



**YOUR NATIONAL SOURCE  
FOR LAND AND PPSR INFORMATION**

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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](http://www.landinfo.net.nz) or phone 0800 106 206**

**:: AN EXTENSION OF YOUR OFFICE ::**

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## **Comments from the General Manager, Janelle Weir**

### **Welcome**

Welcome to our first edition of the LANDinfoNET newsletter for 2009. We trust you all enjoyed a relaxing Easter and indulged in some chocolaty delights. It's hard to believe we are in May already with winter looming ahead. Much has changed for us since our last newsletter. We've closed an office, moved an office, bid farewell to some valued team members and welcomed some new ones, phew... we can finally take a breath and update you with a new newsletter, albeit slightly overdue.

### **A BUSIER LAST FEW MONTHS**

Slightly more activity in the market has resulted in LANDinfoNET enjoying a more productive last few months, we look forward to it continuing into May and June. After some strategic planning and change management we continue to be well positioned to provide you with all the services and high standards you are accustomed to. We've come through the mandatory 100% eDealing, endured the declining property market and now taking on the global recession. We're still here just as strong as before and welcome all your enquires big and small regardless of the frequency.

### **EDEALING**

We have heard from some of our eDealing customers who have been through a LINZ

audit, and were happy to report all with an excellent result. LANDinfoNET have strict compliance standards in respect of the secure storage of all correct documentation and access to it. Our eDealing customers are enjoying an amazing low cost service please feel free to trial at any time.

Our consultants have written some interesting and informative articles surrounding eDealing you may be interested in reading below. Please call us if you would like to discuss any of the issues raised or regarding audit requirements on 0508 534 251.

If your office is getting a little busier or focusing in directions away from property (land), save yourself some time and stress and utilize our eDealing services when required. Our eDealing team are eDealing/eLodgment savvy and are able to provide all the assistance you're accustomed to in the paper environment now in the electronic environment instantly, below are **three** different extremely cost effective ways we can assist you;

1. If you are not associated with our license, we can check and prepare eDealings on our license. You must submit, certify and sign. (For your added peace of mind we are unable to see any other dealings in your workspace)
2. If you are not associated with our license but would like us to check your eDealing (no matter what it is) all you need to do is name one of our eDealing team as the Primary Contact and we can go into Landonline and view the document. (We are unable to see any other dealings in your workspace).
3. We can check, prepare and submit eDealings on your eDealing license if our eDealing team is associated with your firm's eDealing license. You must certify and sign the dealing.

For any enquiries please contact Dave, Dianne Roger or Janelle on 0508 534 251.

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## **LINZ Issues**

### **Limited Partnerships – by Roger Fielding**

In the past, a partnership may have obtained a charging order over property in the name of each individual partner, which of course could in some circumstances, require each individual partner to execute an A & I for the discharge if no Court Order is made to discharge it. A limited partnership could be of advantage in these circumstances as only their authorised signatory would need to sign a Private Corporate Authority and Instruction form. There could be similar circumstances where the execution provisions would be useful too.

### **Redundant Easements - Section 70 Land Transfer Act 1952 - by Roger Fielding**

Much has been written on redundant easements in, for example, the Land Information New Zealand (LINZ) publication Torrenstalk issue No. 25 and also in the LINZ Guideline LINZG20707.

The most usual circumstance in which an easement can be considered to be redundant is by virtue of the servient and dominant tenements having become separated by way of a subdivision which isolates one part of the dominant tenement from abutting the servient tenement.

Bear in mind that the servient tenement for an easement is considered by LINZ to be the whole of the allotment. So the servient tenement for an easement, that is created over part of an allotment, is actually the whole of that allotment – not just the part marked on a plan over which the easement is granted.

We recently had a case where an application for redundancy of an easement was made where the dominant tenement was subdivided resulting in both new dominant tenements abutting the servient tenement but only one of the dominant tenements abutting the easement area over which the easement had been granted over the servient tenement. The dominant tenement that did not abut the easement area was not making any use of the easement in this case.

The application for redundancy was requisitioned by LINZ because technically the servient and dominant tenements were not separated. LINZ were asked to consider that in the Torrenstak publication, the Registrar-General of Land was open to other ways in which an easement could be considered redundant and that the application fit the criteria for this consideration because of the separation of the easement area from the new dominant tenement and the fact that they could no longer make use of the easements over any part of the servient tenement. LINZ accepted the application with and 'in this instance only' condition attached to it. However, it is useful to know that there can be some flexibility in determining in what circumstances and easement may be considered redundant for the purposes of making an application to remove easements that are not being utilised.

If you want to know more about removal of easements under Section 70 of the Land Transfer Act 1952 we can send you the publications mentioned above.

### **Notices of Claim & eDealing - by David Barker**

Notices of claim do have the same effect as a caveat however the requirements under the legislation for what must be included in a notice of claim is quite different from a caveat. Unlike the requirements under s137(2)(c) Land Transfer Act 1952) for caveats, s 42 Property (Relationships) Act 1976 **does not** require the claimant to show how the person against whom the claim is being made to show how that person derives an interest in the land from the registered proprietor.

With caveats, for example, you may have a client who wishes to lodge a caveat based on an agreement for sale and purchase to buy a house and land package from a builder - however the builder may not yet been registered on the title - it may still be in the name of a developer. Section 137(2)(c) Land Transfer Act 1952 requires that the caveat must describe how the interest is derived from the registered proprietor. As a result you must show in the caveat that your client has an agreement for sale and purchase with the builder who in turn has an agreement for sale and purchase from the developer - the registered proprietor.

In contrast, s42 Property (Relationships) Act 1976 simply requires the claimant to complete the prescribed form as set out in the Property (Relationships) Forms Regulations 2001. That form requires either the first or second options to be shown - firstly, that the person against they are claiming is the registered proprietor or secondly, that the person against whom they are claiming is *'...entitled to, or beneficially interested [nature of estate or interest under Land Transfer Act 1952] in, the land described below, by virtue of an unregistered agreement or other instrument or transmission, or an express or implied trust, or by virtue of some other circumstances'*. This second option would be used if for example if the title was in the name of a company or trust and the person against whom you were claiming was a shareholder of the company or the beneficiary under the trust.

When preparing the E-dealing for a Notice of Claim in Landonline it appears that the template that has been created reflects the same template that has been created for Caveats and requires you to show how the interest is derived from the registered proprietor. As outlined above under the Property (Relationships) Act 1976 **there is no requirement to show the derivation from the registered proprietor**. If the

person against whom your client is claiming is not shown as the registered proprietor it is sufficient to utilise the second option outlined above and **there is no duty** to show exactly how that person is entitled to or benefiting from the estate against which you are claiming.

As my colleague Roger Fielding noted Landonline appears in this, and other instances, to be attempting to be creating new law and the template in Landonline needs to be amended to more accurately reflect the prescribed form as set out in the Property (Relationships) Forms Regulations 2001. Any rejections that require you to show how that interest being claimed is derived from the registered proprietor should be appealed vigorously and I am afraid that there may be instances where a claimants entitlement may be defeated should the notice of claim be rejected by LINZ while allowing a subsequent transfer to be registered.

### **E-Dealing watch points - things you should know: by Dianne Watson & David Barker**

1. Any document that follows an 'Order for New Title' fails pre-validation Easement Instrument stating that the pre-allocated titles must have a 'live status' however this is a Landonline issue and will not prevent the dealing from being submitted. This defeats the purpose of having a pre-validation failure report as the dealing is still able to be successfully registered.
2. There is a risk in downloading A & I forms from Landonline because the form may not contain all the information that may be required to be viewed and authorised by the client. Here are two examples a) easement instruments - the type of easement marked areas affected & the rights and powers that apply does not appear; and b) if you are completing a subdivision and only transferring part of the land in the title (e.g a new lot to satisfy an amalgamation condition) it simply shows that you are transferring all of the land and does not show the additional 'part' text that has been added.
3. Further to the above point in many instances a copy of the instrument should be attached to the A & I form (e.g. Easement Instruments & Leases). From a compliance review perspective LINZ advise that a copy does not need to be attached however from the point of view of the client being aware of what they are authorising you, the conveyancing professional, to sign on their behalf we would consider this to be essential.
4. Easements Instruments incorrectly produce a certification line that you have the consent of the mortgagee of the dominant tenement even when you don't need it under the Land Transfer Act.
5. If the title is subject to a Charging Order and you are registering a dealing against that title, Landonline incorrectly produces a certification that you have obtained the consent of the charge holder - when it is not possible to do this under the relevant legislation - if the land is being dealt that the charging order affects - then the Charging Order must be withdrawn (and if necessary re-lodged).
6. When preparing dealings to deposit unit plan we advise you do not use the in-built functionality in Landonline that allows you to populate the dealing with the required documents as it automatically creates a 'Change of rules' instrument immediately following the Unit Plan application. The 'Change of Rules' must always be lodged in a separate dealing following application to deposit the unit plan.
7. Do not use the in-built functionality in Landonline that allows it to suggest the required documents to deposit a subdivision plan. It creates one line each for the s223 and 224 Resource Management Act certificates which are invariably lodged by the surveyor with the plan. If you do this and the certificates have already been lodged with the plan LINZ will not automatically refund the \$120 in fees that have been paid.

8. The registration fee for an 'Image Only' instruments is \$60 (not \$37). This includes Easement Instruments, Consent Notices, Leases, Encumbrances, Unit Plan applications and 172 other type of instruments. This fee has not been well publicised. Also the resubmission fees for an 'Image Only' instrument is \$31 (not \$13).
9. A & I forms are required from local authorities when they are shown as a party to the instrument e.g. Encumbrances or Easements in Gross. Letters of authority are not sufficient. (NB This does not apply when the signed image is being lodged such as a consent notice).
10. Where any document is required to be signed by an attorney and an image of the document must be lodged in Landonline then the power of attorney must still be deposited with LINZ . The power of attorney, however , must be lodged manually and cannot be lodged electronically.

### **E-dealing Transmission by executor of last surviving joint tenant - by Roger Fielding & Dianne Watson**

Where there are two joint tenants of a title and one of them dies, it is usual to expect that the surviving joint tenant will make an application by way of Transmission to become the registered proprietor by virtue of being the surviving joint tenant. However, in a case we had recently, the survivor did not get around to registering such a Transmission before they themselves died.

This did not normally present too much difficulty for a paper registration of a Transmission because the executor of the last surviving joint tenant will make an application for Transmission. It does though present some difficulty in the e-registration environment because none of the template documents for Transmission fit this situation.

The successful way of registering such a Transmission by e-registration is to complete a Transmission by way of executor where you show both the deceased as affected proprietors and the executor as the applicant. The statutory declaration by the executor should be attached as a supporting document to clarify the intent of the Transmission. This will also change the status of the e-dealing to 'lodge', which means that a LINZ officer will check the Transmission manually before registering it.

Please note the following:

- Pre-validation of the Transmission will fail. However you can still sign, certify & submit the dealing and LINZ will process it manually.
- As the dealing will step down to 'lodge' for checking by LINZ, we recommend that certified original copies of the death certificate and probate be attached to the declaration.
- All other requirements for e-dealing e.g. A & I forms will still apply to the Transmission.

If you are not associated with our license but would like us to check your e-dealing (no matter what it is) all you need to do is to name one of us as the Primary Contact and we can go into Landonline and view the document.

If you would like a precedent of the declaration that is required for a Transmission by the executor of the last surviving joint tenant please request one from us.

### **Contacting the LANDinfoNET Consultants**

Our Land Transfer Consultants Roger Fielding, David Barker and Dianne Watson 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](mailto:rogerf@landinfo.net.nz)

**David** 0508 534 251 LANDinfoNET Limited [davidb@landinfo.net.nz](mailto:davidb@landinfo.net.nz)

**Dianne** 0508 534 251 LANDinfoNET Limited [diannew@landinfo.net.nz](mailto:diannew@landinfo.net.nz)

**Roger and Dave have a prior cumulative experience of working with LINZ as senior Land Registrar for over 30 years, please ensure you utilise their ongoing knowledge and resources as an "extension of your office". A team of registration clerks support Roger, Dianne, and Dave to ensure they are free for high-end consultancy.**

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## PPSR Issues

### PERSON ACTING ON BEHALF

Even though many of us have been using this method of recording the Person Acting On Behalf of an Organisation, the Ministry now deem it acceptable as an alternative to enter a job title for the person acting on their behalf, instead of the name of the person currently employed in that role.

The job title simply needs to be entered in the first and last name fields. The Ministry does not intend to update the website to accommodate this change in the near future.

### REQUESTING LOST PINS & PASSWORDS

Should you have mislaid secured party group ID's, Passwords and financing statement pins that you require for renewals, amendments and discharges, we can obtain them for you from the ministry. The information will be emailed to the email address shown on the financing statement for the secured party group. Should an alternative email address need to be used, a letter of authority is required. For more information, please email [janellew@landinfo.net.nz](mailto:janellew@landinfo.net.nz).

#### **Janelle Weir**

General Manager

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#### **Marian Kempster**

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## Real Estate Statistics

The Real Estate Institute Of New Zealand's latest statistics show activity in the property market has increased in March and February after a slight lull in January. March 09 reports the median sales price at \$335,000, a small rise of \$5,000 from February 09. Days to sell has dropped to 44 days from 62 reported in February, and the number of sales at 6694 is the highest on The Institutes records for the past 12 months.

QV's March's statistics for the residential property market report a 9.3% decline in national property values over the past year (calculated over the three months ending February 09 in comparison to the same period last year), down further than the 8.9% decline reported in February. The average New Zealand sale price for March is

reported at \$378,399.

Whist REINZ and QV's stats vary in average sale price, both report increased activity in the market due to vendors becoming more realistic about their property's current value. QV's Blue Hancock says "There is increasing sentiment that now is a good time to buy property, with investors returning to the market. However, there is still considerable caution amongst buyers, who are taking their time to research the market thoroughly".

Auckland property values are continuing to decline whilst Hamilton, Wellington and Dunedin have all improved compared to 12 months ago.

"Despite signs of stability in property values across some areas of the country, there remains widespread uncertainty over what the coming months may bring. The number of sales traditionally drops during autumn and winter, but how interest rates impact market activity and the extent to which broader economic factors, in particular declining job security, will affect the property market remains unclear" said Blue Hancock.

To generate specific REINZ reports [click here](#).

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## **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 2009.

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](mailto:janellew@landinfo.net.nz)

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

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**Regards The LANDinfoNET Limited team.**

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**An extension of your office.**

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Freephone **0800 106 206** ::: Freephone **0508 534 251**

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**visit us at [www.landinfo.net.nz](http://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.

