



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

SEPTEMBER 2008 :: IN THIS ISSUE

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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 or phone 0800 106 206

::: AN EXTENSION OF YOUR OFFICE :::

Comments from the General Manager, Janelle Weir

Welcome

Hello all, welcome to our September edition of the LANDinfoNET newsletter. It's been a little while since our last publication, so we've packed this edition with lots of newsworthy items and current matters of interest.

It's been a wild and blustery last few months, weather bombs and extreme storms have not helped the depressed market, not to mention the depressed wintry moods.

To help cheer your office up, for the month of September, the customer with highest agency spend, will receive a beautiful case of mixed red & white wine to enjoy and a delicious chocolate cake, compliments of the LANDinfoNET team.

LINZ TIMEFRAMES

In brief, presently Plan deposit dealings are averaging approximately 8 days for completion. Currently, LINZ are completing Fast Track lodgements within 12 days of the documents being lodged - once the plan has been approved.

UPDATED A&I FORMS

In line with the latest release of landonline 3.0, we have updated our A&I forms to accommodate some of the changes to eDealing instruments

Our updated forms now let you show the resulting ownership of a Transfer when dealing with shares or interests in land & add text to Transfer & Mortgage instruments.

These updated A&I forms are now available on our website www.landinfo.net.nz.

DRAFTING A&I's

As a result of your feedback, LANDinfoNET is now able to offer an additional eDealing service, **drafting your A&I forms**. Simply email or fax us the Agreement for Sale and Purchase or supporting documentation, and we will draft the A&I form saving you both time and effort, then forward it back to you promptly upon completion. Should you instruct us to, we can also start preparing the eDealing right away making the process as seamless as possible. Just like our existing eDealing service, utilise this new service as little or as much as you like depending on your volumes and staffing availability.

Any questions, please contact Dianne Watson our eDealing champion or David Barker Team Leader on 0508 534 251 .

FINAL MANDATORY DATE

LINZ and the NZ Law Society's Property Law Section (PLS) have agreed on the date for introducing mandatory 100% e-lodgement for titles transactions (3.1) – 23 February 2009.

This has resulted in LINZ revising the date for delivering Release 3.1 to 29 September 2008.

If you have not enquired about having LANDinfoNET's eDealing team associated with your eDealing license to assist with complex e-registrations, please contact David Barker or Janelle Weir anytime.

Thank you for taking the time to read our newsletter. If you have an article idea or would see the benefit in one of our consultants researching and clarifying a matter for our next edition, please contact Janelle Weir 0800 106 206.

End of an Era – Our Auckland Operations are Moving to Hamilton

As part of our continuous programme for improvement, we would like to advise you of some important upcoming changes at LANDinfoNET.

With the impending closure of the Auckland LINZ public counter this year and the corresponding expiry of our Auckland Office lease, we have made the decision to move all our operations to our Hamilton office no later than the 25th October 2008.

For our valued Auckland clients, we envisage very little impact from our move to you. We will operate a mobile consultancy service should you need to meet with our consultants, and they will happily attend your offices. As most of our services and communication methods are online and over the Internet, geographically speaking, you shouldn't notice the difference.

We do ask however, should you currently utilise the Auckland PO Box and DX Box, by the 1st October we ask that you begin utilising:

PO Box 9213
Hamilton
or
DX GX10061
Hamilton

We will have a redirection service operating from 25th October for the Auckland Post and DX boxes, however there will be a day's delay in our receiving it in Hamilton. We will also retain the Auckland phone numbers for your convenience, which will be diverted to us in Hamilton.

Please rest assured there will be no difference to the services or the standard of service we provide. We see this as a positive, sustainable move and we're all looking forward to being under the one roof.

Our Hamilton Office is on the Move

Now for some exciting news, our Hamilton office is on the move to a spacious, extremely modern, team based environment. We are relocating to Sentinel House 586 Victoria Street, still within a short walking distance for us to LINZ Hamilton. We are taking over the entire 6th floor to accommodate us all.

Our phone and fax numbers will remain the same as will our email addresses. The Hamilton DX and PO Box numbers have also not changed. The only difference for you is our physical address.

We are extremely happy to report that Janelle Weir, Elaine Hancock and Pamela Makensi are all relocating to our new Hamilton office. Unfortunately this means a very sad goodbye to Tania, Alevtina, and Turea. You will however be getting to know some new staff to LANDinfoNET very soon.

We invite you to visit us and take a look at our new surroundings, we'd love to see you.

LINZ Issues

Consent of Mortgagee – by Elaine Hancock

Since the 2002 amendment to the Land Transfer Act 1952 came into force there are more documents that require a mortgagee's consent for registration purposes than there were before the amendment.

Please note that the term mortgagee also includes an encumbrancee of an encumbrance document too.

As a result of the amendment, we are being asked the question 'Do I need the existing mortgagee to consent to my new document?' more frequently than ever before.

It isn't always a simple yes or no answer because it is clear that in some cases customers are interested in consent requirements beyond just the issue of whether or not a document can be registered at Land Information New Zealand (LINZ) with or without a mortgagee's consent.

There are 3 main concerns our customers seem to have in relation to mortgagee's consents that we have identified so far:

Firstly - Registration requirements under the Land Transfer Act 1952

This is usually a simple yes or no answer. The Section or Part of the Land Transfer Act 1952 that authorises registration of a particular document will contain the consent requirements.

For example Section 115, in the case of Leases, contains the consent requirements under subsection (4).

It is worth mentioning too that mortgagee consent requirements in respect of the creation, variation and surrender of Easements and Land Covenants are contained in Section 90E(3) below.

90E. General provisions relating to easements

(3) Consent is needed as follows:

(a) the creation or variation of an easement under any of sections 90A, 90B, or 90C needs consent by any mortgagee of the land that is to become the servient tenement:

(b) the variation of an easement under section 90C needs consent by any mortgagee of the easement or dominant tenement:

(c) the surrender of an easement under section 90A or section 90B needs consent by any mortgagee of the easement or dominant tenement.

(4) If a mortgagee gives a consent under subsection (3), the mortgagee and all persons who subsequently derive any interest from the mortgagee are bound by the easement or profit a prendre, variation, or surrender.

Secondly - Contractual requirements under a mortgage document

An existing mortgage, registered on a title, may contain a clause relating to the obligations of the mortgagor to obtain the mortgagee's consent or permission if they want to register any further documents against their title.

It may be good practice to inform a mortgagee of any proposed dealing with the land otherwise the mortgagor could be in breach of the covenant and therefore serious consequences upon the mortgagor are a possibility.

A consent or permission arising under these circumstances might be relatively informal and provided by way of letter from the Bank to the mortgagor. LINZ would not be interested in seeing this sort of consent because it is not critical to the registration process, it should be kept by the mortgagor or placed on the Solicitor's file.

Thirdly - Section 105 of the Land Transfer Act 1952

Upon the mortgagee exercising their power of sale under their registered mortgage, Section 105 Land Transfer Act 1952 provides that estates and interests subsequent to the power of sale mortgage will be automatically discharged. However, if the power of sale mortgagee has consented to the registration of any subsequent estate or interest that subsequent interest will not be discharged.

There is sometimes a bit of debate about whether the power of sale mortgagee's consent is effective if it has not been attached to the document that was registered subsequently.

For the avoidance of any doubt we recommend that if you are going to obtain the consent of a prior mortgagee to the registration of your new document, then that consent should be a formal consent attached to the document that you are intending

to register.

Just a reminder that we have the electronic re-usable formal consent form available for use with land transfer documents. This form can be used for any consents e.g. mortgagee, caveator etc.

Should you require any assistance or advice regarding the abovementioned or any other consultancy matter, please contact Elaine, David or Roger.

Easements and the Recent Amendment to Land Transfer Regulations 2002 the Property Law Act 2007 - by Roger Fielding

With the coming into force of the new Property Law Act 2007, some amendments to various other legislation has followed. One such amendment has been the addition of several new clauses to Paragraph 11 of Schedule 4 to the Land Transfer Regulations 2002. The Paragraph has now had clauses (5), (6) & (7) added. The new clauses (5) & (6) are of particular interest because they make up for some deficiencies that afflicted the Land Transfer Regulations. These deficiencies had to be compensated for with extra wording in easement documents, that was recommended by the Law Society, but now appears in the new additional clauses to the Land Transfer Regulations.

The extra wording that usually appears in most Easement Instruments or documents creating easements is as follows:

The easements described in Schedule A shall include the terms set out in paragraphs 10, 11, 12, 13 and 14 of Schedule 4 to the Land Transfer Regulations 2002 save that:

- a)** Any maintenance, repair or replacement of any easement facility set out herein that is necessary because of any act or omission by any user (being either or all the owners of the dominant and servient tenements) of the easement facility (which includes any of their agents, employees, contractors, subcontractors or invitees of the user) must be carried out promptly by that user at the sole cost of that user or in such proportion as relates to the act or omission.
- b)** Where there is a conflict between the provisions of the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule to the Property Law Act 2007, the provisions of the Fifth Schedule must prevail.
- c)** Where there is a conflict between the provisions of the Fourth Schedule to the Land Transfer Regulations 2002 and/or the Fifth Schedule to the Property Law Act 2007 and the modifications in this Easement Instrument, the modifications must prevail.

Because the new additions to the Land Transfer Regulations cater for damage caused solely or partially by one or other party, we now suggest that the only extra wording that needs to be included in Easement Instruments or documents creating easements is as follows:

TOGETHER WITH, IN RESPECT OF ALL OF THE SAID EASEMENTS, the rights and powers as set out in paragraphs 10, 11, 12, 13 and 14 of the Fourth Schedule to the Land Transfer Regulations 2002 SAVE THAT:

- (a)** In respect of easements of right of way where there is a conflict between the provisions of the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule to the Property Law Act 2007, the provisions of the Fifth Schedule must prevail.
- (b)** Where there is a conflict between the provisions of the Fourth Schedule and/or the Fifth Schedule and the modifications in this Easement Instrument, the

modifications must prevail.

NB *If no right of way is being created then paragraph (a) can be omitted.*

For advice on this or any other matter, don't hesitate to contact Roger.

E-Dealings and transfers of shares - by David Barker

Transfers of shares whether they are completed as e-dealings or in the paper environment have always created difficulties for practitioners - they know what they want to achieve and end up with but can't quite figure out how to get there!! Here is a classic example:

A & B on title and A wants to transfer their interest to B so that the title will end up in name of B solely. As in the paper environment unless you state otherwise as a result of the transfer the title will issue in the name of B as to a 1/2 share and B as to a 1/2 share which is usually not intended.

In the e-dealing environment if you wish the title to end up in the name of B solely then you must select 'part/complex' then type in additional text that states that B is to own all the land in the title solely. When the dealing is submitted it will not be registered instantaneously but will be checked by someone within LINZ and so registration may take a few days to be completed. For assistance with this type of transaction or any other e-dealing matters contact your e-dealing experts at LANDinfoNET.

E-DEALINGS & MAORI LAND - by David Barker

When preparing and completing an e-dealing you may encounter difficulties when dealing with land that contains a Maori appellation (i.e. Waitoa 3B2 Block). The dealing would have failed pre-validation with a message that the land being dealt with is or could be Maori Land. This is because LINZ have 'flagged' this title in a similar way to titles that are flagged that are subject to caveats or notices of claim. Titles have been flagged whether the status is in fact Maori land or General land and the only criteria seems to be whether the parcel has a 'Maori land' appellation - there are of course countless parcels of 'General Land' that contain such appellations.

While you are able to proceed with registration, you are subsequently required to certify that you have obtained any necessary consents from the Maori Land Court. Obviously if the status is Maori Land you are required to obtain confirmation of alienations as required under the Te Ture Whenua Maori Act 1993 however in most cases the land being dealt has long ago ceased to be Maori Land but you are still required to certify that you have obtained the consent of the Maori Land Court. LINZ is once again placing responsibility on the conveyancing professional to certify either way. In these cases Landinfo Net is quickly able to provide you with a report that you can attach to the A & I form confirming whether the status is Maori Land or General Land allowing you then to confidently certify & sign your e-dealing. Alternatively if there is a status declaration on the title declaring the land to be General land or saying that the land has ceased to be Maori land, then we can get LINZ to remove the Maori land flag so that the client can continue with the e-dealing without having to make any further certifications.

David is happy to assist with this or any other matter you require expert advice on.

WHEN REGISTERED PROPRIETORS NAMES ARE SPELT INCORRECT ON THE TITLE - by Dianne Watson

There are some differences in the way a title should be corrected when there is an error in a registered proprietors name. Generally they should be corrected by way of an application for correction or change of name under Regulation 26 of the Land

Transfer Regulations 2002, however when the registered proprietor is coming off the title by way of an edealing this is not required. In these cases the A&I form should have accompanying evidence showing the correct name along with a statutory declaration stating why it differs from the spelling on the register. A correction of name declaration as per the traditional format would suffice in these instances.

The requirement for cases where the registered proprietor is staying on the title differ depending on whether the error occurred during an edealing or if there are following mortgages that need to tie in with the correct mortgagors name. If you require any assistance in this area, please contact any of the edealing team at LANDinfoNET for more information .

Contacting the LANDinfoNET Consultants

Our Land Transfer Consultants Roger Fielding, David Barker 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 rogerf@landinfo.net.nz

David 0508 534 251 LANDinfoNET Limited davidb@landinfo.net.nz

Elaine 0508 534 251 LANDinfoNET Limited elaineh@landinfo.net.nz

Roger, Dave and Elaine have a prior cumulative experience of working with LINZ as senior Land Registrars of over 60 years, please ensure you utilise their ongoing knowledge and resources as an "extension of your office". A team of registration clerks support Roger, Elaine and Dave to ensure they are free for high-end consultancy.

PPSR Issues

Change Demand Process

Before lodging a change demand, the debtor or a person with an interest in the collateral must first give written notice to the secured party of their demand. The address to give notice is found on the financing statement, under secured party group details.

After 15 working days, should the secured party not respond to the demand the debtor or interested party may then lodge a change demand on the Personal Property Securities Register.

The secured party has a further 15 working days to accept the change demand or obtain a court order to maintain the registration otherwise the change demand will automatically be accepted.

The situations in which a debtor is intitled to lodge a change demand are:

- all the obligations under the security agreement to which the financing statement relate have been performed
- the secured party has agreed to release part or all of the collateral described in the collateral description included in the financing statement
- The collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the security party and the debtor
- no security agreement exists between the parties
- the security interest is extinguished in accordance with the PPSA

GENERAL SECURITY AGREEMENT FORMS

We have received a few enquiries recently regarding drafting General Security Agreements (GSA's) on behalf of our customers. Although we do not draft GSA's as part of our Personal Property & Security services, we do have General Security Agreement forms we are happy to email you at no charge for your office to utilise. .

Any queries at all regarding these matters, please don't hesitate to contact Janelle, Marian or Vesna.

Janelle Weir General Manager/PPSR Consultant
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Free Phone: 0800 106 206

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Real Estate Statistics

The Real Estate Institute Of New Zealand's latest statistics show property values are clearly on the decline. June 08 reports the median sales price at \$340,000, a drop in price of \$5000 from May 08 with and increase of 4 days to sell. Days to sell, is currently sitting at 53 days. June 08 shows a 35% decrease in the number of sales from this time last year.

QV's July statistics for the residential property market report a 2.2% decline in national property values over the past year (calculated over the three months ending July 2008 in comparison to the same period last year), down on the 0.1% growth reported in June. The average New Zealand sale price stayed steady at \$393,370

Whist REINZ and QV's stats vary, both report a subdued property market with declining national property values, properties staying on the market for longer, and the volume of sales dropping.

"With market activity slowing dramatically, consumer confidence knocked by increasing interest rates, fuel and food prices, we expect the trend of falling property values to continue. The traditional upsurge in activity in the spring market may reverse the mood of the winter market, however the issue of home affordability may dampen any resurgence in the market for a while to come" said Glenda Whitehead QV Valuations.

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 2008.

If you have any questions regarding this newsletter, please contact Janelle Weir, LANDinfoNET's General Manager on 0800 106 206 or at janellew@landinfo.net.nz

Feel free to phone our call free number 0800 106 206 and ask for Janelle Weir 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.

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