

**RECOMMENDED CHANGES TO REDRAFTED STANDARD
LINZ20002 STANDARD FOR VERIFICATION OF IDENTITY FOR
REGISTRATION UNDER THE LAND TRANSFER ACT 1952**



<p>To: James Mowat Regulatory Frameworks & Processes Land Information New Zealand Private Box 5501 WELLINGTON 6145</p> <p>Fax: 04 472 2244 Email: regulatorysubmissions@linz.govt.nz</p>	<p>From: New Zealand Law Society C/ Property Law Section PO Box 5041, Lambton Quay Wellington 6145</p> <p>Closing date for comments 5 July 2010</p>
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Comment is preferred in electronic format using Microsoft Word 97 or above, following the layout below. Electronic drafts are available from Land Information New Zealand’s website at <http://www.linz.govt.nz>

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SPECIFIC COMMENTS

Insert the number of the clause, paragraph or figure. Do not preface the number with words (ie 1 not clause 1). If there is no clause number, use the section heading (eg Foreword). Insert the page, paragraph and line number as appropriate. Use a new row for each comment.

The rows will automatically expand to accommodate comments of any length. Remove unused rows, or insert additional rows as required. To insert extra rows at the end of the table, go to the last cell and press the TAB key.

Clause/ Para/ Figure/ Table no	Page no	Recommended Changes and Reason <i>Exact wording of recommended changes should be given</i>
4.1	9	<p>Commentary – item 2 <i>Recommended change</i> That the words “<i>very recent purchaser</i>” should be replaced by the words “<i>new purchaser/landowner</i>”.</p> <p><i>Reason</i> We assume the rationale for the exception is to exclude a transaction where the purchaser is buying and mortgaging in the same transaction, because the purchaser would not be able to provide the documentation required under clause 4.1(a)(ii). The reference to “<i>very recent purchaser</i>” is too broad. There would still be a risk of a fraudulent person taking transfer of an unencumbered property, and then approaching another practitioner two or three days later to register a mortgage over that property. It would be useful to clarify that this clause does not include a situation where the purchase and mortgage are part of the same transaction.</p>

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4.1	10	<p><i>Recommended change</i></p> <p>That clause 4.1(b) be consolidated into clause 4.1(a)(ii).</p> <p><i>Reason</i></p> <p>As a standalone clause, 4.1(b) may be read in isolation as allowing an exception to the requirement for photographic ID, rather than the limited exception to clause 4.1(a)(ii).</p>
4.2	11	<p>2nd bullet point</p> <p><i>Recommended change</i></p> <p>That the item be amended to specify the standard of proof required for a passport or drivers licence.</p> <p><i>Reason</i></p> <p>Practitioners will need to know the equivalent standard of proof, so adding this information will make the standard more user-friendly.</p>
4.2	12	<p>Commentary – para 1</p> <p><i>Recommended change</i></p> <p>That expired government-issued photographic ID be permitted as a form of ID where the person being identified is still clearly the person shown on the ID, so long as corroborating evidence is also obtained (e.g. rates demand).</p> <p><i>Reason</i></p> <p>If the person being identified is still clearly the person in the expired ID photo, then their identity is confirmed. Government-issued photographic IDs expire for reasons besides lack of continued confidence in the identity of the holder. For example, because fees are payable or because the drivers licence holder is required to have their eyes tested.</p> <p>This will avoid the need for the lawyer to obtain a statutory declaration where the client is in a rest home, but the lawyer has known that client for 20+ years.</p> <p>Commentary – para 3</p> <p><i>Recommended change</i></p> <p>That a cross-reference to clause 5.1(c) be included in the commentary.</p> <p><i>Reason</i></p> <p>If the commentary is read in isolation, there is a possibility that the fact it is a high-risk transaction might be overlooked when a foreign passport is presented.</p> <p><i>Recommended change</i></p> <p>That consideration be given to whether the commentary should state that a certified translation of a foreign language overseas-issued passport is necessary.</p> <p><i>Reason</i></p> <p>The practitioner or delegate cannot reasonably rely on a passport if they do not understand the language in which it is issued.</p>

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		<p>Commentary – para 4 <i>Recommended change</i> That the words “instructing a practitioner” be deleted.</p> <p><i>Reason</i> These words are unnecessary and may lead to an unduly restrictive interpretation of “instructing” because an Authority and Instruction form (A & I form) can be addressed to a law firm. Another lawyer in the firm, other than the lawyer named on the A & I form, can certify and sign the electronic transaction.</p>
4.3(c)	13	<p><i>Recommended change</i> That the words “have known the landowner for at least 12 months” be replaced with the words “knows the landowner personally and can vouch for their identity”.</p> <p><i>Reason</i> This is consistent with the approach in clause 4.1(b), which is preferable to an arbitrary 12-month period.</p>
4.4	13	<p>Commentary – para 2 <i>Recommended change</i> That the words “guidelines for <i>mortgagee</i> authorities” be replaced with the words “guidelines for <i>chargeholder</i> authorities”.</p> <p><i>Reason</i> This is consistent with the terminology in the New Zealand Law Society <i>e-dealing</i> guidelines. Consideration should be given to whether the chargeholder exception should be extended to other instruments, such as mortgage variations and transfers in exercise of power of sale.</p>
5.1	14	<p><i>Recommended change</i> More guidance in relation to high-risk transactions would assist. For example, when a non-resident corporation is a transferee, commentary about the extent to which (and how) practitioners are to discharge their obligations would be helpful.</p>
5.2	14-15	<p><i>Recommended change</i> That consideration be given to requiring two forms of photographic ID.</p> <p><i>Reason</i> This is consistent with the Australian approach for this type of transaction.</p>
6	15	<p><i>Recommended change</i> That a cross-reference or hyperlink to LINZ’s procedures for manual lodgement be included.</p> <p><i>Reason</i> This will help to generate awareness of the distinction between a lawyer witnessing a paper instrument that is being lodged by a non-lawyer, versus an electronic or paper instrument that has been signed correct by a lawyer. The procedure in clause 6 should be consistent with the procedures for manual lodgement. Practitioners should not use paper lodgement to bypass Landonline.</p>

GENERAL COMMENTS

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1. Transferor focus

The revised standard does not expressly acknowledge that certifications are required by both transferor and transferee. The language and risk focus almost exclusively on the transferor/mortgagor. Landowner is defined as “a registered proprietor, or signatory, or any other person legally authorised to act on the registered proprietor’s behalf”. A transferee is not a registered proprietor at the time of identity verification.

The term ‘landowner’ is used throughout the standard and it would assist if that definition were revised to include all parties to an electronic transaction. Section 4 includes detailed commentary that is almost entirely focused on transferors and New Zealand residents. The standard should be amended to address all parties, to assist practitioners in determining what is reasonable. For example, it is unclear whether the threshold is lower for “reasonable steps” to verify identity in the case of a transferee due to lower risk.

2. Certifications

It is suggested that the draft standard be amended to reinforce that the certifications made in an *e-dealing* are part of the practitioner’s professional obligation to LINZ, with a cross reference to clause 2.5 LCA ([Lawyers: Conduct and Client Care\) Rules 2008](#). That may reinforce the lawyer’s duty in circumstances where a client gives instructions to certify (or brings extreme pressure to do that) when “reasonable” evidence might not be available.

3. Drivers licences

Concerns have been expressed about the standards for issuing New Zealand drivers’ licences, given the reliance placed on them to verify client identity.

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