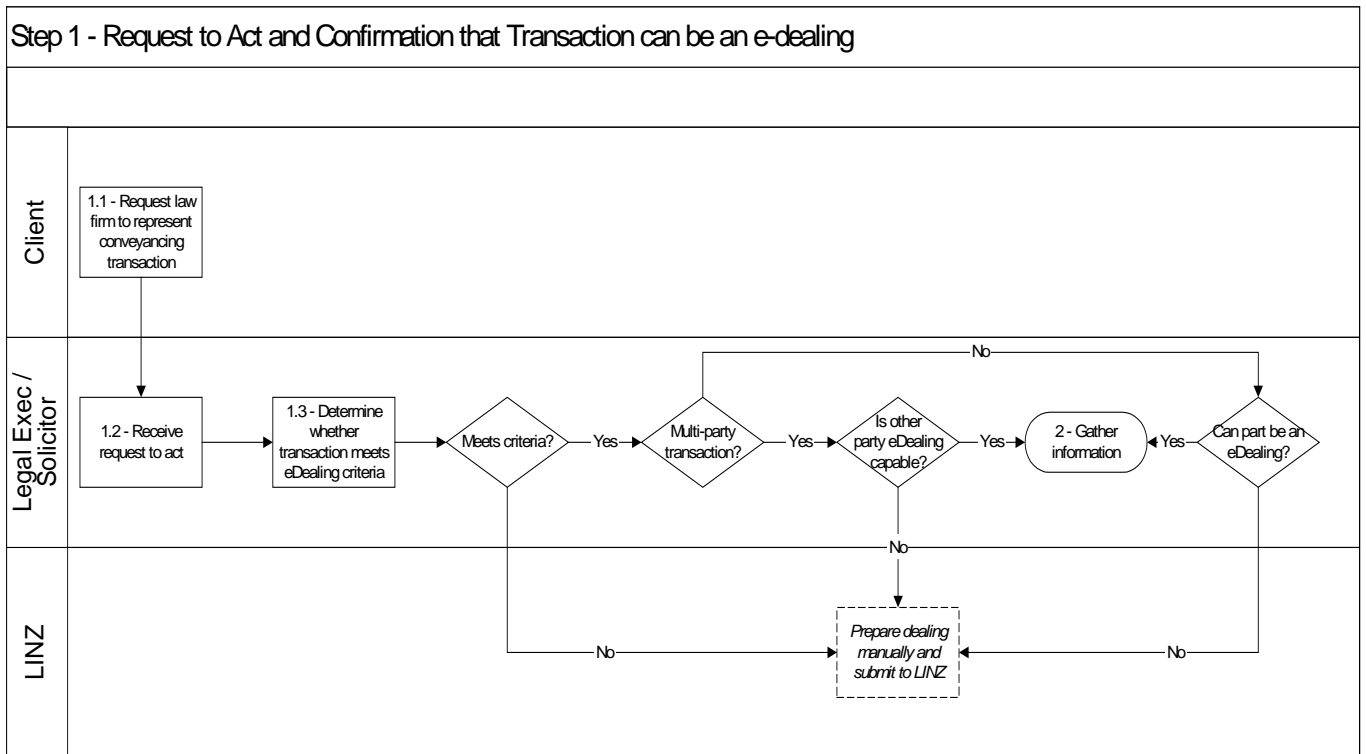
- The dealing is prepared via the manual dealing preparation process.
- The dealing is capable of being transacted in Landonline by *e-dealing*.

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<sup>1</sup> A full list of eligible transactions is contained in Appendix 1.



## 1.2 Process Flow



## Step 2 – Gather information and create Authority and Instruction (A&I) form

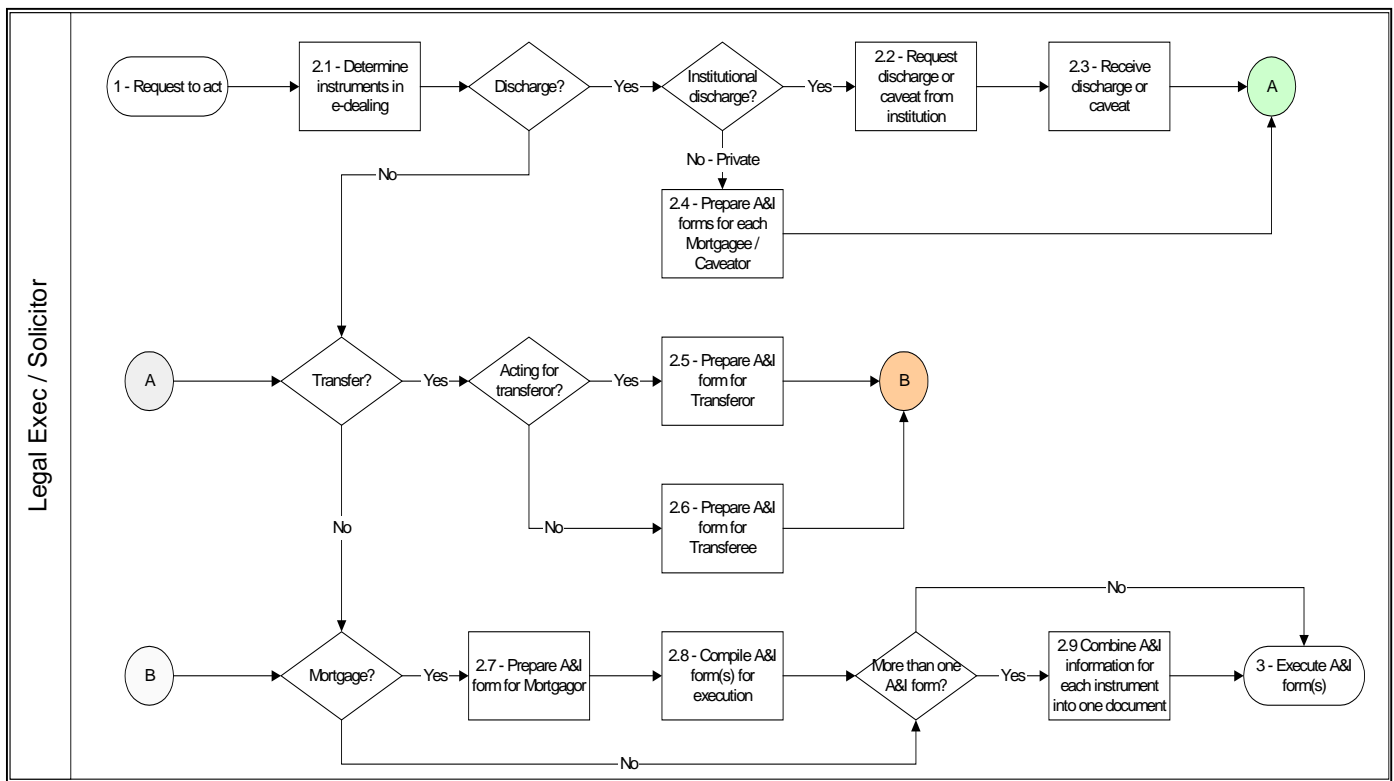
During this step, information required for the *e-dealing* transaction is gathered, including:

- Details of the Primary Contact (PC), normally the legal executive, and the Conveyancing Professional (CP) for the other party where this is a multi-party transaction. This information is often now included in standard form letters confirming the special conditions of the contract.
- Details required to complete the A&I form. One form will need to be completed for the discharge and transfer by the vendor, and one form will need to be completed by the purchaser for the transfer and the mortgage (if applicable). All information required can be found in a standard paper-based conveyancing file.

### 2.1 Process Description

The process starts directly from the outcomes of the previous process. The process ends with prepared A&I forms, ready for client execution.

## 2.2 Process Flow



## 2.3 Workflow Impacts

There are up-front workflow impacts that arise out of this process. Key impacts are:

- More information is required up-front, including:
  - Details of the CP and PC for the other party.
  - Details to complete A&I forms (dependant on the type of transaction<sup>2</sup>).
- A&I forms are now required to be signed by both the transferor and transferee. This compares to the manual environment where only the transferor signed the document. From a conveyancing perspective, this will require attendance on the part of the transferee, which previously was not required. If there is no mortgage, this is an additional step in the process when dealing with cash purchasers.

<sup>2</sup> For a full commentary on A&I forms, refer to Guidelines for the use of Landonline for an electronic transaction (e-dealing) published by the New Zealand Law Society on 20 February 2004. Sample A&I forms can be downloaded from: <http://www.lawyers.org.nz/memregissuesedealing.asp>

## 2.3 Workflow Impacts Cont.

### Creating A & I forms

Firms will want to establish a method for using 'Word' documents as 'merge files' for A&I forms for simplicity of document creation. This will differ between each firm completing *e-dealings*.

There are various techniques (depending on the word processing package being used) that will assist in creating the A&I forms as easily as possible.

Standard form letters confirming special conditions of a contract need to be updated to take advantage of the information requirements of *e-dealings* that are required at this point in the process.

### Documents Execution

If the documents need to be sent out of the office for execution, a package of documents needs to be compiled. This package may include:

- The A&I form(s), a set of witnessing instructions and a list of acceptable witnesses.
- The client matter number would ideally be the common reference on each item in the package.

### RGL Compliance

In order to prepare for any compliance review that LINZ may conduct, all firms need to be aware of the evidence requirements and incorporate these into standard practices.

Supporting evidence must be held to prove the truth of each certification made by the CP and retained for 10 years. For example, a copy of the client's A&I Form and all documents supporting the A&I Form.

Evidence requirements differ for each instrument. For example:

- For a registration of a discharge of mortgage:
  - An executed discharge (with certificate of non revocation if applicable) or a written authority from the institution authorising registration of the discharge.
- For a registration of a mortgage:
  - A letter of instruction from the lending institution, which identifies the mortgage details and title/computer register, an A&I Form from a private mortgage

Any other documents required to evidence the certifications should be attached to the A&I Form. Examples include:

- Caveators consent
- Letter of consent from the prior chargeholder
- Any original consents or orders
- Copy of Power of Attorney and certificate of non-revocation.

For complete details of the LINZ compliance review requirements, see

[http://www.landonline.govt.nz/content/legacy/info/pdfs/compliance\\_factsht\\_final.pdf](http://www.landonline.govt.nz/content/legacy/info/pdfs/compliance_factsht_final.pdf)

Compliance review requirements are also available at:

<http://www.lawyers.org.nz/PDFs/LandInfoOct03.pdf>

## Step 3 – Execute Authority and Instruction (A&I) form

Based on the preparation work completed in step 2 above, A&I forms are prepared for execution. For example, an A&I form is completed for the discharge and transfer for the Transferor (and one each if acting for two or more individuals) and an A&I for the Transferee and Mortgagor when acting for the Transferee/Mortgagor.

The form is executed by the client, and forms the authority for the solicitor to act in the *e-dealing* environment.

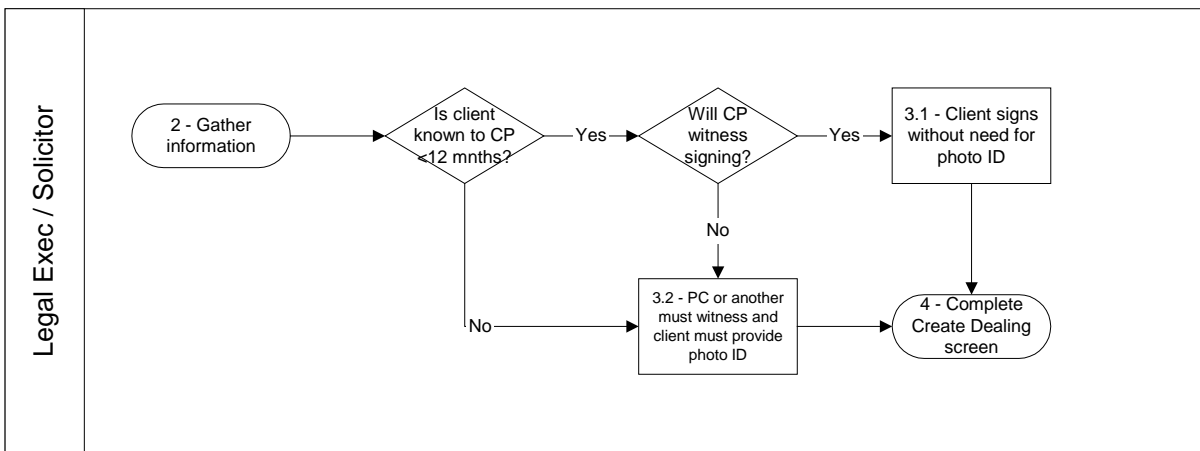
Note:

- Institutional discharges do not require an A&I form to be executed, but a letter accompanying the discharge should provide authority to register by *e-dealing*.
- The A&I form does not necessarily have to be signed at this point, but it must be executed by clients, witnessed and in hand before step 6 – Certify and sign.

### 3.1 Process Description

The process follows two routes, depending on the individual witnessing requirements of each transaction.

### 3.2 Process Flow



### 3.3 Workflow Impacts

#### The A & I form

Separate A&I forms are required for each transaction. These forms are set up as part of the previous step.

#### Client ID

The client signing the A&I form must provide photographic evidence of identity to the PC or witness on every occasion. However, the one and only exception to this rule is where the CP has known the clients for more than 12 months and is available to personally witness the client's execution of the A&I forms.



## 3.3 Workflow impacts Cont.

The executed hard copy A&I form must be held on the client file. It is recommended that execution be completed using a pen with dense blue ink.

## Witnessing

Best practice dictates that a person who can witness documents outside the jurisdiction must witness documents transmitted overseas. This is standard under Regulation 16 of the Land Transfer Regulations 2002, which provide a list of the acceptable witnesses for manual transactions at LINZ. This should be used as a guideline for *e-dealing* transactions as well.

Firms need to establish their own witnessing guidelines and acceptable witness list for documents that are executed both in-house and outside the law firm (within NZ or overseas).

**NB** If you are relying on a faxed copy of the A & I, you should ensure that the original is sent to you in due course. (See Guideline J of the *NZLS E-dealing Guidelines*.)

## Step 4 – Complete Create Dealing screen

The PC completes all required details to set up the *e-dealing* in Landonline. This step is similar to preparing an abstract document.

### 4.1 Process Description

The Create Dealing screen is launched from Landonline Workspace. Saving the *e-dealing* with all relevant details completes the process.

### 4.2 Process Flow

The key steps involved in creating an *e-dealing* in Landonline are:

- Enter a client reference (normally the matter number)
- Enter instrument summary details:
  - Instrument type
  - Affected titles
- Enter role details for each instrument

Note: Role details need to be entered twice for multi-party instruments such as Transfers.

### 4.3 Workflow Impacts

CPs need to provide an email or paper request form containing all the information that the PC will need to complete the *e-dealing* details in Landonline.

For multi-party transactions, when this step is complete, the PC needs to manually email the dealing number details to the other party. As most people will not use Landonline throughout the day, it is courteous to let the other party know that the transaction has been created.



## Step 5 – Prepare Instruments

Details for each instrument in the *e-dealing* are prepared by the relevant party, by entering names, registered numbers and priority figures in areas provided.

### 5.1 Process Description

Each instrument is slightly different and prepared according to the key characteristics of each document. There are three screens in Landonline that are completed – according to whether the instrument is a Discharge, Transfer or Mortgage or variants thereof.

### 5.2 Process Flow

For full details of the steps required for each type of instrument, refer to the support materials available for Landonline.

### 5.3 Workflow Impacts

#### For Mortgage Instruments

Check the institution's instructions for e-dealing instrument, as various institutions have differing requirements.

Some institutions still require a mortgage document to be typed and signed by the client (eg. National Bank). Other institutions have differing requirements, for example, some require copies of the A&I with the solicitors certificate whilst others require copies of View Instrument Details of the mortgage from Landonline.

It is recommended that those who are new to e-dealing print the detail of each View Instrument, as if the instrument was an unsigned instrument. More experienced users may not find the need to complete this step.

#### Pre-validation

Landonline provides functionality to check that the content of the e-dealing and/or the instruments are correct. Individual instruments and entire e-dealings can be pre-validated at any time from this step onwards.

e-dealings can be pre-validated as many times as necessary before submitting the e-dealing to LINZ. For example, Conveyancing Professionals might also consider pre-validating the dealing once they have certified and signed the instruments in step 6.



## Step 6 – Certify and Sign Instruments

This is the only step in the process that the PC cannot complete. It must be completed by the authorised Conveyancing Professional (CP).

This step is similar to 'signing correct' and can be completed after the A&I form has been signed and the instrument prepared.

CPs do not have to wait for the settlement date to occur to complete this step. It is strongly recommended that CPs do not leave the certification and signing to the last moment. This will avoid having to rush the process, which for many is unfamiliar and best done in a controlled environment.

For a simple single party discharge, the *e-dealing* process can take only a matter of minutes.

### 6.1 Process Description

Each instrument must be certified and signed separately by the CP.

Multi-party instruments require certification and the digital signature by both parties to the instrument. For example, a Transfer instrument requires certification and signature by the transferor and transferee.

A CP must complete each certification separately and complete all certifications and sign the instrument at the same time (ie. CPs cannot complete one or two certifications and save).

### 6.2 Process Flow

The CP opens the dealing from Workspace and selects each instrument in turn. Each certification must be completed before the CP can move on and digitally sign the instrument.

### 6.3 Workflow Impacts

#### Checklists

Before this step can commence, the PC needs to complete a checklist to confirm that all required details at this point have been completed. The checklist will essentially be a summary of the dealing work in progress. The CP can use it to easily determine whether all required steps have been completed. All supporting documentation will be attached to the checklist so that the CP can check each aspect required to complete certification.

The CP can then confirm the checklist details against the *e-dealing* and certify and sign the *e-dealing*.

The CP needs to manually email the PC with confirmation that the file is now ready for release (also see commentary in step 4). An alternative to an email might be to incorporate this step as a standard part of the instruction sheet.



## Step 7 – Arrange settlement

Settlement processes are very similar in the *e-dealing* environment to the manual environment, except reliance is on the electronic transaction rather than physical paper and there are no copies of documents to be faxed backwards and forwards.

This step also involves checking that settlement funds have been deposited as expected, which is critical before moving on to the next step.

### 7.1 Process Description

Settlement of an *e-dealing* is conducted outside of Landonline. The only part of the process performed in Landonline is releasing instruments. This is covered in step 8.

### 7.2 Process Flow

Normal manual processes apply.

### 7.3 Workflow Impacts

No copies of faxes are required for this step.

In face-to-face settlements there is an opportunity to see the documents being released on the screen at the Vendor's solicitor's office when handing over the cheque.

## Step 8 – Release instruments

At this point in the process, the vendor's PC releases each instrument to indicate that settlement has been completed. This process is similar in the manual environment to sending documents by DX or mail.

The CP does not need to be involved in this step of the process. This is similar to the manual environment, where the CP will often leave the legal executive to settle and register without the need of supervision.

**Note:** It is important to check that settlement funds have been transferred correctly before completing this step. Firms may need to consider revising internal policies that govern settlement to ensure that instruments are only released once authorisation of settlement has been obtained.

### 8.1 Process Description

Any user from the same firm with the appropriate privileges can release an instrument. Before you can release an instrument it must first be certified and signed.

### 8.2 Process Flow

Once all instruments have been released in an edealing, it is ready to be submitted to LINZ for registration.



## Editing a released e-dealing

If any party who has edit access to an *e-dealing*, edits an instrument that has been released, Landonline clears all certifications and signatures and provides an appropriate warning message. In this situation, each edited instrument must be re-certified and re-signed.

### 8.3 Workflow Impacts

- There is greater trust in the system as visibility of the transaction and its progress is high. Reliance on the other party (as is the case in the manual environment) is reduced.
- There is no risk of physically losing documents.
- There is no risk of documents being un-registerable.
- Fewer settlements need to be delayed due to original documents being unavailable, as faxed documents can be relied upon.
- There are no agency charges on the discharge.
- There are no resubmission fees if an *e-dealing* is rejected.
- Pre-validation ensures that there is no chance of missing something required for registration.
- There is no chance of being fooled by 'twink' at the last minute!

## Step 9 – Submit dealing

Once the purchaser's PC has released all instruments, the *e-dealing* can be submitted to LINZ for registration.

This step can also involve confirming the fees applicable for the dealing.

### 9.1 Process Description

When all instruments in an *e-dealing* have been released, the *e-dealing* can be submitted to LINZ for registration. This is the equivalent to lodging a paper dealing with LINZ.

### 9.2 Process Flow

The process involves the following key steps:

- Check the status of all instruments is 'Released'
- Preview and pre-validate the *e-dealing*
- Submit the *e-dealing*
- Confirm any fees applicable for this *e-dealing*

### 9.3 Workflow Impacts

It is worthwhile to print key messages before submitting the *e-dealing* as messages cannot be recovered once the *e-dealing* is submitted.



## Step 10 – LINZ register updated

The submitting party to the *e-dealing* transaction will receive notification immediately once the *e-dealing* has been registered.

### 10.1 Process Description

This process does not require any action from the person who submitted the *e-dealing*.

### 10.2 Process Flow

When an *e-dealing* is registered the PC who submitted the *e-dealing* receives notification in their My Messages folder.

### 10.3 Workflow Impacts

None.

## Step 11 – Close file and advise client

This step involves:

- searching the title to confirm that registration has been completed as expected
- the manual processes that are normally completed to finalise the client file, including printing a copy of the title information and forwarding it to the client. If time permits, all this could be done on the same day as settlement!

### 11.1 Process Description

Complete a title search in Landonline to confirm registration. You can also view the Confirmation of Registration notice that is automatically sent to the submitting party.

**NB** Landonline does not mandate that a title search is completed, but it is a prudent step to take on the same day as settlement. The title search results obtained at this stage can be used to provide confirmation of registration to clients. The clients can move into their new property and have a copy of their names registered on the title on the same day!

### 11.2 Process Flow

Normal file closure procedures are completed at this point.

### 11.3 Workflow Impacts

Details of the title search showing your client as the registered proprietor can be sent to your client and/or their mortgagee immediately.

Any messages should be attached to hard copy file for compliance review purposes.

It can be useful to keep copies of all key documents for each individual *e-dealing* in a separate *e-dealing* file or ring binder stored by *e-dealing* number for ease of access. This will ensure any LINZ Compliance Review can be conducted quickly, and without recalling your client file from storage.



## PART 2 Checklists

### Checklists and Instruction Sheets

The following list suggests a number of areas that would benefit from the use of checklists and instruction sheets. The table on the following page highlights where these suggested checklist and instruction sheets should be used on the process.

Checklists and instruction sheets may cover the following areas:

- A standard letter informing the other party the name of the Primary Contact and Conveyancing Professional.
- Email or paper workspace creation instruction sheet (could form part of a master checklist).
- Completion of A&I forms using firm's template, together with witnessing guidelines, and acceptable witness schedules
- Standard letter or email to the other party with e-dealing number
- Workspace Primary Contact checklist, signed by PC before handing to CP (could be part of a master checklist)
- Workspace and documentation CP checklist for certification and signing. This checklist would ideally combine with the PC checklist (could be part of a master checklist)
- Settlement undertakings
- Release instructions. Use the master checklist to indicate that settlement has been completed, and instruments can be released
- Submission instruction (if *e-dealing* is prepared by CP – and instructions to PC are required). Could also form part of the master checklist.

Ideally, one A&I form is prepared and executed for each instrument, and one checklist is completed for each *e-dealing*.

Sample A&I forms can be downloaded from:

<http://www.lawyers.org.nz/memregissuesedealing.asp>

# e-dealing Workflow Guidance for Solicitors



The following table indicates where in the step process proposed checklists and instruction sheets should be used.

Step <sup>3</sup>	Checklist/Instruction	Action/Output	Subsequent step
1	Checklist to determine whether a transaction is <i>e-dealing</i> capable.	None – checklist does not need to be retained.	Step 2.
2	Obtain sample A&I forms and modify as needed (different for each individual practice).	Locate and modify precedent A&I forms.	Step 3, unless A&I forms need to be sent out of the office.
2	If the documents will be sent out of the office for witnessing, prepare a standard package of information including: <ul style="list-style-type: none"> <li>The A&amp;I form(s), one set of witnessing instructions and a list of acceptable witnesses.</li> </ul>	<ul style="list-style-type: none"> <li>Package of information.</li> <li>Email or paper workspace creation instruction sheet.</li> </ul>	Step 4.
1	Incorporate request for e-dealing into standard letter in the first communication with the other party's representative.	Send letter to other party.	Step 2.
3	Create witnessing guidelines and acceptable witness list based on Land Transfer Regulations. Incorporate provision for photographic ID with the A&I form.	Email or paper workspace creation instruction sheet.	Documentation containing all information needed to complete summary e-dealing details in Landonline.
4	Based on the documentation resulting from step 3, the PC enters all required details into Landonline Workspace.	Signed workspace creation instruction sheet.	PC needs to email the dealing number details to the other party.
5	Based on the documentation resulting from step 3, and the information entered into Landonline Workspace in step 4, the PC enters details of each instrument into the required instrument screens in Landonline.	PC completes and signs a checklist to confirm that all required details have been completed	Print the detail of each View Instrument
6	CP confirms the checklist details provided by the PC against the e-dealing	Certify and sign	
9	Print relevant messages from Landonline.	Printed copies of messages are held on the client file.	
11	Complete file closing procedures.	Send details of title search to client.	Key documents are retained and meet LINZ compliance review guidelines.

<sup>3</sup> This column provides a cross-reference to the relevant step number contained in this document.

## Appendix 1 – Instrument Types for e-dealings

The types of instrument you can create in an *e-dealing* are:

### Discharge / Withdrawal

- One or more full discharges, and/or
- One or more partial discharges as to one or more full titles, ie where a charge applies to a group of titles, the discharge affects one or more, but not all, of the groups of titles.
- Where there is more than one encumbrancee, all encumbrancees must discharge their interest.

**e-dealing Discharge/Withdrawal instrument are: -**

Discharge/Withdrawal Instruments		<u>Partial</u> Discharge/Withdrawal Instruments	
Code	Type	Code	Type
DM	Discharge of Mortgage	PDM	Partial Discharge of Mortgage
WX	Withdrawal of Caveat	PWX	Partial Withdrawal of Caveat
DFBC	Discharge of Family Benefit Charge	PFBC	Partial Discharge of Family Benefit Charge
WNC	Withdrawal of Notice of Claim	PWNC	Partial Withdrawal of Notice of Claim
DCHO	Discharge of Charging Order	PCHO	Partial Discharge of Charging Order
DCC	Discharge of Compensation Certificate	PDCC	Partial Discharge of Compensation Certificate
DENC	Discharge of Encumbrance	PENC	Partial Discharge of Encumbrance
DSLCL	Discharge of Statutory Land Change	PSLCL	Partial Discharge of Statutory Land Change

### Transfer

- Where there is more than one proprietor currently on the title(s), all proprietors must be transferring all of their interests to the new proprietor(s).
- Where there are multiple estates (e.g. composite titles, access lots, life estates), all estates must be transferred to the new proprietor(s).
- Transferees can be created in shares (e.g. Alice transfers title in half shares, one half to Bob and one half to Catherine).
- Transfers can create a Fencing Covenant.
- Transfers cannot create other types of conditions on covenants.
- Transfers for a purpose (e.g. Local Purpose Reserve) cannot be prepared as part of an eDealing.
- Transfers of land held as a reserve cannot be prepared as part of an eDealing.

### Mortgage

- Creation of one mortgage.
- Where there is more than one proprietor currently on the title(s), all proprietors must be party to the mortgage.
- Where there are multiple estates (e.g. composite titles, access lots, life estates), all estates must be subject to the mortgage.