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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 GM Janelle Weir

It has been a wee while since you heard from us last and it's already half way through the year! We've been busy behind the scenes with a couple of new projects and some upgrading of our IT infrastructure.

We've also been having fun with the challenge of interpreting and applying LINZ's ever evolving standards & regulations particularly for paper registrations. We have found the simplest way around the paper registration difficulties is to register by Edealing, which is of course what LINZ ultimately desires. LANDinfoNet assists many firms including Finance Companies, Barristers, and Solicitors that do and do not have access to Landonline. We are working with our clients very closely with the transition from paper to electronic registrations with great success. As we provide a complete Edealing service right down to the certifying and signing, the process can be made very simple and efficient.

By the sounds of things most of us have had a slightly busier past couple months after a disappointing April. The varying factors such as lower interest rates, easier lending criteria aimed at first home buyers and vendors finally accepting the market for what it is have been a basis for this.

Property activity is typically subdued through the winter months, but has fluctuated in

recent years. We are finding it's still very difficult to judge and to make any accurate predictions, the market is still volatile in many ways. Our comparisons for May and June 2011 show we're slightly up in some areas such as consultancy and eDealing and down in others such as paper registration from the same period last year which highlights the inconsistent environment we're in.

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## **Our Team**

We are happy to report that Dianne is excelling in her new career in Auckland, she's enjoying a change from the legal realm and the challenges of a new job. Congratulations to Amanda who was recently married to Craig. Amanda is also doing very well in her new motherhood role and is loving the challenge.

LANDinfoNET is now a smaller team however just as expert and efficient as always now made up of myself (Janelle), Roger and Greg our two consultants, Rachel and Marian our two search and registration experts and David Graham our director. We also now have a third generation Graham, Jonty, who has recently joined the ranks after school. Jonty is learning the ropes very quickly and is enjoying the work, must be in the blood!

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## **LINZ Paper Registrations**

This little piece is aimed specifically at our Financing Company Customers who are still registering paper documents.

LINZ fees significantly increased on 1st July for manual paper registrations. In addition with the revised standards for verification of identity, LINZ now imposes further regulations with these types of lodgements. This has undoubtedly impacted your business drastically and LANDinfoNET would like to assist your transition into the electronic environment and offer our service to assist in alleviating this increase in cost and reduce the impact of the new requirements.

We have been communicating closely with LINZ to clarify many of the issues causing concern resulting in "unexpected" rejections. We now have specific clear guidelines in writing to follow that LINZ staff will also be adhering to. Whilst this has not made the process any less arduous, at least we're all singing from the same hymn book now.

### **Difficulties Registering Paper Documents**

Some of you will already be experiencing the difficulties with LINZ's revised standards for verification of identity. The necessity of having to have a Form 27 or Form 28 declaration taken and providing copies of rates notices or utilities invoices are proving to be quite onerous. *With Edealing the Form 27 and 28 Declarations are not required taking away the necessity of having to find a JP or solicitor to take the declaration for you.*

In addition, section 6(c) of the standards requires LINZ to carry out further steps set out in section 5.2, such as contacting the landowner (mortgagor) before registering a mortgage to gain assurance that the landowner is aware of the transaction and is the person who executed the documentation. Mortgages and transfers of unencumbered land are deemed to be "high risk" transactions in section 5.1 We have approached LINZ regarding this practice on your behalf as we realise in many cases the Agreement to Loan documents are signed at an earlier time and the mortgage is only registered if the parties default. It is an obvious concern that if a mortgagor said "No" to LINZ when asked if it was their intention to register, whether a rejection would then take place, and where that leaves you! LINZ have assured us that they will take this into consideration with regards to their approach when communicating with landowners. *LINZ does not take this extra step when the transaction is done via Edealing.*

If you would like to take advantage of the ease of our electronic registration service (Edealing), save up to 20% per dealing and enjoy the benefits of instant registration, please contact Marian, Rachel or Janelle on 0800 106 206 or info@landinfo.net.nz for more information.

Thank you for taking the time to read our newsletter, we trust you will find it helpful. Please read on for some useful information regarding LINZ issues. Thank you for your custom and all the best for a productive and successful remainder of the year – Janelle

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## **LINZ Issues**

### **Consent Notices – by Roger Fielding**

On the odd occasion we receive a new consent notice to register after the subdivision it affects has already been registered and new titles have issued – (a late consent notice). This is not a practice that sits well with Land Information New Zealand (LINZ) and usually results in a rejection. NB a Consent Notice can only be issued if it is referred to in the Section 224(c) Resource Management 1991 approval.

When subdivision documents are lodged with LINZ it is at that point that any consent notice associated with the plan needs to be registered – not days or months later. (Section 224(d) Resource Management Act 1991).

LINZ have advised that they are willing to make an exception to the rule of not accepting late consent notices if circumstances warrant it, provided that the new consent notice was issued prior to the deposit of subdivision plan and provided also, that in addition to the Local Authority execution, the landowner and other interest holders agree to its registration (i.e. they sign the consent notice – landowners - or provide consents – mortgagees). This is so LINZ does not get drawn into any disputes between the various parties/interest holders.

The acceptance of a late consent notice is entirely LINZ's discretion and we would advise that a letter/fax should be sent to LINZ once the late consent notice is lodged for registration, explaining the circumstances surrounding the issue of the latest consent notice.

If the late consent notice that has issued is just for the purpose of the tidying up of some wording or some matter in the original consent notice for the subdivision then perhaps a variation under Section 221(3)(a) and (5) Resource Management Act 1991 should be considered first.

### **Removal of Encumbrance Held by Struck Off Encumbrancee – by Roger Fielding**

Where a sole encumbrancee that is a company and that company is removed from the company register then normally what happens is that encumbrancee's estate in the encumbrance becomes property of the Crown under Section 324 Companies Act 1993 and then the Crown will dispose of the encumbrancee's estate.

However if the encumbrancee is a different kind of entity i.e. an incorporated society that no longer exists then the Companies Act 1993 procedure cannot be used.

A discharge of the encumbrance under Section 113 Land Transfer Act 1953 can be discounted too as LINZ advise that this Section is only applies to persons rather than corporate entities.

An alternative is to use Sections 109(1)(a) and 110 Property Law Act 2007 and obtain a Court Order under Section 110. The Court Order disposing of the encumbrance will need to be lodged manually at LINZ since Court Orders are not e-dealing capable documents.

## **Crossleases : by Greg Strange**

Recently at LANDinfoNET we have been consulting on a number of dealings involving cross leases and there appears to be a misconception to what procedures need to be undertaken to complete a successful registration of a cross lease e-dealing and the issue of the new composite certificates of title. We have identified a number of recurring issues and we hope the following information will help provide an easier understanding of cross leases and help identify any problems that may arise.

### **Variation of Lease**

Variation of Lease instruments can be used to change or vary the term of the lease and the covenants, conditions and restrictions of an existing lease. For example, these changes could be the changing or varying the restrictive or exclusive use areas of the lease. Sometimes there appears to be misunderstanding that when an existing building within a leasehold estate is renovated or modified and the footprint of the existing building changes or if a new building is erected within the leasehold estate that by simply registering a variation of lease will include the renovated or new building in the existing leasehold. Unfortunately this is not correct, and the existing lease will in most cases have to be surrendered and a new lease registered to include the renovated or new building as part of the new leasehold estate.

### **New Leases**

#### **Consistency of the Leases Registered over the Fee Simple Estate:-**

When surrendering and registering a new cross lease we suggest you consider surrendering all the current leases registered over the total fee simple estate and registering new leases. This provides all the registered proprietors of the new composite certificates of title with the same clauses, conditions, rights and powers. This consistent approach will help eliminate any possible ownership disagreements or conflicts in the future. If it is not possible to surrender all the leases and register new leases, variation of leases may have to be registered against the remaining leases or new lease to maintain the same clauses, conditions, rights and powers over all the leasehold estates in the cross lease development.

### **Operative Clauses of the Lease**

When drafting a new cross lease instrument make sure the lease instrument is the correct one as the operative clauses between the standard lease instrument and the lease instrument for a cross lease are different. The operative clause of a standard lease instrument states:- 'The Lessor leases to the Lessee and the lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the above Lease Memorandum or in the Annexure schedule(s) (if any)'.

For a comparison this is the operative clause for a lease instrument for a cross lease:- 'In consideration of payment of the rent, the Lessor(s) lease to the Lessee(s) and the Lessee(s) accepts on lease, the flat or other building described herein to be held by the Lessee(s) as Lessee(s) subject to the restrictions, conditions and covenants set out in Memorandum Number xxxx/xxxx registered in the Land Registry Office for the above district together with the restrictions, conditions and covenants contained in the attached Annexure Schedule (s) all relating to the land in the above Computer Register(s)'.

As the comparison between the two different lease instruments shows that with the standard lease instrument the lessee is leasing the land contained in a particular certificate of title whereas the lease instrument for a cross lease the lessee is leasing a flat or building.

We can supply a copy of the e-dealing cross lease instrument we use at our standard

minimum cost. Please advise us if required.

## **Areas Identified on Plans**

With the recent change in the Survey Regulations all flats, houses, other buildings and structures, restrictive or exclusive areas, and common areas are identified on the plan as an 'Area' and if there is more than one 'Area' on the plan, further identified with an alphabetical or numerical symbol, e.g. 'Area A' or 'Area 1' or a combination of both 'Area 1A'. There should be a key on the flats plan to outline the restrictive areas on the plan. With the various parts or sections of the flats plan identified as 'Areas' it is very important to ascertain the buildings / structures to be leased and the areas that are to be restrictive / exclusive or common when drafting the new lease instrument as it is not permissible to lease a restrictive area – only areas depicting buildings.

## **Order for New Computer Freehold Register or Certificate of Title**

The Order for New Computer Freehold Register or Certificate of Title (OCT document) is not required in an e-dealing to order the composite title. A request or notation on the lease instrument addressed to the Registrar-General of Land to issue a composite title is sufficient. An example of this request is contained in our e-dealing cross lease instrument or in the Butterworth's publication 'Land Titles New Zealand Forms and Practice' under the section 'Leases'.

## **Mortgages**

When a mortgage is registered against the title/s of a fee-simple and leasehold estates, and the current leasehold estate is to be surrendered and a new leasehold estate created we recommend discharging the existing mortgage and registering a new mortgage against the new composite title. This is because the existing mortgage will carry over to the new composite title, but will only affect the fee simple estate. This could have some ramifications for the mortgagee if there was a mortgagee sale or transfer power of sale as the mortgage would affect the fee simple estate only but not the leasehold estate (buildings). If you do not go through this process of discharging the current mortgage and replacing it then the mortgagee will need to consent to the surrender of the leasehold estate. When surrendering a cross lease the mortgagee consent of the mortgages registered against the **other titles** that make up the cross lease development is not required. However, when registering a new cross lease, mortgagee consent is required from all the mortgages registered against the other titles that make up the cross lease.

## **Conclusion**

We hope the preceding information is helpful and provides some clarification on some basis requirements and pitfalls in cross lease transactions. If you require a copy of the e-dealing cross lease instrument or help with any cross lease transactions please advise us and we will be happy to assist you.

## **Contacting the LANDinfoNET Consultants**

Our Land Transfer Consultants Roger Fielding and Greg Strange 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)

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

**Roger and Greg have a prior cumulative experience of working with LINZ for over 32 years, please ensure you utilise their ongoing knowledge and resources as an "extension of your office". A team of search and registration clerks support Roger and Greg to ensure they are free for all your consultancy needs**

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# **PPSR / Company's / Searching Services**

## **Current / Historical Title Searching – By Marian Kempster**

There are various different types of searches that we can provide to you; Current searches, Historical Searches, Guaranteed Searches and Purchasers searches, just to name a few. Which search you require can be dependent on what you and your clients are requiring it for, here's a breakdown of what these types of searches are:

### **Guaranteed Search**

A Guaranteed Search is usually only completed for Solicitors and Barristers and desired when you require your search to comply with sections 172 and 172a land transfer act 1952. Ensure this search is ordered 13 days prior to settlement or 14 days including settlement date, and that registration or lodgement is completed 2 months after settlement date.

### **Current Search**

A current copy of the title will only show the current details on the property. This will disclose nature of land, area, legal description, current registered proprietor, financial and land encumbrances also any easements benefiting or affecting the title. A title diagram will also be attached as part of the title. This form of title does not have any historical data included.

### **Historical Search**

An historical search copy will show all historic interests on the title since the date of issue of the title. Eg: if issued in 1980 - it will show all Transfers, mortgages, discharges of mortgages, easements etc noted on that particular title since the date of issue. If the title was created prior to landonline, there will also be a scanned image of the old paper title. This type of search only includes the plan if the plan was part of the old paper title, therefore if the title was issued in the landonline format then a plan will not be attached.

### **Purchasers Searches**

When you order this type of search we will supply you with a current search of the land and also provide all relevant information pertaining to encumbrances affecting the land together with documentation and plans relating to easements both benefiting and affecting the land. If only certain documents are of interest to you, then please insure that this is detailed in your instructions so we only supply you with the documents you require.

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## **Last Word from the Director David Graham**

A warm hearty welcome to the half way mark of the year where it's been anything but warm and hearty out there lately. Although great for those of you lucky enough to spend some time with the family in the snow for school holidays.

LINZ's latest statistics may interest you. As LINZ has the monopoly on registration for all of New Zealand land transactions, they are a very telling indicator of our situation. Comparing July 2010 through to March 2011 with the same time the previous year the number of Discharge Mortgages, Mortgages and Transfers registered has dropped 20.3%, Plans lodged has dropped 21.4% with new titles issued dropping 35.1% indicating the size of the subdivisions lodged are smaller, land title records supplied has also dropped 16.4%. These are pretty sobering stats with the knowledge of the previous year being far from buoyant. The silver lining is any of your conveyancing

arms that are better than 20% down from the previous year is good news, and those of you that are the same as last year..... Well done, it's not easy out there!!

All the best for the remainder of the year, once again thanks for your support and as always we are here and ready to assist you in any way we can.

If you have any questions regarding this newsletter, please contact:  
Janelle Weir, LANDinfoNET's General Manager on **0800 106 206**  
or **[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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