



PROPERTY LAW SECTION
New Zealand Law Society

E-DEALING GUIDELINES

(for Electronic Registration)

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These guidelines are endorsed by the New Zealand Law Society and Registrar-General of Land for recommendation to practitioners using Landonline.

Users are encouraged to send any comments to property@lawsociety.org.nz.

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TABLE OF CONTENTS

	Page
INTRODUCTION	3
GLOSSARY	5
GUIDELINES	7
A <i>E-dealing</i> Prerequisites	7
B Nominating a Primary Contact.....	7
C Creating an <i>e-dealing</i>	7
D Nominating a Conveyancing Professional.....	8
E Instrument Preparation.....	9
F Back-to-Back Dealings	10
G Mortgagee Separately Represented	10
H Digital Certificate Protocols.....	11
I Completion of Authority and Instruction Forms (A & I).....	12
J Client Identity.....	14
K Format of Authority and Instruction Forms (A & I).....	16
L Execution of Authority and Instruction Forms(A & I) By Attorney.....	16
M Capacity.....	17
N Retention of Authorities.....	18
O Transaction Ceasing to Qualify as <i>e-dealing</i>	19
P Mortgages.....	19
Q Discharges	21
R Transfers and Other Instruments	23
S Process of Certification.....	23
T Certification by Lawyer not from firm named on Authority and Instruction (A& I).....	24
U Settlement of an <i>e-dealing</i>	24
V Releasing and Submitting.....	26
W Evidence of Registration	27
X Perfection of Transaction	28
APPENDIX 1 - Client Authority & Instruction Form for an Electronic Transaction (Private Individual)	29
APPENDIX 2 - Client Authority & Instruction Form for an Electronic Transaction (Private Corporate)	31
APPENDIX 3 - Client Authority & Instruction Form for an Electronic Transaction (Public Corporate)	33

E-DEALING GUIDELINES

These guidelines include reference to some of the functionality of the Landonline system maintained by LINZ. These guidelines are not intended as a substitute for the training and education material produced separately for the use of Landonline by LINZ.

They should be read in conjunction with the NZLS Property Transactions Practice Guidelines.

INTRODUCTION

Responsibilities

With the introduction of *e-dealings* under Landonline the responsibility of lawyers in certifying documentation under the Land Transfer Act is brought under close scrutiny.

In signing documents correct for the purposes of the Land Transfer Act for paper based transactions, lawyers have been verifying the documentation submitted as being appropriate to permit the staff of LINZ to alter the Register. This certification has included correctness of the documentation, the identity of the parties, the execution of the documents and all matters leading to a change in the status of ownership or interest in the land in question.

Behind the certification practitioners have had the partial protection of the document checking process by LINZ. This has acted as a safety net for the occasional transaction where some aspect of the documentation which the lawyer has certified as being correct has on subsequent inspection been shown to be deficient.

The certification and signing by a lawyer of each instrument in the *e-dealing* leads to an alteration of the Register. The responsibility on practitioners 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 password. 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 issue those with a current practising certificate Digital Certificates with accompanying passwords which authorise the holder 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 sole practitioners and firms to determine those within their offices 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

The need for payment of the traditional agency fee in respect of discharges of securities on a sale transaction disappears with an *e-dealing*. The discharge will be released by the vendor's solicitor and will involve no additional action by the solicitor submitting the *e-dealing* than would apply if there was no discharge.

Landonline allows for a splitting of registration fees between the parties to the dealing. Accordingly, the vendor's discharge registration fee will show on the vendor's solicitor's account from LINZ and the transfer and mortgage registration fees will show on the purchaser's solicitor'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 Guideline 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 to repeatedly 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'.

GLOSSARY

Access Profile: Access profiles are controlled by the Register-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.

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 is prescribed in the Land Transfer Act 1952, as a practitioner under the Law Practitioners Act or a landbroker licensed by the RGL.

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, solicitors nominee company, private company or other organisation which regularly lends money or provides credit in the course of its business activities, (but does not include a private individual or

- contributors under a contributory mortgage advance); or
- (b) a territorial authority, the Legal Services Agency, or other organisation which registers encumbrances or charges against land in the normal course of its activities.

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 for signing with the Digital Certificate. The password must be between 6 and 8 characters, have at least one numeral, one letter.

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 is Appendix 2 to these guidelines. The Private Corporate entity can nominate any authorised signatory for signing the Authority and Instruction form.

Public Corporate: This is a term used for a publicly listed company (ie listed on the stock exchange) territorial authority or government department etc. The Public Corporate Authority and Instruction form is Appendix 3 to 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 dispatching 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 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.

GUIDELINES

A E-dealing Prerequisites

Guideline

When the agreement becomes unconditional, a lawyer should assume that the transaction can be performed electronically in Landonline unless it is not possible. 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.

Commentary

All lawyers have an obligation to their clients and fellow practitioners 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.

B Nominating a Primary Contact

Guideline

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.)

The Primary Contact must be a registered named user of Landonline and have the access privileges to prepare instruments. (Access profiles are set by each firm and can be altered by the firm's System Manager).

Commentary

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.

C Creating an e-dealing

Guideline

*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 **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).*

Commentary

As the purchaser 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 only recognise exact matches of names. For example 'Liz Smith' will not be recognised if that person's name is 'Elizabeth Sophia Smith'.

The vendor's Primary Contact should advise this information 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.

In the creation of that *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. Accordingly, the 'create dealing' screen should **be treated like a lodgement abstract form** and make reference to **all** instruments.

D Nominating a Conveyancing Professional

Guideline

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.

Commentary

The Conveyancing Professional need not be directly involved in aspects of settlement or registration. The critical aspect of that lawyer's involvement is in certification and signing. That lawyer must have sufficient knowledge of the transaction to make informed and factually accurate certifications.

In fulfilling his or her obligations to a client, a sole practitioner 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 practitioner needs to link his or her attorney to the sole practitioner's licence to enable that attorney to access an *e-dealing* in the sole practitioner's absence and to make the necessary certifications to enable settlement to proceed.

As with the need for a sole practitioner 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 sole practitioner 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 practitioner's Attorney (by the firm's System Manager) to the licence, when Landonline *e-dealing* functionality is first acquired.

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

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.

E Instrument Preparation

Guideline

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.

Commentary

Creating the Dealing

It is usual practice for the purchaser's Primary Contact to create the *e-dealing*. In the creation of the *e-dealing* the purchaser's Primary Contact should include reference to all instruments in the *e-dealing*, including the discharge(s) that the vendor's Primary Contact will prepare. Accordingly, the 'create dealing' screen should be treated like an abstract lodgement form and make reference to all instruments.

Mortgagee Requirements

Although some mortgagees may require a paper mortgage to be executed by the client, only the electronic mortgage will be registered.

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

Lawyers also need to be diligent when dealing with second or subsequent mortgages. The contractual requirements of the prior mortgagee will invariably require the mortgagor to obtain consent to register a subsequent charge. If such consent is not obtained, the client mortgagor risks

having their facilities terminated. The lawyer will also normally be acting for the subsequent mortgagee and will be obligated to protect the interests of the subsequent mortgagee.

Accordingly, as most mortgages contain a s 90 to 94 Property Law Act 2007 priority amount, the lawyer would be in breach of his or her obligations to the subsequent mortgagee if a deed of priority recording the respective rights of mortgagees was not obtained. This would ordinarily be required to ensure that there was a sufficient equity margin for the subsequent mortgagee.

To avoid a breach of the borrower's covenants with the mortgagee(s) the same considerations would apply for 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.

F Back to Back Dealings

Guideline

Back to back transactions with the same settlement date, should be in the same dealing..

Commentary

The same considerations about appropriate undertakings that would apply for back to back dealings in a paper based transaction should apply to electronic dealings. Settlement in person (at the office of the first transferor or as otherwise agreed) may be appropriate.

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.

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. Ensure that the correct transferee is nominated to submit the dealing.

G Mortgagee Separately Represented

Guideline

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.

Submitting the dealing must be by one party only 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

Guideline

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 password for his or her Digital Certificate. It must not be written down and must not be shared with anyone, including partners in the firm.

The lawyer is personally responsible for all instruments that are registered that have been certified and signed using that lawyer's Digital Certificate.

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 of being able 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 password 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 password absolutely confidential is imperative.

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 still requires that the lawyer does not leave his or her computer unattended while logged on.

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)

Guideline

*The specified Authority and Instruction Forms (A & I) (see Appendices) 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. The client should indicate that they have read and understood every aspect of the A & I. **The instrument(s) cannot be certified and signed until the A & I has been signed by the client.***

Each client must sign the form personally or by an attorney under a properly completed power of attorney with appropriate certificate of non-revocation.

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.

Commentary

The following A & I forms are Appendices to these guidelines:

- Private Individual A & I;
- Private Corporate A & I (e.g. a non-publicly listed company or an incorporated society etc.); and
- Public Corporate A & I (e.g. a publicly listed company, territorial authority or government department).

The A & I forms within Landonline are identical to the forms in the Appendices to these Guidelines. 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 practitioner will rely to complete the transaction. 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 2005 must also be considered).

A client cannot sign for and on behalf of a partner or spouse without written authorisation in the form of a power of attorney.

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. That lawyer 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, then adopt the procedure set out in Guideline I

Issues of legal capacity are also addressed in the form. The test of capacity requires the same professional standards as would be applied to a paper dealing and inquiries that would be necessary to discharge the obligations of capacity in a bank's Solicitor's Certificate. Lawyers are reminded that if any of the specified criteria are not met, that further steps must be taken. For example, if the client is a minor a court order may be required. In the case of a bankrupt the Official Assignee will generally need to be included as a party. In the case of companies and incorporated societies the lawyer would be prudent to have a copy of the appropriate resolution on file notwithstanding that the Registrar-General of Land would not ordinarily need to sight such documentation.

A signed transfer or mortgage document in the traditional form is not an adequate substitute for an A & I form.

J Client Identity

Guideline

*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.*

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.

As there no longer is a duplicate Certificate of Title the lawyer ought to consider obtaining evidence linking the client whose ID has been established with the property in the case of sale and/or mortgage transactions.

Commentary

It is not necessary for a lawyer personally to witness the A & I being signed.

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.

Where the client is selling or mortgaging a property and the client is not personally known to the certifying lawyer, the lawyer must obtain additional evidence linking the client to the property, e.g. a rate demand or electricity account ([LINZS20002 Standard for verification of identity for registration under the Land Transfer Act 1952](#)).

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.

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 client interaction has been with other lawyers within the firm. It would, however, be unreasonable 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. However the lawyer is reminded that he or she takes responsibility for the document that has been witnessed outside the lawyer’s office. If there is any inconsistency or anomaly the lawyer must make further inquiry as to the bona fides of the documentation provided.

The lawyer is accountable for the valid establishment of the client’s identity, and the discretion rests with the lawyer as to the acceptability or otherwise of the person establishing the identity.

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.

A copy of the photo ID should be attached to the A & I in all cases. 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.)

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.

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 the [LINZS20002 Standard for verification of identity for registration under the Land Transfer Act 1952](#).

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, generally the lawyer will be acting for the mortgagor and mortgagee. Subject to normal prudent practice, it is acceptable to rely on the face of the institutional mortgagee's (or other 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.

If the lawyer has not initiated the discharge or withdrawal by requesting it from the institutional chargeholder, then further inquiry should be made as to the bona fides of the authority.

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

Guideline

The format of the A & I forms (see Appendices) may be changed to accommodate a firm's template but the content of the form must not be reduced.

Commentary

While the forms can be amended the content required cannot be reduced in order that the requirements of s 164C(2) of the Land Transfer Act 1952 are met and the approvals of the form by NZLS and RGL are not lost.

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.

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

Guideline

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.

Commentary

A 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 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.

Where the lawyer has not previously acted for the principal party or the attorney, the lawyer should make additional inquiries as to the bona fides of the power of attorney.

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.

It is the lawyer's responsibility to ensure that the transaction is within the scope of the Power of Attorney.

M Capacity

Guideline

The certifying and signing lawyer is required to make certifications as to the legal capacity of the client. 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.

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” that will not necessarily preclude the transaction from being an *e-dealing*.

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 s 9 of the Minors' Contracts Act 1969. The court order should be attached to the A and 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.

N Retention of Authorities

Guideline

Lawyers shall retain for a period of not less than ten years the evidence in support of the certifications made in an e-dealing.

Commentary

The retention requirement is contained s 164C(1) of the Land Transfer Act 1952. That links back to the reg 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;
- chargeholder's authority to discharge;
- if appropriate, the certificate of non-revocation and a copy of the power of attorney;
- 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 practitioner 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 J.)

It is a matter for lawyers to determine whether a particular A & I should be retained to survive beyond the ten 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). 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 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

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

Guideline

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 (see commentary J) applies) 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.

As outlined below an A & I form is not required from an institutional mortgagee but is required from the mortgagor. A signed mortgage in the traditional form is not an adequate substitute for an A & I form for the mortgagor.

Where a mortgagee makes reference to the s 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.

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).

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 2005 must also be considered).

Consent of Prior Mortgagees

Lawyers also need to be diligent when dealing with second or subsequent mortgages. The contractual requirements of the prior mortgagee will invariably require the mortgagor to obtain consent to register a subsequent charge. Historically the title would have been required. If such consent is not obtained, the client mortgagor risks having their facilities terminated.

Accordingly, as most mortgages contain a s 90 to 94 Property Law Act 2007 priority amount, the lawyer would be in breach of his or her obligations to the subsequent mortgagee if a deed of priority recording the respective rights of mortgagees was not obtained. This would ordinarily be required to ensure that there was a sufficient equity margin for the subsequent mortgagee.

To avoid a breach of the borrower's covenants with the mortgagee(s) the same considerations would apply for 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.

Q Discharges

Guideline

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 (see commentary J) applies)

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.

If a discharge is the only instrument in an e-dealing, specific authorisation from the mortgagee (or other chargeholder) is all that will be prima facie required to be produced on an audit. An A & I form is not required from an institutional chargeholder.

In the case of a private (non-institutional) mortgagee (or other chargeholder) the completion of an 'individual' 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 mortgagee (or other 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 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 use 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 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.

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 would include as part of the undertaking to forward the transfer etc, an undertaking that:

- 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.

OR

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.

R Transfers and other Instruments

Guideline

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 such authority is actually received (Rules 2.5 and 2.6 applies (see commentary J))

The vendor's lawyer must also have the necessary client Authority and Instruction form prior to certification and signing.

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, 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).

S Process of Certification

Guideline

*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 that 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.

Where the evidence to support the identity of the client has been verified by a staff member or someone outside the firm, the practitioner 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

If a sole practitioner's attorney (pursuant to the Law Practitioners 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 practitioner's dealings it is necessary to have the attorney linked to the sole practitioner'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 practitioner. It is too late to arrange the linking when the sole practitioner is incapacitated as they need to authorise the linking process via LINZ.

Refer also to Guideline 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

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. When real time banking becomes available, the need for a face to face settlement for an e-dealing will probably diminish further.

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),*
- (d) prepared and dispatched the Notice of Change of Ownership to the vendor's lawyer,*
- (e) pre-validated the whole dealing (including any discharges) as close as possible to settlement,*
- (f) obtained a guaranteed search,*
- (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),*
- (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 shall be along the following lines:

“Re: Client X to Client Y – Property address

I/we refer to the above transaction which is being transacted as an electronic dealing in Landonline.

I/we undertake that I/we have certified and signed the instruments listed below.

Immediately following receipt of confirmation of deposit of settlement funds to my / our trust account, I / we further undertake;

1. to release the following instruments from the Landonline Workspace into your control:
 - Transfer
 - Discharge of mortgage number _____
 - (List any other instruments) _____; and
2. not to attempt to withdraw such release or attempt any alteration of such instruments following settlement or release; and
3. (if no arrangements have been made in respect of keys, if any) to instruct the agent / or the vendor to release the keys to the purchaser.”

V Releasing and Submitting

Guideline

Lawyers need to have in place protocols governing their staff relating to authorisation to release instruments and submit e-dealings.

Release should occur immediately after settlement in accordance with the undertaking given.

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.

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. If the release occurs after 4:00 pm the purchaser cannot submit the dealing until the next business day but this does not negate the obligation on the vendor to release immediately after settlement.

Advice to the other side confirming release would also be a professional courtesy to avoid repeated logging on to ascertain if it has been released.

(The basis of enforcement of undertakings as between lawyers arises from 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

Practitioners 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

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 practitioner 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 fellow lawyers 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.)*

	Driver Licence	Passport	Firearms Licence	Other 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. 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.

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.