



**YOUR NATIONAL SOURCE
FOR LAND AND PPSR INFORMATION**
www.landinfo.net.nz

May 2006 :: IN THIS ISSUE

- :: [Comments from the Business Development Manager](#)
- :: [LANDinfoNET Does have an E-Dealing Service!](#)
- :: [LINZ Issues](#)
- :: [Average Time for New Titles to Issue and Plans to Approve](#)
- :: [PPSR Issues](#)
- :: [Real Estate Statistics](#)
- :: [A Big Thank You](#)

Introduction

We trust you will find this publication a helpful addition to your resources. For further information regarding LANDinfoNET Limited and our services, including full Land and PPSR search and registration, please visit www.landinfo.net.nz

::: AN EXTENSION OF YOUR OFFICE :::

Comments from the Business Development Manager

Welcome to the May Issue of LANDinfoNET's newsletter, the property market continues to hum along nicely and according to recent figures is having a small resurgence following a slow February. This is of course great news for everyone, except for those still waiting to take that long holiday which they planned back in 2003.

eDealing is again a large focus of this newsletter, mostly because of its topical nature. The good news is that as of May this year LANDinfoNET will have an eDealing service available to all solicitors throughout New Zealand. LANDinfoNET invites anyone who would like to know more about our service to click on the link at the bottom on the next article and register their details. We will then contact you personally to outline how we can save you time & hassle, reduce your risk of liability and offer your firm peace of mind!

With the busy period continuing LANDinfoNET have also decided to once again extend the searching hours we offer to our clients. As well as searching until 7pm during the week, as of June 3rd LANDinfoNET will also be able to complete searches on

Saturdays from 9am until Midday. We see this service as being another example of our commitment to our clients and hope you find it useful.

YES...LANDinfoNET Does Have an eDealing Service!

Following the announcement of Mandatory eDealing and the subsequent closure of LINZ offices, we have fielded a number of calls asking us to clarify where LANDinfoNET fits in under the new system.

Following extensive consultation with LINZ we are very pleased to inform everyone that **LANDinfoNET will definitely be able to offer our clients an eDealing service.** Following a meeting with the New Zealand Law Society this service does have some restrictions, but will still closely mirror the service clients currently enjoy under the paper system.

Over the last 18 months LANDinfoNET has been embedding a new computer system that has more than enough capacity to handle the demands of eDealing and online registration. We have already received one-on-one training from LandOnline's eDealing demonstrators and have set up the appropriate internal processes to handle you eDealing registrations.

LANDinfoNET's eDealing service is all about providing law firms with peace of mind and our vast experience to ensure complete accuracy in the irreversible eDealing system.

LANDinfoNET will have this service available during May this year, which allows a further 12 months to slowly build up the eDealing work we do for our clients before the mandatory date in May 2007. What this means is that any law firm that uses LANDinfoNET will be more than prepared and completely comfortable with eDealing before it becomes compulsory.

The benefits of using LANDinfoNET are among others:

1. We will prepare the eDealing and act as a second set of eyes and check your eDealing thoroughly before it is registered (as LINZ will not be checking eDealings prior to registration).
2. By preparing and second checking your eDealings we will reduce your exposure to liability.
3. We will save you time and allow your staff to get on with other chargeable work.
4. Our service will be nationwide.
5. We already have the computer systems and software in place to handle any volume of eDealing.
6. We are the proven experts and have over 35 years experience in the industry.

If your legal agent has told you that they are unable to offer an eDealing service please feel free to contact us using the link below. As New Zealand's most progressive

legal agent LANDinfoNET is committed to offering our clients the best legal agency services possible and this includes being able to adapt to change. As well as our eDealing service your firm will also have access to our 5 consultants with over 90 years experience between them to help you with high-end work such as sub-divisions and new title dealings.

If you would like to know more about this service please go to:

www.landinfo.net.nz/e-dealing_registration.htm and enter your details or call **Marcus Reynolds on Freephone 0508 534 251.**

LINZ Issues

Executions by an overseas company

In recent months LandInfoNet has noticed an increase in the number of inquiries relating to the execution of documents by overseas companies.

When the execution is by a director for that company this is acceptable, but the document must be witnessed in accordance with Section 166 Land Transfer Regulations 2002 (Notary Public or Commonwealth representative) if executed outside New Zealand. A letter should then accompany the document from an authorised person (for example the solicitor acting for the company), confirming that the document has been executed in accordance with the laws under which the company has been incorporated. It is also recommended that a copy of the statute authorising the form of execution accompany that letter.

Strangely enough if the document is executed and a common seal is affixed then no further evidence is required - this is covered in Regulation 16 of the Land Transfer Regulations.

If a document is for an overseas company and is being executed by an attorney this is also acceptable. However, if the document is being executed outside New Zealand then the document must again be witnessed in accordance with Section 166 Land Transfer Act i.e. before a Notary or Commonwealth representative.

However when lodging the power of attorney in the first place, where the donor is an overseas company, the document needs to be accompanied by a declaration by a director of that company under Section 343(2) Companies Act 1993 certifying that:

1. The company is incorporated under the name stated in accordance with the law of the country in which it is so incorporated and
2. The instrument has been executed and the powers being conferred are authorised under the constitution of the company or under the Act or instrument under which the company is incorporated.

Relaxing of Requirements in Document Registration

A simple example of this relaxing of requirements is company executions – LINZ no longer require the parties signing on behalf of a company to show their capacities – that is whether they are a director or an authorised signatory. And we think that particularly from the Auckland region 30-40% of the executions by companies don't

show the capacities of the persons signing.

LandInfoNet have been aware of this relaxing of requirements and have adopted an approach in the checking of documents to make our clients aware of not only what LINZ requirements are and what their policy is, but more importantly what is required under the applicable statutes or regulations. In relation to company executions if there is no capacity shown then we would check the companies office database who the directors are and this often provides a guide as to whom the signatory or signatories are.

This is just one example. As you are aware everything is not as simple as that and some in the profession have wrongly relied on LINZ as a backstop and taken the view that if something is wrong then ultimately the Registrar at LINZ will requisition or reject it.

In the eDealing environment the lawyer is the Registrar, There will no longer be anyone at LINZ to requisition incorrect documents. The Lawyer/Conveyancing Professional's name will appear in the LINZ database as the person who approved that dealing, correct or not. This is why a number of Law Firms are choosing to use LANDinfoNET as a second check within the eDealing environment, much the same as under the current paper system.

The Conveyancing Professional will be responsible for certifying that they have taken reasonable steps to verify the identity of the person who signed that power of attorney in Australia and they were who they said they were. That power of attorney will not be lodged with LINZ in the eDealing environment but will need to be held on your file.

The automatic pre-validation process that is incorporated within eDealing will pick up anything that has been flagged by LINZ however will not pick up everything and should not be relied on as the ultimate check. There was a gazette published in 2002 that set out a 26-point check that must be undertaken before an eDealing can be certified and signed. If you would like a copy of this please contact us and we will be happy to supply it.

The Creation of rights in respect of access allotments

In one of our previous newsletters (No. 15) we looked at the importance of setting up rights in respect of access allotments.

To briefly recap, access allotments usually occur in subdivisions where an amalgamation condition on the new plan will require that a particular allotment on the plan, that is to be used as a driveway, is to be held in proportionate shares with 2 or more other principal residential allotments on the plan that do not have road frontage. The access allotment does not automatically attract any rules as to its use and maintenance until some rights are established over it, preferably by way of a registered easement of right of way.

A right of way easement is not the only method that has been used to create rights in respect of access allotments though and the use of land covenants as an alternative method has become increasingly popular.

An abbreviated look at the definition of an easement and a land covenant will highlight the difference between them:

Definitions:

Easements are a mechanism where landowner A gives a right to someone, B, to use A's land for some purpose eg Right of Way.

Land Covenants can only bind landowner A to perform certain conditions in relation to landowner A's land for the benefit of landowner B's land but does not give landowner B the express right to use landowner A's land.

The land covenant method has been successful but there has been a difficulty with them in that some land covenants are drafted in such a manner that they are effectively creating an easement, and of course a land covenant cannot be used to create easements.

Some of the troublesome land covenants we have seen are drafted along the following lines:

The registered proprietor of the dominant tenements will have the full free uninterrupted and unrestricted right, liberty and privilege to use Lot 1 on DP 123456 with or without vehicles as if such allotment were a right of way in terms of the 4th Schedule to the Land Transfer Regulations 2002.

The above example is clearly giving the dominant landowner the express right to use the servient tenement and this is of course the domain of an easement and not something that can be said to constitute a land covenant.

An example of some correct wording for a land covenant would be as follows:

The registered proprietor of the servient tenement will not use or permit to be used the servient tenement for anything other than an accessway or service area for the purpose of going, passing or repassing over the servient tenement with or without vehicles, machinery and implements of any kind from time to time and at all times by day and night for the benefit of the dominant tenements.

In this way the servient owner has restricted their use of the access allotment for a specific purpose without having given the dominant tenement owner the express right to use the servient land. Even without the land covenant in place each owner can go over their share in the access allotment to get to their principal residential allotment. But with the land covenant in place it now means that rules can be established further on in the land covenant document to prevent obstructions to passing and repassing, and also to provide for the upkeep and maintenance of the access allotment.

Land Information New Zealand (LINZ) has been accepting the above type of land covenants for registration regardless of whether or not they have been drafted correctly and unfortunately this has created a perception that the incorrectly drafted ones are legitimate and trouble free since they have gained acceptance for registration. However, Section 126A Property Law Act 1952 says that the act of registration does not give a covenant any greater validity at law than it would have if it were not registered. So we can see that a defective covenant will not be cured by its registration against a title.

We would recommend that these rights in respect of access allotments are created by way of easement if possible but if they are going to be created by way of a land covenant then care needs to be taken to draft them correctly.

A reminder that we have precedents available for rights that can be created in respect of access allotments and we can draft them for you as well if you require.

Contacting the LANDinfoNET Consultants

Our Land Transfer Consultants Roger Fielding, David Barker, Barry Green, Evan Yates and Elaine Hancock are always available for consultancy and technical advice issues on any matters. Please do not hesitate to contact them with any queries that you have.

Roger 0508 534 251 LANDinfoNET Limited Hamilton rogerf@landinfo.net.nz
Barry 0800 106 206 LANDinfoNET Limited Auckland barryg@landinfo.net.nz
David 0508 534 251 LANDinfoNET Limited Hamilton davidb@landinfo.net.nz
Evan 0508 534 251 LANDinfoNET Limited Hamilton evany@landinfo.net.nz
Elaine 0508 534 251 LANDinfoNET Limited Hamilton elaineh@landinfo.net.nz

Roger, Barry, Dave, Evan and Elaine have a prior cumulative experience of working with LINZ as senior Land Registrar for over 90 years, please ensure you utilise their ongoing knowledge and resources as an "extension of your office". A team of registration clerks support Roger, Barry, Elaine, Evan and Dave to ensure they are free for high-end consultancy.

Average Time for New Titles to Issue and Plans to Approve

LINZ TIME FRAMES - RECENT AVERAGES		
Type of Registration	LINZ Performance standard time frames 90% processed within:	Average based on our experiences:
Ordinary	15 working days	15 working days
Parallel	15 + 25 working days	18 working days
New title	15 working days	20 working days

For your information above is the table setting out LINZ's guidelines and the average time we are experiencing currently for registration to be completed. These averages are fairly consistent throughout New Zealand.

At LANDinfoNET Limited we are continuing to look at systems to create efficiencies so you and your clients benefit. With this in mind, we publish these averages as a regular feature of our newsletter to assist you with providing information to your clients.

Please be aware we are unable to request LINZ to give priority or urgency ahead of other dealings until the expiration of LINZ's performance standard time frames (shown ABOVE).

Should you feel circumstances permit for you to request priority over other prior lodged new title documentation, please forward to us a formal letter addressed to the Processing Centre Manager of LINZ, outlining your reasons for special priority. We will submit this letter on your behalf and advise you of LINZ's intention.

PPSR Issues

Below are listed some of the additional services LANDinfoNET provides from the PPSR that you may find useful in maintaining your own office systems or clients files.

Financing Statement List Report:

This report displays a list of all financing statements registered (including discharged financing statements) against a specific Secured Party Group within a defined period of time. Or, all financing statements registered (including discharged financing statements) against a specific Secured Party Group due to expire within a defined period of time.

NB: This search is conducted on the Secured party Group (SPG) ID and Password, not the SPG name(s), therefore if poor office practices have resulted in multiple SPG's being registered for the one group, this search may not identify all financing statements registered unless a search of all the SPG ID's and Passwords is conducted.

Registered Financing Statement Report:

This report displays how many and what type of registrations were completed against a specific SPG with a specified month. Eg;

Total registrations for the month

Total discharges for the month

Total expiries for the month

Total registered financing statements on PPSR

Total pending financing statements on PPSR

Total registrations due to expire within 30 days

NB: This search is conducted on the Secured party Group (**SPG**) ID and Password, not the SPG name(s), if poor office practices have resulted in multiple SPG's being registered for the one group, this search may not identify all financing statements registered unless a search of all the SPG ID's and Passwords is conducted.

Requesting Lost Pins & Passwords:

Should you or your client have misplaced any of the following; SPG ID, SPG Password, Financing Statement Pin or Debtor Pin, LANDinfoNET PPSR officers are happy to request this information on your behalf from the Ministry. The pins / passwords will be sent directly to the email address of the SPG within 3 working day, usually sooner.

NB: If LANDinfoNET registered the original financing statement on your behalf, we will hold all pins and passwords on file that we are able to forward to you promptly at no extra charge.

We invite queries from you in regard to PPSR issues. You can contact any of our PPSR specialists:

Janelle Weir General Manager/PPSR Consultant.
janellew@landinfo.net.nz Free Phone: 0800 106 206

Adele Oram PPSR Searching and Registration,
Land Transfer Search and Registration
adeleo@landinfo.net.nz Free phone: 0508 534 251

Real Estate Statistics

After a slow start to 2006, March provided an encouraging month in terms of both house prices and the number of properties sold. Statistics obtained from the Realenz website (www.realenz.co.nz) show that the number of property sales in March 2006 (10,094) were very similar to March 2005 (10,400). This made up for a sluggish February where the number of properties sold was much lower than in 2005 (approx 1500 lower) and the number of days to sell a property was up to 37 days.

Despite the drop in sales the average value of properties across New Zealand has risen again to sit at \$302,000, compared to \$280,000 in March 2005. This represents a 7.8% increase in property prices over the 12-month period.

These statistics once again indicate that the property market does still have some life left in it, and based on the rising property prices it is apparent that demand for properties still outweighs supply.

A Big Thank You

Once again thank you for your continued support, we hope that you find this newsletter and the information it contains useful. We wish you all continued success for the rest of 2006.

If you have any questions regarding this newsletter, please contact Marcus Reynolds, our Business Development Manager, on marcusr@landinfo.net.nz.

Feel free to phone our call free number 0508 534 251 and ask for Marcus Reynolds for further information.

Regards The LANDinfoNET Limited team.

An extension of your office.

Auckland Freephone 0800 106 206 ::: Hamilton Freephone 0508 534 251

visit us at www.landinfo.net.nz

Disclaimer:

Although every effort has been made to ensure the accuracy of the information within this newsletter, we are not liable for the results of any action taken on the basis of the information given or any errors or omissions.