



PLS Guidelines

November 2019

Property Law Section Property Transactions and E-Dealing Practice Guidelines

PREPARED BY THE PROPERTY LAW SECTION OF THE NEW ZEALAND LAW SOCIETY



PROPERTY LAW
SECTION
NEW ZEALAND LAW SOCIETY

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Introduction

These Guidelines have been compiled by the Property Law Section of the New Zealand Law Society and replace the Property Transactions and E-Dealing Practice Guidelines published in July 2012 and updated in April 2015.

The Guidelines have been endorsed by the Board of the New Zealand Law Society on 17 October 2019 and came into effect on 1 November 2019.

Purpose of the Guidelines

[Part 5](#) has contractual force under all existing versions of the REINZ/ADLS Agreement commencing with the Ninth Edition (2012) and under the Realforms Agreement. [Part 5](#) may also have contractual force under other forms of agreement. [Part 5](#) sets out when it has contractual force.

[Part 6](#) is endorsed by the Registrar-General of Land for recommendation to lawyers using Landonline.

The balance of the Guidelines reflect recommended practice for property transactions.

Structure of the Guidelines

These Guidelines are structured as follows:

[Part 1](#) – Client and professional service including undertakings

[Part 2](#) – General conveyancing requirements including division of relationship property

[Part 3](#) – Workflow guidance – Acting for a vendor

[Part 4](#) – Workflow guidance – Acting for a purchaser

[Part 5](#) – Settlement requirements

[Part 6](#) – E-dealing guidelines

[Part 7](#) – Glossary

The Appendix to these Guidelines set out the three A & I forms approved by the New Zealand Law Society and Registrar-General of Land.

Limits on effect

The Guidelines are **not** intended to:

- be an exhaustive checklist
- deal with every type of property transfer
- replace lawyers' professional obligations
- substitute the material produced by LINZ relating to Landonline and e-dealings

The Guidelines do not limit the application of the [Rules](#) or any applicable law.

Use of the Guidelines

All references to other documents (including legislation) are to those documents as at .

You must check for any changes to the Guidelines or any documents (including legislation) referred to in the Guidelines.

All words and phrases used in the Guidelines have the meanings set out in [Part 7](#).

URLs for external websites are in italics. Hover over with your mouse and when the 'hand' becomes a 'pointing finger', you can link straight to the website.

1. Client And Professional Service Including Undertakings

1.1 This Part provides guidance on client and professional service, fees, estimates, quotes and undertakings. It does not replace the requirements of the [Rules](#) ».

General

1.2 In providing services to clients, you must always act:

- (a) competently;
- (b) in a timely manner; and
- (c) consistent with the terms of your client's engagement documents.

1.3 You must keep your client appropriately informed throughout the duration of the matter.

1.4 You must not act without instructions from your client. If you receive instructions in a meeting or over the phone you should record the instructions in a file note and record the date, time and names of the client and lawyer attending the meeting or phone call.

1.5 See [Chapter 3 of the Rules](#) » in relation to the provision of information to clients before commencing work. In particular, see Rules 3.4 and 3.5 dealing with information that a lawyer must provide to a client in writing before commencing work under a retainer. You also need to ensure compliance with Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) legislation.

Legal fees

1.6 It is best practice for you to provide an estimate or quote of fees and disbursements to your client in writing before starting work. For new clients, the estimate or quote should be included when you send your terms of engagement. For existing clients, the estimate or quote should be provided to the client in writing or in accordance with the engagement terms agreed with the client.

1.7 Clearly set out your understanding of the instructions with your estimate or quote.

1.8 Obtain your client's written acknowledgement of the estimate or quote before you commence work on the matter. However, if you continue to receive instructions following the giving of your estimate or quote, you should assume acceptance of your estimate or quote.

1.9 Retain copies of all documents relevant to the estimate or quote on your file.

1.10 See [Chapter 9 of the Rules](#) » relating to fees. Rule 9.1 sets out the reasonable fee factors.

Giving estimates

1.11 You should give estimates where it is not reasonably practicable to accurately calculate the fee and disbursements before the work is carried out. Clients should be made aware that

the figure given is an estimate only. You should explain the factors that might affect the total cost as against your estimate.

- 1.12 If you provide an estimate before fully receiving instructions, you may need to state that you will confirm that estimate once you are fully instructed and in receipt of all relevant information. It is reasonable to alter an estimate only if you receive further information after being instructed.
- 1.13 It may be reasonable to alter an estimate during progress of the matter. You should advise your client in writing immediately if it becomes apparent that your estimate is likely to be exceeded. You must provide a reason for the increase and you should provide a revised estimate. [Rule 9.4](#) provides:

9.4 A lawyer must upon request provide an estimate of fees and inform the client promptly if it becomes apparent that the fee estimate is likely to be exceeded.

Quotes

- 1.14 You may wish to provide a quote where it is possible to accurately calculate the fee and disbursements before the work is carried out. Unlike estimates, there is no professional obligation to give quotes. You might wish to provide a quote for fees but only an estimate for disbursements if the disbursements cannot be accurately quantified.
- 1.15 You cannot charge more than a quote you have given to a client, unless:
- (a) the work undertaken is outside the initial agreed scope and the client has approved the undertaking of that work;
 - (b) permitted by the terms of the quote; or
 - (c) there are exceptional circumstances.
- 1.16 Your quote should be in writing and specify:
- (a) the amount of your legal fees;
 - (b) the amount of any disbursements and third party charges (which might be stated to be an estimate in the circumstances);
 - (c) whether the above is including GST or plus GST;
 - (d) the work covered by the quote;
 - (e) if relevant, the work which is not covered by the quote; and
 - (f) any assumptions or qualifications which affect your quote (including that the client has provided all relevant information).

Estimates and quotes generally

- 1.17 You should emphasise the need for your client (or potential client) to supply all known details of the matter, preferably in writing.
- 1.18 When estimates or quotes are given:

- (a) Full details of the transaction should be obtained, preferably at an interview or by an email exchange to reduce misunderstandings.
- (b) A warning should be given that an estimate (but not a quote) might be revised if the transaction is more complex or time-consuming than expected.
- (c) The estimate or quote should set out what work is covered by the estimate or quote and what work is not covered by the estimate or quote. Any other assumptions and qualifications should be clearly set out.
- (d) You should summarise the details of the instructions if the request was not received in writing or if your assessment of the required work differs from that request.

1.19 You must act professionally when estimating likely fees and disbursements. A lawyer who is careless or negligent when giving an estimate may be prevented from charging more than the estimated figure.

Duties to other lawyers and third parties

- 1.20 You must act professionally in all dealings with other lawyers and with third parties. This includes treating other lawyers and third parties with respect and courtesy. See Chapters [10](#) and [12](#) of the Rules.
- 1.21 You should respond to correspondence regarding property transactions promptly.

Undertakings

1.22 [Rules 10.3 and 10.3.1](#) of the Rules state:

10.3 A lawyer must honour all undertakings, whether written or oral, that he or she gives to any person in the course of practice.

10.3.1 This rule applies whether the undertaking is given by the lawyer personally or by any other member of the lawyer's practice. This rule applies unless the lawyer giving the undertaking makes it clear that the undertaking is given on behalf of a client and that the lawyer is not personally responsible for its performance.

1.23 'Member' is defined in the [Rules](#) by reference only to lawyers. However, it is customary for registered legal executives to also give undertakings on behalf of the practice in the conveyancing context. Accordingly registered legal executives also have ostensible authority to give undertakings on behalf of a law practice. Subject to 1.24, a lawyer is entitled to rely on undertakings given by the partners or directors of a law practice, and also by lawyers and registered legal executives of a practice, in the conveyancing context. It is the responsibility of the partners and directors of the practice to ensure that undertakings are only given by appropriate persons.

1.24 A law practice should have in place a clear understanding of who may give undertakings on behalf of the practice and the status of people in other firms that it is willing to accept undertakings from. In light of the significance of undertakings, a law practice might take the view that undertakings may be given only by or received from partners or directors or certain other experienced lawyers.

- 1.25 If a lawyer wishes to require that it will accept undertakings only from lawyers, or only from the partners or directors of a law practice, then the lawyer should, for each transaction, do so in writing no later than 5.00pm on the working day prior to the settlement date. If the lawyer fails to give such prior notice, they should accept undertakings given by the partners or directors of the practice, and from lawyers and legal executives employed by that practice. If a lawyer imposes requirements under this clause, these requirements also bind the lawyer imposing the requirements.
- 1.26 Make sure all undertakings, including any requirements as to undertakings, are expressed clearly. An assurance or promise, even if it is not expressed as an undertaking, may take effect as an undertaking.
- 1.27 Make sure that you do not give undertakings unless you are in a position to fully ensure they are carried out.
- 1.28 Undertakings bind the lawyer personally, whether or not the lawyer has the client's authority to give the undertaking. They remain binding on the lawyer despite subsequent contrary instructions by a client or the death or incapacity of a client.
- 1.29 Lawyers must have a client's authority before giving an undertaking on behalf of the client or any undertaking which may affect the client's position (such as an undertaking to pay rates from settlement funds). However, client authority to give the standard pre-settlement undertakings to mortgagees and KiwiSaver providers and the undertakings required under [Part 5](#) (except under [Guideline 5.19](#)) should not normally be necessary. See [Guidelines 3.56, 3.57 and 5.19](#) regarding the payment of rates on settlement.

Solicitor's certificates

- 1.30 Lawyers are generally required to give solicitor's certificates to mortgagees in order to satisfy the mortgagee's requirements to disburse loan funds. You must ensure that all solicitor's certificates are correct and complete.
- 1.31 [Rule 2.5](#) of the Rules provides that:
- 2.5 A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.

2. General conveyancing practice

- 2.1 This Part provides guidance on general conveyancing practice applicable to both a vendor's lawyer and a purchaser's lawyer.

Receiving new instructions from a client

- 2.2 **Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT):** All property transactions are captured activities. You must therefore comply with [AML/CFT Act](#) requirements, including undertaking client due diligence (CDD) before commencing work.

(a) **New client:** You must undertake CDD on your client, your client's beneficial owner(s) and any person acting on behalf of or who has effective control over your client **before** establishing a business relationship ([s16\(2\)](#)). Enhanced client due diligence may need to be undertaken in certain situations, including where the client is a trust or another vehicle for holding personal assets, from or connected to a high-risk country or a politically exposed person. Refer to the AML/CFT Act ss [14](#), [18](#) and [22](#) and [23](#) and your law practice's Risk Assessment.

(b) **Existing client:** The Act requires you to conduct client due diligence (CDD) on existing customers if there has been a "material change" in the nature or purpose of the business relationship, and CDD has not been conducted to the level required by the Act. "Material change" is not defined in the Act, however, the supervisor refers to a working definition of "an event, activity or situation that you identify that could change the level of ML/TF risk you may encounter". Again, refer to the AML/CFT Act ss [14](#), [18](#) and [22](#) and [23](#) and your law practice's Risk Assessment.

Note: you must also conduct **ongoing** CDD on existing clients. This requires you to ensure that the business relationship, including the activities and transactions within it, are consistent with your knowledge about the client, their business and risk profile. When doing this, you must regularly review any information you hold about the client. This may require you to update your CDD records even when there has been no "material change" in the business relationship ([s 31](#)).

- 2.3 **FATCA and AEOI/CRS:** Before placing client funds on IBD, you are obliged to gather tax residency information from the client (individual or entity), pursuant to tax-sharing agreements the NZ government has entered into, including with the United States (for FATCA compliance) and with at least 100 other countries (for CRS compliance). Tax residency self-certification forms must be completed by your client. Check with your bank for their requirements as to which self-certification form/s must be completed.
- 2.4 **Open file and check for conflicts:** As soon as possible after opening a new file for a client's conveyancing transaction you should carry out a conflict check. You must not act for more than one client on any matter in any circumstances where there is more than a negligible risk that you may be unable to discharge the obligations owed to one or more of your practice's clients.
- 2.5 **Searches:** You should promptly undertake the following searches:

- (a) **Title search:** Obtain a search copy of the title to confirm ownership of the land. Get the client to confirm it is the correct property.
 - (b) Obtain a copy of any relevant trust deed to ensure trustees have necessary powers.
 - (c) **Register:** If relevant, search the companies register or another applicable register or statute to confirm the name and registration status of your client and the other party to the transaction.
 - (d) **PPSR:** In some circumstances it will be necessary to search the PPSR to ensure that none of the chattels are subject to a financing statement to a third party.
- 2.6 **Overseas person:** If your client is defined as an “overseas person” under the [Overseas Investment Act 2005](#) (OIA) you should ensure they have complied with the Act . This includes the following:
- (a) **Consent required:** If your client is an “overseas person” who is acquiring an interest in “sensitive land” (including “residential land”) then you should advise them that they will need to obtain the consent of the OIO as a condition of the agreement. If your client is the vendor of sensitive land (including “residential land”), you should advise them that, if the purchaser is an overseas person, there is a requirement for the purchaser to obtain the consent of the OIO as a condition of the agreement.
 - (b) **Residential land statement:** All purchasers of residential land must provide a statement as to whether consent is required under the Act. These must be held on file for 10 years.
 - (c) **Farm land advertising:** If your client is the vendor of “farm land”, you should ensure that your client complies with the OIA, including advertising the land in accordance with the Act before entering into an agreement to sell the land to an overseas person.
- 2.7 **Registered instruments:** If appropriate for the transaction, before the agreement is signed, review any caveat, mortgage or encumbrance registered against the title to take a view as to whether any consent is required.
- 2.8 **Tax:** Consider the tax implications of the transaction. The below is a summary only and is not an exhaustive list of issues relating to taxation.
- (a) **Value of the supply:** The vendor and purchaser should agree the value of the supply, which might in the circumstances include different values attributed to the land, dwelling and curtilage, chattels, forestry, buildings, lease goodwill, livestock, stock in trade and shares included in the sale.
 - (b) **Bright-line test:** The sale by your client of a residential property may be taxable. Unless an exception applies (such as the property being the client’s main home or transferred as part of an inheritance), a bright-line test applies to property that:
 - (i) was purchased between 1 October 2015 and 28 March 2018 (both inclusive) and was owned for less than 2 years before your client entered into an agreement to sell the property; or
 - (ii) was purchased on or after 29 March 2018 and was owned for less than 5 years before your client entered into an agreement to sell the property.

(c) **RLWT:** The sale by your client of a residential property will be subject to RLWT if the bright-line test applies (see above) and your client is an “offshore RLWT person” as defined in [section YA1 of the Income Tax Act 2007](#)⁷. You should consider and advise your client about the relevant provisions of the agreement. See also Guidelines [3.49](#)⁷ and [4.76](#)⁷.

(d) **Goods and Services Tax:**

(i) Vendor registered for GST & selling property as part of its taxable activity

The vendor must account for GST on the supply. Where part of the property is used as a principal place of residence by the vendor, that part of the property will not usually be part of the taxable supply. Values may need to be ascribed to each part of the property and treated as two supplies.

(ii) Both parties registered for GST

If the purchaser is purchasing the property with the intention of using it as part of its taxable activity and does not intend to use the property for their (or an associated person's) principal place of residence, GST must be charged at 0% on the supply.

Note: Care should be taken to ensure that the GST position in the agreement is correct (including the GST schedule where appropriate) and any warranties in the agreement reviewed and amended as required before the agreement is signed. Advise your client to seek tax advice before the agreement is signed if you consider that advice is required. See also Guidelines [3.17](#) and [4.29](#).

(e) **Other triggers for income tax**

Income tax may also be payable in other circumstances, including if your client:

- (i) bought the property with the firm intention of resale;
- (ii) has a pattern of buying and selling property;
- (iii) is a dealer, developer or builder;
- (iv) is an “associated person” with a dealer, developer or builder;
- (v) sells a property within 10 years of purchase and was a property dealer or developer at the time they bought the property; or
- (vi) sells a property within 10 years of building work being completed on the property and was a builder at the time they bought the property.

2.9 Māori land: You may need to identify whether the land is Māori land. When you search for a copy of the title on Landonline you may receive a report that the land is potentially Māori land. It may be difficult to identify Māori land and you may wish to obtain expert advice if in doubt. The following are potential Māori land indicators:

- (a) land included as Māori land on: *maorilandonline.govt.nz*;
- (b) land owned by a Māori incorporation;
- (c) a status order registered against the title under Te Ture Whenua Māori Act 1993 declared the land to be Māori freehold land or Māori customary land;

- (d) evidence of the owners holding the land “as trustee”;
- (e) a Māori land appellation (eg. Ohutu 2C4B);
- (f) a string of registered Māori Land Court orders;
- (g) multiple owners (eg. more than five);
- (h) (f.a) or (m.a) after the name (used to indicate female adult & male adult orders);
- (i) proprietorship in unusual shares (eg. a 9/876th share);
- (j) location of the land in a district where Māori land is more prevalent, such as Gisborne.

2.10 See the information on the LINZ website: linz.govt.nz/survey-titles/land-records/maori-land-records

Duties to mortgagees

- 2.11 **Inherent conflict:** Lawyers acting for the vendor will owe duties to the vendor’s mortgagee and when acting for the purchaser will owe duties to the purchaser’s mortgagee, unless separately represented. Lawyers must act in the best interests of the respective clients. [Rule 6.1 of the Rules](#) applies, and you must not act or continue to act where there is a more than negligible risk that you may be unable to discharge obligations owed to both clients (refer [GE Custodians v Bartle \[2010\] NZSC 146](#)). You should advise your client of the conflict and obtain a waiver of independent legal advice from your client.
- 2.12 **Undertakings and solicitor’s certificates:** You must strictly comply with all undertakings and solicitor’s certificates given to mortgagees. See also [Part 1 of the Guidelines](#).
- 2.13 **Transfer subject to mortgage:** While the [Land Transfer Act 2017](#) does not require mortgagee or encumbrancee consent to a transfer, to avoid a breach of the borrower’s covenants under a mortgage, you must obtain the prior consent of the mortgagee to a transfer of a property subject to the mortgage. See also [Guideline 2.27](#).
- 2.14 **Second mortgages:** You need to be diligent when dealing with second or subsequent mortgages (including encumbrances). Your client’s contractual requirements with the prior mortgagee will almost invariably require your client to obtain consent to register a subsequent charge. If consent is not obtained, the client risks having their facilities terminated. Consider whether the circumstances require you to disclose a potential conflict to the first mortgagee if you acted for that mortgagee on the registration of the first mortgage. As most mortgages contain a priority amount for the purposes of [sections 90 to 94](#) of the Property Law Act 2007, you could be in breach of your obligations to the subsequent mortgagee if a deed of priority recording the respective rights of mortgagees is not obtained.
- 2.15 **Transactional duties:** Consider your transactional duties to the mortgagee, for example sending a copy of the post-registration record of title after settlement.

Division of Relationship Property

- 2.16 **Who acts for the client:** When selling relationship property after a breakdown of a relationship, the parties should decide which lawyer is to act on the sale of the property on behalf of both parties. If the parties cannot agree on a lawyer, you should act on the sale of the property if:
- (a) you act for the party in possession of the relationship property; or

- (b) if neither party is in possession of the relationship property and there is a tenancy or formal form of supervision in place and you act for the party who manages the tenancy or supervises the property.
 - (c) You should reach an agreement with the other lawyer involved if there is uncertainty as to who is in possession of the property or who manages it.
- 2.17 If you do not act on the sale:** If you do not act on the sale you should:
- (a) seek your client's approval for the other lawyer to act;
 - (b) give the other lawyer written confirmation that he or she is to act on the sale; and
 - (c) obtain an undertaking from the other lawyer that they will not disburse the sale proceeds until the parties have agreed how the proceeds will be divided.
- 2.18 Acting on the sale:** If you act on the sale you should:
- (a) provide an engagement document to the parties;
 - (b) give the other lawyer a written acknowledgement that you are acting on behalf of both parties;
 - (c) keep the other lawyer fully informed;
 - (d) keep in mind that you are acting for both parties; and
 - (e) give an undertaking to the other lawyer that you will not disburse the sale proceeds until the parties have agreed how the proceeds will be divided.
- 2.19 Independent lawyer:** You and the other lawyer should, with the consent of your clients, appoint an independent lawyer acceptable to both parties to act on the transaction if:
- (a) you and the other lawyer cannot agree who is to act; or
 - (b) either party refuses to give approval for one of you to act.
- 2.20 Fees:** You may charge your client separately for any work that you do in connection with the sale from any other work you are doing for that client, whether or not you are acting on the sale. Your fees may be deducted from the sale proceeds, with both clients' agreement. Refer to [Part 1 of the Guidelines](#) for more information on fees, quotes and estimates. You must comply with the [Lawyers and Conveyancers Act \(Trust Account\) Regulations 2008](#) and [Chapter 9 of the Rules](#).
- 2.21 Independent lawyer obligations:** If you are acting as the independent lawyer, you must deal with the settlement proceeds as instructed by the lawyers for the parties. You must hold the proceeds undisbursed on behalf of both parties if they cannot agree how the proceeds should be dealt with. You must also comply with all other requirements of the [Rules](#) and the Guidelines.

Preparing for settlement

- 2.22 Execution of agreement:** Ensure that the agreement has been properly signed:

- (a) In the case of a company, the agreement should be signed in accordance with the company's constitution or otherwise in accordance with [section 180 of the Companies Act 1993](#)⁷;
- (b) If the agreement has been signed by an attorney, you should make sure that there is a certificate of non-revocation of power of attorney attached to the agreement;
- (c) If the agreement has been signed by the trustees of a trust, you should ensure that all trustees listed on the record of title have signed the agreement or the agreement has otherwise been signed in accordance with the trust deed. Where the purchaser is a trust, the purchaser's lawyer should confirm that all trustees have signed the agreement and provide confirmation to the vendor's lawyer on request; and
- (d) Check that the GST schedule has been completed or the required GST information has otherwise been given to the vendor.

2.23 Nomination and assignment: In relation to nominations and assignments:

- (a) unless the agreement provides for it, the vendor cannot insist on a deed of nomination (see clause 4.2(b) of the Realforms Agreement for example);
- (b) a nomination phrased as such is merely a conveyance by direction, and therefore the original purchaser remains principally responsible to complete settlement;
- (c) nomination is permitted by right unless the agreement provides otherwise; and
- (d) deleting "and/or nominee" from the front page of the REINZ/ADLS Agreement will not prevent a nomination (although it may prevent the nominee succeeding in a direct claim against the vendor, as the nominee may not have the benefit of [section 12 of the Contract and Commercial Law Act 2017](#)⁷, and could also alter how clauses referring to the "purchaser" operate).

2.24 A nomination may have implications on the transactions. Consider, for example:

- (a) **AML/CFT:** If you are acting for the purchaser, you will need to obtain updated AML/CFT information from the nominee.
- (b) **GST:** The nominee may need to provide updated GST information – check the version of the Agreement you are working with for any requirements.
- (c) **OIA:** Consider whether any issues arise under the OIA. If the nominee is an overseas person, the nominee will need to obtain consent from the OIO, which, depending on the processing timeframes at the OIO, may affect the settlement date in the agreement. Consider whether a nomination to an overseas person may expose the purchaser to liability for failing to settle or put the purchaser in breach of a warranty given by the purchaser in the agreement.

Also see Guidelines [3.41](#) and [4.59](#).

2.25 Discharges: Consider which existing instruments are to be discharged and which are to remain registered on settlement. If appropriate, advise the other lawyer. Where an encumbrance is to remain registered, the purchaser's lawyer should consider whether a mortgage priority instrument or other priority document is required (eg. if the mortgagee is requiring a first-ranking mortgage).

- 2.26 Transfers subject to mortgages:** Make sure you obtain the mortgagee's consent when you transfer a property subject to a mortgage. See [Guideline 2.13](#).
- 2.27 Settlement statement:** The vendor's lawyer will prepare the settlement statement. The settlement statement must state the purchase price, any GST payable by the purchaser, any deposit paid, any payments or allowances to be credited to the purchaser and apportionments of all incomings (eg. rent) and outgoings (eg. rates) apportioned at the settlement date (refer to [Guidelines 3.50 to 3.54](#) for more detail). Incomings and outgoings relating to the settlement date are the responsibility of or belong to the vendor. The purchaser's lawyer should check the settlement statement and verify any apportionments. The purchaser's lawyer must confirm with the client that the client will have sufficient funds available to complete the transaction.
- 2.28 Land transfer Tax Statement:** A land transfer tax statement must be obtained from your client where the transaction includes a transfer of land. You should not complete any non-administrative parts of the land transfer tax statement on behalf of your client. Any false or misleading tax statement given with a person's knowledge or with intent to deceive may be an offence under [section 81 of the Land Transfer Act 2017](#)⁷. A separate land transfer tax statement is required from each owner, including one from each trustee. You must add the information provided in the land transfer tax statement into the transfer instrument in the Landonline e-dealing workspace before certifying and signing the transfer instrument.
- 2.29 A & I forms:** These will usually be required for property transactions. [Sections K to O of Part 6](#) deal with the preparation and execution of A & I forms. Compliance with [Sections K to O of Part 6](#) is mandatory.
- 2.30 Certifying instruments:** Certifying an instrument as correct is not a mere procedural step. You must read and confirm all Landonline certifications before you sign. Where you are registering a paper instrument, you must consider the correctness of the instrument before signing it correct. The purpose of these certifications is to assure the Registrar-General of Land that the instrument is correct and may be registered. If you are not aware of the circumstances surrounding a transaction, then you must not give the certifications or sign a paper instrument correct. See [Part 6](#) for further requirements in respect of e-dealings.
- 2.31 Copies of documentation:** You should ensure that the client receives a copy of all signed documentation or other key documentation including the agreement, settlement statement, trust account statement, bank documents, trustee resolutions, company resolutions, etc.

Settlement

- 2.32 Remote settlement:** All sale and purchase transactions must be settled remotely and by SCP (unless agreed otherwise). See [Part 5](#) for further requirements.
- 2.33 In-person settlement:** If the lawyers for the parties agree to settle in-person, they must agree all matters relating to that settlement in advance including the undertakings to be given, how payment is to be made and how electronic instruments are to be released. Settlement should occur at the vendor's lawyer's office.
- 2.34 Notice of sale:** A notice of sale advises the required authorities of the transaction. A notice of sale should include the price and sufficient information to allow the authorities to update their databases. If you act for the purchaser or a lessee of a registered lease (if the lease is for a term of 10 years or more and provides that the lessee will pay the rates directly to the

authorities) you should prepare a notice of sale and provide it to the vendor's lawyer or the lessor's lawyer a reasonable time before settlement. If you act for the vendor or the lessor of such a qualifying lease, you should provide the completed notice of sale (in paper or electronic form) immediately after settlement to the territorial or unitary authority, to the regional council (if rated separately from the territorial authority) and to the water rating authority (if water rates are charged separately).

- 2.35 Insurance:** Risk normally passes from the vendor to the purchaser on the giving and taking of possession, although risk can pass earlier (eg on a mortgagee sale). If you act for the purchaser, you should confirm when risk passes and advise your client to obtain insurance. If you act for the vendor, you should advise your client to cancel the insurance after settlement has been completed (even if risk passes before settlement). See [Guideline 4.22](#) for further obligations when acting for the purchaser.

After settlement

- 2.36 Legal fees and other disbursements:** You must obtain your client's written authority before deducting legal fees and any other disbursements from any amounts received on settlement ([regulation 9 of the Lawyers and Conveyancers Act \(Trust Account\) Regulations 2008](#) ⁷).

- (a) **Payments:** Unless agreed otherwise, fees and costs are usually paid as follows:
- (b) **Registered instruments:** The party who receives the benefit of the instrument should pay the LINZ registration fees. The fees for transfers are paid by the transferee.
- (c) **Resubmission fee:** If you are at fault for the requisition/rejection, you should pay the fee. The fee should not be charged to your client unless the client has provided an incorrect document and, acting professionally, you were not able to identify the error before presenting the document for registration.
- (d) **Consents:** In the case of a standard consent from a mortgagee, caveator, encumbrancee or lessor:
 - (i) the mortgagor should pay the cost of obtaining the consent of a mortgagee or encumbrancee to the transfer or leasing of the charged property;
 - (ii) the sublessor should pay the cost of obtaining the consent of the head lessor to a sublease;
 - (iii) the mortgagor should pay the cost of obtaining the consent of a sub-mortgagee to a variation of the head mortgage; and
 - (iv) the landowner should pay the cost of obtaining caveator's consent.
- (e) **Mortgage:** For dealings with existing mortgages:
 - (i) the mortgagor should pay the costs of a discharge of the mortgage;
 - (ii) the mortgagor should pay the costs of a variation of the mortgage;
 - (iii) the mortgagee should pay the costs of transfer or transmission of the mortgage or the change of name of the mortgagee; and
 - (iv) the sub-mortgagor should pay the costs of discharge of the sub-mortgage.

- (f) **Notary fees:** The party executing a document in the presence of a notary public should pay the notary's fees.
- (g) **Assignment of lease:** Unless the lease provides otherwise:
 - (i) the assignee should pay the costs of preparing the assignment documents;
 - (ii) the assignee should pay the costs of registering the assignment; and
 - (iii) the assignor should pay the costs of obtaining the lessor's consent to the assignment.

Before closing your file

- 2.37 **Complete all matters:** You must ensure that you have completed all matters relating to the transaction including registering all instruments and checking that registration has been completed correctly, making all required payments and discharging all undertakings given. You must also report to the client and may also need to report to another party (such as a mortgagee).
- 2.38 **Statement:** For every transaction where funds have passed through your law practice's trust account, you must provide the client with a complete and understandable statement of all trust money handled for the client, all transactions in the client's account and the balance of the client's account (if any). This statement should accompany your report to the client.
- 2.39 **Retention of documents:** You must retain A & I forms and related documents for at least 10 years and OIA documents for at least 7 years. See also [Guideline 6.67](#).

3. Workflow guidance – Acting for the vendor

- 3.1 This Part 3 provides guidance on issues which arise when acting for a vendor under an agreement for sale and purchase of property. You should also review [Part 2](#).

Before the vendor markets the property

- 3.2 **Marketing the property:** If you are instructed to act for a client before the client commences marketing of the property then you should ensure the client understands the sale process and the terms of all relevant documents. You should advise your client not to sign any agreement (including any listing authority with a real estate agent) before referring the agreement to you.

3.3 **Listing authority:**

- (a) If your client wishes to appoint a real estate agent, you should explain that your client will be required to enter into a listing authority with the agent. The listing authority will either give the agent a sole agency or general agency to market the property – make sure your client understands the difference.
- (b) You should ensure that any discount on the agent’s commission negotiated by your client is recorded in writing in the listing authority along with any agreement regarding costs and methods of marketing.
- (c) You should ensure that your client understands the listing authority, including any disclosure warranty and indemnity, and that the agent is required to disclose to any potential purchaser any defects known to the agent.

- 3.4 **Required disclosure of information:** You should discuss with the vendor if any of the below exist and explain the effect of not dealing with these matters or not disclosing all relevant information to a potential purchaser:

- (a) any known defects in the property, where non-disclosure would amount to a misrepresentation or would breach a warranty in the agreement for sale and purchase or the agency agreement;
- (b) any chattels, plant and equipment which are not in reasonable working order or not fully paid for;
- (c) any notice or demand received from a local or government authority, a statutory body, a tenant or any other person which affects the property (including under the RMA) and which will remain outstanding at the date of the agreement;
- (d) any consent or waiver given by the vendor which affects the property;
- (e) if the property is part of any scheme (including a home insulation retrofit scheme) where there is an outstanding balance to be paid to a local or government authority;
- (f) details of any works which have been made without getting a building consent, resource consent, the consent of any co-lessors in the case of a cross-lease title or of the body corporate in the case of a unit title;

- (g) any work undertaken otherwise than in full compliance with all laws;
- (h) any outstanding code compliance certificates or compliance schedules; and
- (i) any contamination.

- 3.5 Additional disclosure of information:** Your client can choose whether to disclose a LIM report, a building report, a contamination report or any other information to potential purchasers (unless withholding of the report may give rise to a breach of warranty or misrepresentation). You should advise your client that the provision of a LIM report that contains any errors might amount to a misrepresentation by your client. You should advise your client that, in circumstances where a LIM report obtained by the vendor identifies an issue, a purchaser may obtain little benefit as against the local authority or against the real estate agent from that LIM report.
- 3.6 Unit Titles:** If the property is a unit in a unit title development, your client is required to provide a pre-contract disclosure statement under [section 146 of the Unit Titles Act 2010](#)⁷. The pre-contract disclosure statement is normally prepared by the body corporate manager or by you, as the vendor's lawyer. If the statement is prepared by a body corporate manager your client should check and confirm the information contained in the statement before it is provided to the agent and the potential purchaser. You should advise your client about the additional disclosure statement which may be requested by the purchaser under [section 148 of the Unit Titles Act 2010](#)⁷.
- 3.7 Sale of farm land:** If the property is "farm land" under the OIA, you should advise the vendor to ensure that it is marketed for sale in compliance with [regulations 4 to 11 of the Overseas Investment Regulations 2005](#)⁷ if the vendor considers it possible that the property may be sold to an overseas person. "Farm land" means land used exclusively or principally for agricultural, horticultural or pastoral purposes or for the keeping of bees, poultry or livestock.

Preparing an agreement

- 3.8 Form of agreement:** The form of the sale and purchase agreement depends on the method of sale. The most common methods of sale in New Zealand are sales by negotiation, deadline sale, tender or auction. You should check that the correct form of agreement is being used. If your client is selling the property by auction or tender, you should review and advise your client on the terms and conditions relating to the auction or tender process. You should ensure that the most recent agreement form is used.
- 3.9 Agreement details:** If you are preparing the agreement, ask your client for the details required to complete the agreement (eg. the address and legal description of the property, deposit amount and settlement date). If someone else has prepared the agreement, confirm the agreement details with your client.
- 3.10 Record of title:** Order a search copy of the record of title and:
- (a) confirm that the legal description of the property recorded in the agreement is correct including checking that the title details in the agreement are for the correct property where the vendor owns multiple properties;

- (b) identify anything that might prevent the vendor from giving clear title on settlement (eg. a mortgage, caveat, compensation certificate, statutory land charge, amalgamation condition, encumbrance or Treaty settlement certificate); and
- (c) confirm whether the property is Māori land. If the property is Māori land make sure that sufficient time is allowed before settlement for the relevant statutory requirements to be met. See [Guideline 2.9](#).

3.11 Vendor conditions: You should consider including conditions in the agreement, such as:

- (a) **Vendor's lawyer's approval:** It is preferable for a lawyer to review the agreement before it is signed as:
 - (i) in most contexts, any reasons for non-approval may be limited to the conveyancing aspects of the transaction; and
 - (ii) these clauses may provide the purchaser an opportunity to withdraw if you require some changes to the agreement.
- (b) **Approvals:** Ask your client if the agreement should be conditional on any approvals being obtained. These may include board approval (in the case of a company or other entity). Consider if a special resolution or shareholder approval may also be required, such as for a “major transaction” as defined by [section 129 of the Companies Act 1993](#).
- (c) **Purchase of another property:** Ask your client if the agreement should be conditional on them entering into an agreement to purchase another property. If so, an additional contemporaneous settlement clause could be inserted.
- (d) **Other conditions:** Consider if other conditions are required, such as:
 - (i) the vendor's tenant agreeing not to exercise an option to purchase, waiving or declining to accept a right of first refusal or agreeing to surrender its lease;
 - (ii) any existing sale agreement for the property being cancelled;
 - (iii) obtaining mortgagee consent, particularly if the sale proceeds may not be sufficient to clear all of the vendor's mortgage/s;
 - (iv) obtaining consent under any other agreement your client may have entered (such as an easement agreement where the easement is not yet registered);
 - (v) obtaining consent from anyone that is not named on the record of title; and
 - (vi) obtaining a subdivision consent or similar to enable the sale to proceed.

3.12 Chattels, plant and equipment: Ask your client to confirm:

- (a) that the list of chattels, plant and equipment is correct;
- (b) that all chattels, plant and equipment are in reasonable working order;
- (c) whether any of the chattels, plant and equipment are subject to a charge – search the PPSR to confirm; and
- (d) whether any tax issues may arise in respect of the chattels, plant and equipment; and

- (e) whether the chattels, plant and equipment should be separately valued for GST, depreciation or rating purposes.
- 3.13 Cross-lease:** If the property is a cross-lease, you should have the vendor confirm that the survey plan for the flat correctly represents the property. Carports, garages, garden sheds, decks, conservatories and chimneys often cause problems here.
- 3.14 Warranties:** Confirm that your client is able to give all of the warranties and undertakings made in the agreement (refer to the Agreement for Sale and Purchase for particulars).
- 3.15 Tenanted property:** Confirm whether the property is tenanted. If it is tenanted:
- (a) advise your client that it is required to give notice to any residential tenant under [section 47 of the Residential Tenancies Act 1986](#) that the property is on the market;
 - (b) obtain and review a copy of the tenancy agreement, deed of lease or agreement to lease;
 - (c) consider whether the tenant has an option to purchase or a right of first refusal;
 - (d) confirm whether the tenant’s consent to the sale is required;
 - (e) ask your client if there are any breaches of the lease by the tenant or your client;
 - (f) consider whether there is anything relevant to the sale in the agreement or deed;
 - (g) if the property is to be sold subject to the tenancy, the tenant should be notified of the change of landlord as part of settlement;
 - (h) if the property is to be sold with vacant possession, confirm that there is sufficient time to give notice to the tenant terminating the tenancy under the [Residential Tenancies Act 1986](#) in respect of non-fixed term residential tenancies, or otherwise under the terms of the agreement or deed;
 - (i) confirm whether the vendor’s chattels are distinct from those of the tenant; and
 - (j) identify whether there are any bonds.
- 3.16 Mortgages:** You should confirm with your client that the sale proceeds will be sufficient to repay the mortgage (including any penalty amount for breaking a fixed term loan). A mortgage given by a client to guarantee a third party’s loan can often cause difficulty (e.g. if parents have guaranteed their child’s loan by offering a mortgage over their property as security).
- 3.17 GST:** If the GST position is not clear, GST questions should be referred to a tax advisor or an accountant at the earliest opportunity. See also [Guideline 2.8](#) on tax implications of a conveyancing transaction. As general guidance, if the vendor needs to account for GST, you should:
- (a) consider whether the vendor needs to account for GST and on what basis.
 - (b) consider whether the purchase price should be “plus GST” or “including GST” – even if the agreement has been signed it is good practice to confirm this as it may be possible to remedy any GST problem before settlement by agreement;
 - (c) confirm the point at which the vendor must account for GST (which may be as early as when the deposit is received);

- (d) identify when the purchaser should pay the GST – the settlement date or on a separate GST date;
 - (e) confirm whether the sale comes within the compulsory zero-rating regime for land transactions;
 - (f) confirm the GST implications of a nomination or assignment by the purchaser; and
 - (g) ask your client if they have claimed a deduction under [section 20\(3\) of the Goods and Services Tax Act 1985](#) [▸] (likely a second-hand goods tax credit) for the dwelling and curtilage, in which case you should ensure there are no conflicting warranties (eg. strike out the relevant warranty clause in the Agreement).
- 3.18** The best practice when acting for a vendor is to draft agreements on a “plus GST (if any)” basis. The vendor will then receive the agreed amount of the purchase price whether the GST is charged at 0% or 15% or if the sale is an exempt supply. However, for a residential transaction the purchase price will usually be “including GST (if any)”.
- 3.19** Make sure the agreement accurately reflects the vendor’s requirements and that the relevant GST information has been provided.
- 3.20** Make sure that your client understands the full implications of the GST clauses for their cash flow. See also [Guideline 2.8](#).
- 3.21 Other tax implications:** Advise your client to get tax advice if the property transaction is one of the following:
- (a) the sale of a property created from a subdivision;
 - (b) the sale of a farm;
 - (c) the sale of a commercial property;
 - (d) the sale of an investment property;
 - (e) the sale of a property that will make your client liable to pay income tax on the proceeds (see [Guideline 2.8](#)); or
 - (f) the sale of a property within the timeframes of the bright-line test (See [Guideline 2.8](#)).
- 3.22 Relationship property:** Identify whether there are any relationship property issues that might affect the vendor’s ability to sell. See [Guidelines 2.16 to 2.22](#).
- 3.23 Implied subdivision conditions:** Advise your client on the effect of [section 225 of the RMA](#) [▸] if the agreement is to sell an allotment in a proposed subdivision, including the purchaser’s right to terminate within 14 days of entering into the agreement. Ensure that the section does not affect the timing for payment of the deposit.
- 3.24 Any other issues:** Identify whether there are any other issues relating to the sale for which provision should be made in the agreement.

Negotiations with the purchaser

- 3.25 General:** Help your client negotiate with the purchaser if it is appropriate to do so. However, commercial decisions should only be made by your client.

- 3.26 Values:** It might be appropriate to assign values to the land, dwelling and curtilage, chattels, forestry, buildings, lease goodwill, livestock, stock in trade and shares included in the sale. Advise your client to get tax advice to understand the tax consequences (if any) of the values given.

Signing the agreement

- 3.27 Who signs first:** The person making the offer signs first. This is commonly, but not universally, the purchaser.
- 3.28 Before signing:** Regardless of who prepares the sale agreement make sure that your client fully understands the basic commercial details, including:
- (a) the purchase price;
 - (b) the identity of the property – especially if the vendor owns multiple properties;
 - (c) the adequacy of the deposit – 10% of the purchase price is common, but you might consider a higher deposit (within acceptable limits) where there is greater risk (such as the purchaser being based overseas) or where GST is payable before settlement. (Refer to the Agreement for Sale and Purchase for particulars as you may need to amend clauses);
 - (d) when the deposit is payable;
 - (e) whether or not the deposit is to be held by a stakeholder until the agreement is unconditional. (Refer to the Agreement for Sale and Purchase for particulars as you may need to amend clauses);
 - (f) who receives interest on a deposit that is to be held by a stakeholder;
 - (g) who is entitled to the deposit on a default;
 - (h) the amount and time for payment of the agent’s commission;
 - (i) the implications of GST for a GST-registered vendor (especially if the purchase price is “including GST”);
 - (j) the settlement date;
 - (k) if possession is not on settlement, when possession will be given and taken and the resulting implications on risk;
 - (l) the chattels, plant and equipment included in the sale;
 - (m) the conditions in the agreement;
 - (n) the warranties given in relation to the property and the chattels, especially warranties relating to work carried out by the vendor and weathertightness;
 - (o) any further terms of sale;
 - (p) if the property is a unit title property, the required disclosures;
 - (q) the implications of any risk and insurance clauses in the agreement, especially if the property is damaged or if an on-purchase is involved; and
 - (r) OIA implications – see [Guideline 2.6](#).

- 3.29 Your advice should be given in writing to the vendor.
- 3.30 **Execution:** Make sure the agreement has been properly signed. See [Guideline 2.23](#). If the purchaser is a trust, you should seek confirmation from the purchaser's lawyer that all trustees have signed the agreement.

After the agreement is signed

- 3.31 **Receiving instructions after agreement is signed:** In many cases, your client will not contact you until after the agreement has been signed. If this is the case, you should immediately do such things that should have been done before the agreement was signed as remain prudent to complete (see [Guidelines 3.2 to 3.30](#)). If the property is a unit in a unit title development, make sure the vendor understands the disclosure obligations placed on the vendor under the [Unit Titles Act 2010](#) ⁷.
- 3.32 **Dates:** Diarise the relevant dates in the agreement (eg condition satisfaction dates, deposit due date and settlement date).
- 3.33 **Deposit:** Check if the deposit is due when the agreement is signed or when all or some of the conditions are satisfied and ensure the agent or vendor collects the deposit on time. Consider whether [section 225 of the RMA](#) ⁷ (regarding a sale before deposit of a survey plan) affects the timing for payment of the deposit. If the deposit is being paid into your law practice's trust account, make sure you have complied with AML/CFT and FATCA requirements (refer to [Guidelines 2.2 and 2.3](#)).
- 3.34 **Insurance:** Advise your client of the need to keep the property fully insured until settlement has been completed.
- 3.35 **Contact the purchaser's lawyer:** Advise the purchaser's lawyer (or the purchaser if the lawyer is not known) in writing that you are acting for the vendor and supply the purchaser's lawyer with a copy of any tenancy agreement (if relevant).
- 3.36 **Contact the real estate agent:** It is best practice to keep the real estate agent informed. Advise the real estate agent when each condition is satisfied or waived and if any of the condition dates are extended. You should let the agent know once all conditions are satisfied.
- 3.37 **Vendor's conditions:** Conditions for the vendor's sole benefit can be waived by the vendor at any time before the agreement is avoided for non-satisfaction of that condition. Keep this in mind if your client cannot satisfy the condition in time. In such a case, after obtaining instructions from your client, advise the purchaser's lawyer that the condition is waived rather than satisfied. If a condition is not solely for the benefit of the vendor, then the condition cannot be waived and the parties would instead need to agree that the relevant condition is deleted from the agreement.
- 3.38 **Purchaser's conditions:** If the purchaser has not satisfied a condition by the date for satisfaction, you should ask the purchaser's lawyer to confirm in writing whether the condition has been satisfied or waived. If the purchaser cancels the agreement for non-satisfaction of a condition:
- (a) you could ask the purchaser's lawyer for reasons for non-satisfaction (unless the agreement expressly states otherwise);

- (b) immediately report to your client regarding the cancellation and advise your client about the effect of cancellation;
- (c) if relevant and if instructed, seek a copy of any report that the purchaser has relied on; and
- (d) update the agent.

3.39 Unit title disclosures: Ensure that your client complies with any requests by the purchaser for additional disclosure under [section 148 of the Unit Titles Act 2010](#) within the prescribed time limits set out in that Act and in accordance with that Act's technical requirements. Remember that failure to provide any disclosure information within prescribed time limits may lead to settlement being deferred by the purchaser and may allow the purchaser to cancel the agreement. Ensure that your client is aware of its obligation to rectify inaccuracies in prior disclosures (including if the disclosure becomes inaccurate for any reason) as provided in [section 150 of the Unit Titles Act 2010](#).

After all conditions have been satisfied or waived

- 3.40 Deposit:** If the deposit is being paid into your law practice's trust account, make sure you have complied with AML/CFT and FATCA requirements (refer to Guidelines [2.2](#) and [2.3](#)). Collect the deposit or the balance of the deposit. If your law practice is to hold the deposit as stakeholder, make sure you are aware of your practice's obligations. Pay the deposit in accordance with the agreement and your client's and/or mortgagee's instructions. Check the real estate agent's commission statement and confirm it is in order with your client.
- 3.41 Purchaser nomination:** If the purchaser nominates a third party to complete the purchase, consider whether to seek completion of a deed of nomination by the purchaser and the nominee and if acting for the vendor, whether to request that details of the nominee be provided. Consider also AML/CFT, GST and OIA issues arising on nomination. See [Guideline 2.24](#).
- 3.42 Discharge of mortgage:** Contact the mortgagee to obtain authority to discharge the mortgage. Request an indicative repayment figure from the mortgagee and confirm with your client that the sale proceeds will be sufficient to discharge the mortgage. If the mortgagee does not provide an indicative repayment figure (which is often the case) confirm with your client that the sale proceeds are sufficient to repay their obligations to their bank. Mortgagees will usually make authorities to discharge available before settlement against your law practice's undertaking not to release the discharge of the mortgage until you are in a position to repay the amount required to the mortgagee.
- 3.43 Other discharges:** Get authorities to discharge any other caveats, encumbrances or charges that must be removed from the title.
- 3.44 E-dealing details:** Advise the purchaser's lawyer of your Primary Contact and Conveyancing Professional for the transaction and ask the purchaser's lawyer to advise you of the e-dealing number well before the settlement date (refer [Section E of Part 6](#)). Create the e-dealing yourself if the purchaser's lawyer fails to do so in a timely manner and/or if you need to have certified and signed instruments to give an undertaking that you are ready, willing and able to settle.
- 3.45 PPSR:** If you haven't already carried out a search of the PPSR, it is best practice to search the PPSR to check that nothing being sold is subject to a security interest. Obtain a release from

the security holder if required. If the stated security interest is broad (eg. “all present and after acquired property”), obtain confirmation from the security holder that it does not apply to the property being sold (and provide that confirmation to the purchaser’s lawyer on request).

- 3.46 Other amounts to be repaid on settlement:** Check with your client and with the local/regional authority to confirm whether your client has received any grants, subsidies or loans for property improvements that need to be repaid on settlement (eg for installing insulation or heating).
- 3.47 A & I form:** Provide your client with an A & I form. Ensure that all persons who are noted on the title sign the A & I form and that it is witnessed correctly. Ensure compliance with the LINZ A & I Standard and the LINZ A & I Guideline. Refer to [Sections K to O of Part 6](#).
- 3.48 Land transfer tax statement:** Provide your client with a land transfer tax statement and, once completed, enter the details into the transfer in the e-dealing workspace (refer to [Guideline 2.28](#)).
- 3.49 RLWT:** Obtain a RLWT declaration form ([IR1101](#) [↗]) from your client if the bright line test applies (refer to [Guideline 2.8\(b\)](#)). Retain this declaration with any supporting information and your records of the transaction. If your client is an “offshore RLWT person” (as defined in [section YA 1 of the Income Tax Act 2007](#) [↗]), and does not have a RLWT exemption certificate, you will need to:
- (a) calculate the amount of RLWT to be deducted (the IRD has a calculator on its website);
 - (b) hold that amount back from the sale proceeds; and
 - (c) complete a RLWT return form ([IR1100](#) [↗]) and return it with payment of the RLWT amount to IRD by the 20th day of the month following settlement.

If your client refuses to provide the RLWT declaration form ([IR1101](#) [↗]) to you, you must treat that client as being an “offshore RLWT person” and carry out the steps in (a) to (c) above.

- 3.50 Settlement statement:** Prepare a settlement statement. The settlement statement should include:
- (a) the names of the parties;
 - (b) the address or other description of the property;
 - (c) the settlement date;
 - (d) the purchase price (less GST, if applicable);
 - (e) the GST (if applicable);
 - (f) a credit for the deposit (if paid);
 - (g) any payments or allowances to be credited to the purchaser on settlement;
 - (h) apportionments of all incomings (eg. rent) and outgoings (eg. rates) apportioned at the settlement date;
 - (i) any interest payable;
 - (j) the full amount required to be paid on settlement;

- (k) a note as to when the purchaser becomes responsible for paying the rates;
- (l) if the water for the property is separately-metered, a note that a water meter reading has been scheduled; and
- (m) if required by [Guideline 5.19](#), an undertaking that the vendor's lawyer will pay rates or other outgoings apportioned on the settlement statement.

3.51 To prepare the settlement statement, obtain details of:

- (a) local authority rates, regional council rates and water rates;
- (b) body corporate levies and other sums outstanding to the body corporate (if relevant);
- (c) rent and licence fees payable to the vendor under any lease or licence; and
- (d) any other incomings or outgoings to be apportioned as at the settlement date.

3.52 Discuss the content of the settlement statement with your client before you provide it to the purchaser's lawyer.

3.53 For complex transactions consider whether it is useful to send a draft settlement statement to the purchaser's lawyer for confirmation before the final settlement statement is issued.

3.54 Check the agreement to confirm when the settlement statement must be provided to the purchaser's lawyer. In most cases, the settlement statement must be provided to the purchaser's lawyer a reasonable time or a certain period (eg. 5 working days) before the settlement date.

3.55 Tax invoice: If your client is registered for GST, you should send a tax invoice with your settlement statement. Ask your client whether you or your client will prepare the tax invoice. If you are instructed to prepare the tax invoice, ensure that the tax invoice contains all required information, including:

- (a) the words "tax invoice" in a prominent place;
- (b) the name and GST number of your client;
- (c) the name and address of the recipient;
- (d) the date of issue of the tax invoice
- (e) a description of the property;
- (f) the consideration excluding GST;
- (g) the total amount of the GST charged; and
- (h) the consideration including GST.

3.56 Rates: It is best practice for the vendor to pay the rates for the whole of the current rates instalment even if the invoice for that instalment has not yet been issued by the Council. You should discuss rates with your client at an early stage to provide sufficient time for your client to pay the rates instalment or to instruct you to pay the rates on settlement. You cannot pay the rates from the settlement funds unless you have instructions to do so ([regulation 12\(6\) of the Lawyers and Conveyancers Act \(Trust Account\) Regulations 2008](#)²⁸).

- 3.57 There should be no need for you to give rates undertakings generally. However, if your client instructs you to pay the rates on settlement then you must give an undertaking to that effect to the purchaser's lawyer. Check the version of the Agreement you are working with for any requirements, and [Guideline 5.19](#). You should obtain confirmation from your client that, due to the requirement that you must give an undertaking to pay the rates on settlement, the client's instruction to you is irrevocable.
- 3.58 **Water meter reading:** Arrange for a water meter reading with the local authority or other water authority (eg Watercare if the property is in Auckland) on or as near as possible to the settlement date if the property being sold has a water meter.
- 3.59 **Pre-settlement disclosure statement:** If the property is a unit in a unit title development, obtain from the body corporate manager or, if there is no body corporate manager, prepare a pre-settlement disclosure statement and have it certified by the body corporate as required under [section 147 of the Unit Titles Act 2010](#) ⁷. Note that the body corporate may withhold its certificate if the vendor is in debt to the body corporate, so you should confirm with your client that there are no outstanding levies. Obtain a copy of the body corporate's insurance policy or certificate and supply this to the purchaser's lawyer. Supply all information within the times specified in the agreement or the [Unit Titles Act 2010](#) ⁷ (as applicable). Allow plenty of time to obtain the necessary information and certification from the body corporate.
- 3.60 **Correspondence with purchaser's lawyer:** A reasonable time before settlement, you must provide to the purchaser's lawyer:
- (a) your law practice's settlement requirements (which should not effectively prevent the purchaser from settling in accordance with the requirements of the agreement and [Part 5 of the Guidelines](#)), trust account deposit slip and payment information (see [Guideline 5.11\(a\)](#) and [\(b\)](#));
 - (b) the settlement statement;
 - (c) a tax invoice (if your client is registered for GST); and
 - (d) a pre-settlement disclosure statement (if relevant).
- 3.61 **Notice of sale:** Request a notice of sale from the purchaser's lawyer. Check that the property and agreement details in the notice are correct.
- 3.62 **Other documentation required:** Receive or prepare any other documents that are required for settlement. These may include resource consent transfers, share transfers, licence transfers, trustee resolutions, director resolutions, bond forms, change of landlord forms and letters to tenants.
- 3.63 **Arrange signing:** Meet with your client to arrange execution of the A & I form, land transfer tax statement and any other documentation required. If your client is signing the documents remotely, refer to [Section L of Part 6](#).
- 3.64 **Payment instructions:** Obtain your client's instructions for payment of the net sale proceeds after settlement. Where appropriate, obtain from your client a bank deposit slip or written confirmation of your client's bank account details with instructions to deposit the net sale proceeds direct into the account. You should separately verify your client's bank account number (eg by phone) before depositing funds into their bank account (refer to [Guideline 2.2](#)).

- 3.65 Certify and sign:** You must pre-validate and certify and sign all instruments for which you are responsible in the e-dealing workspace (refer to [Part 6](#)). You should certify and sign the instruments before the settlement date in case of a Landonline outage on the settlement date.
- 3.66 Keys:** Confirm with your client that they have made arrangements for the purchaser to obtain all keys, electronic door openers and security codes to the property after settlement (if relevant). Generally, these will be held by the real estate agent and released to the purchaser on settlement.

On the settlement date

- 3.67 Final repayment statement:** You should receive the final repayment statement from your client's mortgagee. If the statement has not arrived before midday you should contact your client's mortgagee to confirm progress. The statement will contain the exact amount required to repay all mortgages and other charges registered against the title to the property on the settlement date. You should check these amounts with your client, especially if they differ from any indicative repayment amount received from the mortgagee and which has been approved by your client, and confirm that your client is able to comply with the mortgagee's (or other chargeholder's) repayment requirements. You should not provide your settlement undertakings to the purchaser's lawyer before the final repayment statement has been received and checked.
- 3.68 Undertakings:** You should provide your settlement undertakings to the purchaser's lawyer once you are comfortable that your client can repay the loan to any mortgagee and comply with all repayment requirements (refer to [Guideline 5.11\(c\)](#)). Where there is no mortgage or other charge, you should send your settlement undertakings as early as possible on the settlement date.
- 3.69 Receive the settlement funds:** In order for settlement funds to be treated as paid, you should receive:
- (a) an undertaking from the purchaser's lawyer that the settlement funds have been transferred by SCP (or an electronic payment system other than SCP that you have permitted) to your law practice's trust account, are from cleared funds in their trust account and will not be cancelled or altered by them (refer to [Guideline 5.14\(b\)](#));
 - (b) a copy of the report from the purchaser's lawyer's banking system confirming that the payment is fully processed; and
 - (c) email advice from either your bank or the purchaser's lawyer's bank that cleared funds have been paid into your trust account. (Note) Further information regarding payment is set out in [Guidelines 5.6 to 5.9](#). You should seek any outstanding documents before acknowledging receipt or drawing on the settlement funds. If the email advice set out at [Guideline 5.7\(c\)](#) is not received, you should contact your bank immediately and seek confirmation that the funds are paid and are cleared – a lack of email advice might indicate that the payment has not been made by SCP or might simply result from an incorrect email address being entered into the payment.
- 3.70 Release:** After the settlement funds, the purchaser's lawyer's undertakings and all other required documents have been received, you must promptly release all instruments for which you are responsible in the e-dealing and notify the purchaser's lawyer that you have done so.

This must be done before you repay your client's loan. Your undertaking to the mortgagee should not conflict with this obligation but should be phrased to allow release when you are in a position to repay the amount required to the mortgagee.

- 3.71 **Keys:** Authorise release of the keys, electronic door openers and security codes (if applicable).
- 3.72 **Repay your client's loan:** After the settlement funds, the purchaser's lawyer's undertakings and all other required documents have been received, you should electronically pay the amount required to repay your client's loan. You should comply strictly with the mortgagee's repayment requirements.
- 3.73 **Complete other payments:** Make any payments you have undertaken to make and have been instructed to make. Pay the balance of the sale proceeds to your client, or as otherwise instructed. If you are deducting your legal costs, withholding funds or paying any other invoice (such as a final water meter invoice), make sure you have your client's written authority to do so.
- 3.74 **Advise the agent:** Advise the real estate agent that settlement is completed (unless already advised under Guideline 3.71).
- 3.75 **Utility bills:** Remind your client to make the necessary arrangements for electricity, gas, telephone, alarm monitoring and other utilities and to cancel the insurance and re-direct mail to a new postal address effective from the date of settlement.
- 3.76 **Send notice of sale:** Send the notice of sale to the relevant authorities or release the notice of sale by way of an electronic platform (whichever is relevant).
- 3.77 **Notify the body corporate:** If the property is a unit in a unit title development, promptly notify the body corporate in writing of the change of ownership.
- 3.78 **Report to client:** Refer to Guidelines [2.38](#) and [2.39](#). Your report should include a trust account statement.

4. Workflow guidance – Acting for the purchaser

4.1 This Part 4 provides guidance on some issues which arise when acting for a purchaser under an agreement for sale and purchase of property. You should also review [Part 2](#).

Before the purchaser signs the agreement

4.2 **Contracting process:** If you are instructed to act before your client makes an offer to purchase the property, then you should ensure that your client understands the sale process and the terms of all relevant documents. You should advise your client not to sign any agreement before referring the agreement to you.

4.3 **Marketing documentation:** You should advise your client to carefully review all marketing information provided by the vendor or by the real estate agent. Note to your client that if the vendor has supplied a LIM report that your client may not be able to rely on the report and it is best practice to obtain the report directly from the Council.

4.4 **Disclosures:** Your client should seek disclosures from the vendor or the agent regarding all material matters including:

- (a) the location of the property boundaries;
- (b) any known history of subsidence, flooding or watertightness issues;
- (c) any earthquake damage (including if remedied); and
- (d) any contamination or any current or previous use of the property which might have caused it to be contaminated.

4.5 **Form of agreement:** The form of the sale and purchase agreement depends on the method of sale. The most common methods of sale in New Zealand are sales by negotiation, deadline sale, tender or auction. You should check that the correct form of agreement is being used. If your client is buying the property by auction or tender, you should review and advise your client on the terms and conditions relating to the auction or tender process. You should ensure that the most recent agreement form is used.

4.6 **Sale by auction:** If the method of sale is by auction, you should advise your client to have finance and (if required) insurance in place and to carry out all necessary due diligence before the date of the auction. For example:

- (a) order and review a search copy of the record of title – see [Guideline 4.9](#);
- (b) explain the effect of any relevant interests, restrictions or encumbrances on the title to the purchaser;
- (c) if the property is a cross-lease, unit title or leasehold estate, your client should carry out due diligence on the matters set out in [Guidelines 4.17 to 4.20](#);
- (d) advise your client to obtain and review a LIM report; and

- (e) advise your client to consider obtaining any other relevant reports (eg. a builder's report, engineer's report, contamination report or surveying report).
- 4.7 Sale by agreement:** If you are preparing the agreement, ask your client for the details required to complete the agreement and any further terms (eg the address and legal description of the property, deposit amount and settlement date). If someone else has prepared the agreement, confirm the agreement details with your client.
- 4.8 Mortgagee sale:** If the sale is a mortgagee sale, advise your client of the risks inherent in such a sale. These include:
- (a) that your client may not have an opportunity to inspect the property at any point before settlement;
 - (b) that the chattels, plant and equipment may not be owned by the mortgagee;
 - (c) the lack of any warranties given by the vendor;
 - (d) the risk of damage occurring to the property (suggest that your client obtains insurance immediately after entering into the agreement);
 - (e) the possible condition of the property on settlement;
 - (f) that the agreement may not permit your client to lodge a caveat against the title to the property; and
 - (g) the potential for your client to need a possession order before taking possession of the property.
- 4.9 Record of title:** Order a search copy of the record of title and:
- (a) confirm that the legal description of the property recorded in the agreement is correct including checking that the title details in the agreement are for the correct property;
 - (b) identify anything that might prevent your client from obtaining clear title on settlement (eg. a mortgage, caveat, compensation certificate, statutory land charge, amalgamation condition, encumbrance or Treaty settlement certificate); and
 - (c) confirm whether the property is Māori land. If the property is Māori land, make sure that sufficient time is allowed before settlement for the relevant statutory requirements to be met by the vendor. See [Guideline 2.9](#).
- 4.10 Purchaser entity and potential nomination:** Discuss with your client what entity will purchase the property, eg individual(s), company or trust. Discuss with your client that it can, unless prohibited by the agreement, enter into the agreement and nominate the purchasing entity later. Advise your client about the requirement for a nominee to comply with all laws that might affect its position as purchaser (eg. consent under the OIA, residential land statement and GST zero-rating) and that the nominee will need to provide information to you to satisfy AML/CFT requirements. Advise your client that whoever signs the agreement will remain liable after nomination. Discuss the differences between purchasing the property as joint tenants and tenants in common (see [Guideline 4.63](#)).
- 4.11 Purchaser conditions:** Ask your client if it requires any of the following conditions to be included in the agreement:

- (a) finance;
 - (b) Overseas Investment Office consent;
 - (c) board approval or other approvals – consider if a special resolution or shareholder approval may also be required, such as for a “major transaction” as defined by [section 129 of the Companies Act 1993](#);
 - (d) sale of another property – if so, a contemporaneous settlement clause could be inserted;
 - (e) LIM report;
 - (f) valuation report;
 - (g) builder’s report;
 - (h) engineer’s report (structural integrity and seismic rating of the building);
 - (i) asbestos report;
 - (j) contamination or toxicology report;
 - (k) geotechnical report;
 - (l) surveying report;
 - (m) due diligence;
 - (n) the obtaining of resource consents (including subdivision consents);
 - (o) withdrawal of KiwiSaver funds;
 - (p) obtaining a KiwiSaver HomeStart grant;
 - (q) ability to arrange insurance on reasonable terms and at a reasonable premium;
 - (r) in the case of a unit in a unit title development, the approval of the content of any additional disclosure statement which may be requested by the purchaser pursuant to [section 148 of the Unit Titles Act 2010](#); and
 - (s) obtaining the issue of a new title.
- 4.12** See further information on conditions below at [Guidelines 4.48 to 4.58](#).
- 4.13** Ensure that each condition gives the purchaser enough time to satisfy the relevant condition.
- 4.14** **Purchaser's lawyer's approval condition:** It is preferable for a lawyer to review the agreement before it is signed as:
- (a) in most contexts, any reasons for non-approval may be limited to the conveyancing aspects of the transaction; and
 - (b) these clauses may provide the vendor an opportunity to withdraw if you require some changes to the agreement.
- 4.15** **Substantive obligations:** Confirm whether your client requires the vendor to complete anything before settlement including having the property commercially cleaned or repair work undertaken.

4.16 Overseas person: If your client is an “overseas person” under the OIA and if the land is “sensitive land” then:

- (a) verify that any warranty in the agreement given by the purchaser that consent is not required under the OIA has been complied with; or
- (b) make the agreement conditional on obtaining Overseas Investment Office approval.

Note that all “residential land” in New Zealand is “sensitive land” under the OIA.

4.17 Access, services and trees: Check that the property has legal road access and legal rights for all services (eg. easements). Consider if the property could be subject to any statutory rights including under the [Local Government Act 1974](#) ⁷ (eg. private drains), [Local Government Act 2002](#) ⁷ (eg. public drains), [Electricity Act 1992](#) ⁷, [Gas Act 1992](#) ⁷ or [Telecommunications Act 2001](#) ⁷. Ask your client if there are any trees near a boundary or near overhead lines that may require trimming or removal.

4.18 Cross-lease: If the property is a cross lease:

- (a) search the title, leases (including the leases of the other flats) and the survey plan(s) for the flats;
- (b) explain to your client how a cross lease works, noting that your client will need the other lessor’s/s’ consent before altering the dwelling;
- (c) explain to your client its obligations as co-lessor and as lessee;
- (d) identify any problems created by the lease, particularly any provisions which amend the standard terms;
- (e) ask your client if all the buildings on the property are shown correctly on the survey plan for the flats including:
- (f) checking that the configuration of the buildings is the same as that described on the plan; and
- (g) checking whether there are any carports, garages, garden sheds, decks, conservatories and chimneys not shown on the plan;
- (h) check with the purchaser that the exclusive and common use areas correspond with the physical layout and usage and verify this by checking the property yourself (eg. using Google satellite, Geomaps or a recent aerial photograph); and
- (i) include an appropriate clause in the agreement if the purchaser requires the vendor to remedy any defects.

4.19 Unit title: If the property is a unit in a unit title development:

- (a) search and review the title to the property and the supplementary record sheet, the plans and the operational rules;
- (b) explain to your client how a unit title works;
- (c) identify any problems or potential problems created by clauses in the operational rules;

- (d) ask the purchaser if the buildings on the property are shown completely and correctly on the unit plan;
- (e) ascertain whether any stages are yet to be constructed and discuss the impacts of this with your client;
- (f) obtain and review:
 - (i) the minutes of past meetings of the body corporate, preferably back 2 years;
 - (ii) the body corporate's long-term maintenance plan;
- (g) discuss with your client:
 - (i) whether the body corporate has imposed or has proposed levies for a long-term maintenance fund, capital improvements fund, contingency fund or any other fund;
 - (ii) the balances of the body corporate accounts;
 - (iii) any agreements entered into by the body corporate;
- (h) consider inserting a clause to make the agreement conditional on your client approving the above documents and the information disclosed;
- (i) include an appropriate clause if your client requires the vendor to correct any plans or documents;
- (j) advise your client not to sign the agreement until your client has received a pre-contract disclosure statement pursuant to [section 146 of the Unit Titles Act 2010](#); and
- (k) advise your client that they have the right to request an additional disclosure statement under [section 148 of the Act](#).

4.20 Leasehold titles: If the property is a leasehold estate:

- (a) search the freehold title, leasehold title and lease;
- (b) ask the client about their intended use of the property;
- (c) review the lease and advise your client of any restrictions in the lease on ownership;
- (d) advise your client when the consent or approval of the lessor is required (eg. when building a garage or carport);
- (e) include an appropriate condition in the agreement requiring the vendor to obtain the lessor's consent (and the consent of the lessor's mortgagee if necessary);
- (f) identify the amount of the rent and the rent review mechanism, and explain to your client how the rent review might affect the value of the property;
- (g) identify any other problems or potential problems in the lease for your client; and
- (h) identify whether there are any defects in the lease or the plans that require remediation or a variation to the settlement price and include an appropriate clause or condition.

4.21 Finance: Ask your client how your client will pay for the property.

- (a) If your client is relying on a loan from a bank, you should advise your client to obtain pre-approval of the required loan amount and confirm that your client can satisfy any of the mortgagee's conditions precedent before making an offer on the property or alternatively make the agreement conditional on obtaining finance.
- (b) If your client needs to sell another property to finance the purchase, make sure an appropriate condition is included in the agreement.

4.22 Insurance consideration: Advise your client:

- (a) to confirm that they will be able to obtain insurance for the property from the settlement date (or another date on which risk passes – see Guidelines [4.6](#) and [4.8](#) in particular);
- (b) to consider assignment of the vendor's insurance to the purchaser if the purchaser cannot obtain separate insurance;
- (c) about insuring from an earlier date to protect their position;
- (d) about the insurance implications of a building being old (eg. old wiring or wall construction), previous unconsented building works, defective plumbing (eg. Dux Qest pipes) and monolithic cladding; and
- (e) about what will happen if, as a result of a natural disaster or other similar event, the insurer declines cover as at the settlement date.

It might be appropriate for you to insert appropriate conditions into the agreement regarding insurance or an agreement for the vendor to assign the existing insurance policy to the purchaser on settlement.

4.23 KiwiSaver eligibility: If it is a first home or equivalent, your client may intend to access KiwiSaver funds to assist with financing the purchase. If so, you should advise your client to contact their KiwiSaver provider to ascertain eligibility to withdraw KiwiSaver funds before making an offer. Advise your client to enquire with their KiwiSaver provider the amount of KiwiSaver funds available and to familiarise themselves with the application process required by their provider.

4.24 Early application to access KiwiSaver: If your client has ascertained that it is able to access its KiwiSaver funds, ensure that your client is aware of the essentiality of submitting the application to the KiwiSaver provider as soon as possible so that the KiwiSaver funds are received before the deposit due date or the settlement date (whichever is relevant). Any delay on your part or failure to so inform the purchaser will affect your client's ability to settle.

4.25 KiwiSaver condition: If your client is drawing down its KiwiSaver funds to assist with finance, then you should advise your client that it can include a condition in the agreement making the purchase conditional on being able to access KiwiSaver funds and that those funds are adequate to enable completion of the purchase.

4.26 KiwiSaver withdrawal: Advise your client that the KiwiSaver funds must be paid to your law practice's trust account. Note that the KiwiSaver provider may require, before payment, a copy of the agreement and an undertaking from you that either:

- (a) the agreement is conditional and the KiwiSaver funds will be used to pay the deposit (or part of it); or

- (b) the agreement is unconditional and the KiwiSaver funds will be used to pay part of the purchase price at settlement.

4.27 Chattels, plant and equipment: Get your client to confirm what chattels, plant and equipment are included in the sale and/or whether the list in the agreement is correct. If necessary, explain the differences between fixtures, which are included in the sale, and chattels, which will not be included unless expressly stated. Consider whether any values need to be attributed to any of the chattels and whether there could be any adverse tax consequences for your client as a result of those values. Ask your client to confirm that all chattels, plant and equipment are in working order and are clear of any charges.

4.28 Tenanted properties: Confirm whether the property is tenanted. If it is tenanted:

- (a) confirm whether the property is sold subject to the tenancy and, if so, obtain and review a copy of the tenancy agreement, deed of lease or agreement to lease;
- (b) if the property is sold subject to the tenancy, confirm with the vendor's lawyer whether there are any breaches by the tenant or by the vendor, any unresolved disputes, any outstanding rent, any bonds and that the tenant has been notified that the property is being marketed for sale;
- (c) if the property is to be sold with vacant possession, confirm that there is sufficient time before the settlement date for the vendor to deliver vacant possession;
- (d) discuss with your client whether the vendor's chattels are distinct from those of the tenant;
- (e) consider what condition the property must be in on the settlement date and whether an express term should be added to the agreement requiring the vendor to ensure that the tenant has complied with its reinstatement obligations and/or cleaned the property to an objective standard; and
- (f) advise your client to check the vendor's compliance with the healthy homes standards (see hud.govt.nz/residential-housing/healthy-rental-homes/healthy-homes-standards for details).

4.29 GST: Ask your client whether your client is registered for GST in respect of the transaction and whether the purchase is part of a taxable activity. If so:

- (a) consider whether the purchaser is registered for GST on an invoice or payments basis (or a hybrid basis) – payments basis is not available if your client's annual turnover exceeds \$2 million but, for suppliers with turnover of less than \$2 million, payments basis is the most common;
- (b) consider whether the purchase price should be “plus GST” or “including GST” – even if the agreement has been signed, it is good practice to confirm this as it may be possible to remedy any GST problem by agreement before settlement;
- (c) confirm whether the vendor is also registered for GST for this transaction;
- (d) identify the point at which the purchaser must pay the GST – the settlement date or a different GST date;
- (e) confirm whether the sale comes within the compulsory zero-rating regime for land transactions;

- (f) confirm the GST implications of a nomination or assignment by the purchaser; and
- (g) if GST is payable at 15%, confirm whether the purchaser can claim back the GST and when.

See also [Guideline 2.8](#) regarding tax implications of a conveyancing transaction.

- 4.30 Be careful especially where the purchase price is “plus GST (if any)”. If one or all of the supplies is not zero-rated, your client may need to pay GST at 15% on some or all of the purchase price and might not be able to obtain an input tax credit for that GST.
- 4.31 You should identify whether the vendor has deleted a warranty that any dwelling and curtilage is not a supply to which [section 5\(16\) of the GST Act](#) applies. Check the version of the Agreement you are working with for any requirements. This may mean that the vendor has claimed a deduction under [section 20\(3\) of the Goods and Services Tax Act 1985](#) (likely a second-hand goods tax credit) for the dwelling and curtilage. This may require the vendor to charge GST at 15% on the dwelling and curtilage even though the balance of the land is zero-rated. Check whether the supply of the dwelling and curtilage will have GST charged or whether it will be an exempt supply.
- 4.32 Make sure the agreement accurately reflects the purchaser’s requirements and that the relevant GST information has been provided (Refer to the Agreement for particulars).
- 4.33 Make sure that the purchaser understands the full implications of the GST clauses. See also [Guideline 2.8](#).
- 4.34 **Other tax considerations:** Discuss with your client whether there may be other tax issues. For example, could borrowing be structured so that some or all of the interest paid by the purchaser is tax deductible? Your client may wish to seek advice from a tax advisor or an accountant.

Negotiations with the vendor

- 4.35 **General:** Help your client negotiate with the vendor if it is appropriate to do so. However, commercial decisions should only be made by your client.
- 4.36 **Subject of the agreement:** Confirm whether anything should be included in the agreement in addition to the property and chattels, plant and equipment. This might include shares, resource consents, forestry rights, livestock and stock in trade.
- 4.37 **Values:** It might be appropriate to assign values to the land, dwelling and curtilage, chattels, forestry, buildings, lease goodwill, livestock, stock in trade and shares included in the sale. Advise your client to get tax advice to understand the tax consequences (if any) of the values given.

Signing the agreement

- 4.38 **Who signs first:** The person making the offer signs first. This is commonly, but not necessarily, the purchaser.
- 4.39 **Before signing:** Regardless of who prepares the agreement make sure that your client fully understands the basic commercial details, including:
- (a) the purchase price;

- (b) the identity of the property – especially if the vendor owns multiple properties;
- (c) the amount of the deposit – 10% of the purchase price is common but the vendor may have sought a higher deposit;
- (d) when the deposit is payable – this will normally be when all conditions are satisfied but it may be appropriate for the deposit to be paid earlier;
- (e) whether or not the deposit is to be held by a stakeholder until the agreement is unconditional – check the version of the Agreement you are working with for any requirements which may need to be amended;
- (f) who receives interest on a deposit that is to be held by a stakeholder;
- (g) who is entitled to the deposit on a default – check the version of the Agreement you are working with for amendments that allow the vendor to retain more than 10% of the purchase price;
- (h) how your client will settle;
- (i) access to KiwiSaver funds;
- (j) the implications of GST for a GST-registered purchaser (especially if the purchase price is “plus GST”);
- (k) the settlement date;
- (l) if possession is not on settlement, when possession will be given and taken and the resulting implications on risk;
- (m) the chattels, plant and equipment included in the sale;
- (n) the conditions in the agreement;
- (o) the warranties given in relation to the property and the chattels, plant and equipment, especially warranties relating to work carried out by the vendor and weathertightness;
- (p) any further terms of sale;
- (q) if the property is a unit title property, the required disclosures; and
- (r) the implications of any risk and insurance clauses in the agreement.

Your comments should be made in writing to your client.

4.40 Execution: Make sure the agreement has been properly signed. See [Guideline 2.22](#).

After the agreement is signed

4.41 Receiving instructions after agreement is signed: In many cases, your client will not contact you until after the agreement has been signed. If this is the case, you should immediately do such things that should have been done before the agreement was signed as remain prudent to complete (see [Guidelines 4.2 to 4.34](#)). If the property is a unit in a unit title development, make sure your client has received the required a pre-contract disclosure statement under [section 146 of the Unit Titles Act 2010](#).

- 4.42 **Termination under [section 225 of the RMA](#)** [↗]: Advise your client on the effect of [section 225 of the RMA](#) [↗] if the agreement is to purchase an allotment in a proposed subdivision, including your client's right to terminate within 14 days of entering into the agreement.
- 4.43 **Dates:** Diarise the relevant dates in the agreement (eg condition satisfaction dates, deposit due date and settlement date).
- 4.44 **Deposit:** Check if the deposit is due when the agreement is signed or when all or some of the conditions are satisfied and make sure your client pays the deposit on time. Consider whether [section 225 of the RMA](#) [↗] (regarding a sale before deposit of a survey plan) affects the timing for payment of the deposit.
- 4.45 **Contact the vendor's lawyer:** Advise the vendor's lawyer (or the vendor if the lawyer is not known) in writing that you are acting for the purchaser and confirm the condition satisfaction dates in writing (if relevant).
- 4.46 **Purchaser's conditions:** If the agreement is subject to any conditions for the benefit of the purchaser (refer to [Guideline 4.11](#)), make sure your client is aware of the timeframes for satisfying the conditions. Order, or make sure your client orders, all necessary reports. If your client will not have the information needed by the condition satisfaction date to satisfy or waive the condition, consider seeking instructions from your client to request an extension of the condition satisfaction date from the vendor's lawyer.
- 4.47 Conditions for the purchaser's sole benefit can be waived by the purchaser at any time before the agreement is avoided for non-satisfaction of that condition. Keep this in mind if the purchaser cannot satisfy the condition in time. In such a case, advise the vendor's lawyer that the condition is waived rather than satisfied. If a condition is not solely for the benefit of the purchaser, then the condition cannot be unilaterally waived and the parties would instead need to agree a waiver of that relevant condition.
- 4.48 **Title review:** Whether or not the agreement has a solicitor's approval, title approval, or due diligence condition, you should obtain a search copy of the record of title and complete the matters set out in [Guideline 4.9](#). Advise your client of the effect of each interest noted on the title. Consider whether any required memorials are missing.
- 4.49 **Cross lease:** If the property is a cross lease, complete the matters set out at [Guideline 4.18](#). If no suitable approval condition has been inserted in the agreement, consider whether any identified defect is able to be requisitioned.
- 4.50 **Unit title:** If the property is a unit title, complete the matters set out at [Guideline 4.19](#). If no suitable approval condition has been inserted in the agreement, consider whether any identified defect is able to be requisitioned.
- 4.51 **Leasehold titles:** If the property is a leasehold estate, complete the matters set out at [Guideline 4.20](#). If no suitable approval condition has been inserted in the agreement, consider whether any identified defect is able to be requisitioned.
- 4.52 **LIM report:** Advise your client of the benefit of obtaining a LIM report directly from the relevant territorial authority rather than relying on a LIM report provided by the vendor or the real estate agent.
- 4.53 **Reviewing the LIM:** Once you have a LIM report you should, among other things, check:

- (a) that all necessary permits/consents have been granted for all improvements on the property and, if relevant, for the use of the land;
 - (b) that all code compliance certificates have been obtained;
 - (c) there are no outstanding resource consent conditions to be complied with (eg. payment of development contributions);
 - (d) the aerial photographs and planning maps; and
 - (e) the natural hazards affecting the property.
- 4.54 You should discuss the LIM report with your client and try to identify any alterations or additions to buildings on the property that might have been made without the necessary permit or consent. Carports, sheds, decks, spa pools, conservatories and wood-burning fires can often cause problems.
- 4.55 **Finance condition:** You should obtain a copy of the loan approval from your client and (if applicable) ensure that cleared KiwiSaver funds required for a first home purchase will be available before settlement. Where possible, check the terms and conditions of any loan before advising that a finance condition is satisfied.
- 4.56 **Notifications:** Advise the vendor's lawyer and the real estate agent when each condition for the purchaser's benefit is satisfied or waived.

After the conditions have been satisfied or waived

- 4.57 **Deposit:** Advise your client to pay the deposit at the appropriate time (or times, if the deposit is paid in instalments).
- 4.58 **Contact the vendor's lawyer:** Once the conditions are satisfied, you should ask the vendor's lawyer for their e-dealing details so that you can set up the e-dealing workspace for the transaction.
- 4.59 **Purchaser nomination:** Ask the purchaser if it intends to nominate a third party to complete the purchase. If the purchaser wishes to nominate, prepare a deed of nomination to be entered into by the purchaser and the nominee. Inform the vendor's lawyer that the purchaser has nominated the third party to complete the purchase. Consider also AML/CFT, GST and OIA issues arising on nomination. See [Guideline 2.24](#).
- 4.60 **Bright-line test:** Before your client nominates, consider the bright-line test timeframes (refer to [Guideline 2.8](#)).
- 4.61 **Joint tenants/tenants in common:** If relevant, explain to your client the difference between purchasing the property as joint tenants or tenants in common in shares (whether equal or unequal). Obtain instruction from your client as to what ownership model they prefer.
- 4.62 **Shared ownership:** If your client is purchasing the property as tenants in common (in equal or unequal shares), advise your client of the benefits of entering into a separate agreement that sets out the ownership terms and conditions between the two (or more) tenants. That agreement should include what happens if one of the tenants wishes to sell their share in the property.

- 4.63 Separate property:** Ask your client whether the property is to be separate property (as defined in the [Property \(Relationships\) Act 1976](#) ²). If the property is separate property, then explain to your client that the property should be purchased by them in their individual capacity and/or they should consider entering into a [Section 21](#) / contracting-out agreement.
- 4.64 Notices of Sale:** Ask your client to confirm what address it would like the future rates notices to be sent to and then prepare the notice of sale. Once prepared, send the notice of sale to the vendor's lawyer by email, post or by way of an electronic platform.
- 4.65 PPSR:** It is best practice to search the PPSR to check that none of the chattels, plant and equipment or any part of the property included in the sale are subject to a security interest. If your search results indicate that any of the chattels, plant and equipment or parts of the property are subject to a financing statement, get the vendor's lawyer to obtain a release from the security holder before settlement or to provide confirmation that the financing statement does not apply to the property being sold. Remember that chattels, plant and equipment included in the sale, such as carpets, blinds or drapes can be subject to a hire purchase agreement or other security interest.
- 4.66 Set up the e-dealing:** Once you have the vendor's e-dealing details, set up the workspace on Landonline as soon as possible and inform the vendor's lawyer of the e-dealing number. If the e-dealing is complex, consider creating the e-dealing early and preparing some of the documents in advance of inserting the vendor's lawyer's details. You could also insert any CP and PC from the vendor's lawyer's practice, and those details could be altered later if required.
- 4.67 Settlement statement:** Seek the settlement statement in plenty of time to review it before requesting the loan drawdown (see [Guideline 2.27](#) about ensuring you have sufficient funds). Seek a tax invoice from the vendor's lawyer if the vendor is GST-registered. Check the settlement statement, verify any apportionments and obtain your client's approval of the settlement statement. Seek any outstanding undertakings required to be given by the vendor's lawyer (eg. if the vendor's lawyer is to pay the rates from the settlement funds). Refer to [Guidelines 3.50 to 3.54](#) for settlement statement requirements.

Review and disclose loan documents

- 4.68 Loan documentation:** Your client should have provided the mortgagee with your contact details, and your client's loan documents should be emailed to you a reasonable time before settlement. If you have not received the loan documents a reasonable time before settlement, then you should follow up with your client's mortgagee. You should seek to have the loan documents a week before settlement to provide time for review, disclosure and execution. You should review the loan documents carefully. Make sure that acting for both the lender and the purchaser would not give rise to any conflicts and obtain any necessary waivers. See also [Guidelines 2.11 to 2.15](#).
- 4.69 Disclose loan documents:** To meet disclosure requirements under the [Credit Contracts and Consumer Finance Act 2003](#) ³, make sure you disclose the loan documentation to your client before they sign the documents. You should point out to your client and make sure your client understands, before signing, all key information including:
- (a) the commercial terms of the loans;
 - (b) the conditions precedent to drawing down the loan funds;

- (c) that your client must hold insurance from the settlement date in compliance with the lender's requirements;
- (d) your client's obligations under the loans and the mortgage (eg. to pay the loan back, to maintain the secured property, to pay the rates); and
- (e) the effect of the priority amount.

4.70 Guarantees: To meet disclosure requirements under the [Credit Contracts and Consumer Finance Act 2003](#), make sure you disclose any guarantees before the guarantors sign the documents. You should point out to the guarantors and make sure the guarantors understand, before signing, all key information including the nature of the guarantee. Where the guarantors are not separately represented, you must explain the conflict to them and advise them to seek independent legal advice, and obtain written waivers of independent legal advice from the guarantors.

Preparing for settlement

4.71 A & I form: Prepare an A & I form. Ensure that all persons who will purchase the property are included as the transferee in the A & I form, and ensure that their names are correct and complete and that it is witnessed correctly. Ensure compliance with the LINZ A & I Standard and the LINZ A & I Guideline. Ensure that the A & I form accords with the mortgagee's instructions. Refer to [Sections K to O of Part 6](#).

4.72 Land transfer tax statement: Prepare a land transfer tax statement. Once completed and signed, enter the details into the transfer in the e-dealing workspace (refer to [Guideline 2.28](#)).

4.73 Residential land statement: Obtain a residential land statement from your client if the property is "residential land" as defined in the OIA. The residential land statement must be retained on file for 10 years. If your client cannot or does not give a residential land statement or you have reasonable grounds to believe that the statement is not correct in a material particular, you must not lodge (or direct to be lodged) the instrument and you should advise your client to urgently seek consent from the OIO.

4.74 RLWT: If the vendor does not have a lawyer or conveyancer, or your client and the vendor are associated persons, you must obtain a RLWT declaration form (IR1101) from the vendor if the bright line test applies (refer to [Guideline 2.8\(b\)](#)). If the vendor is an "offshore RLWT person" (as defined in [section YA 1 of the Income Tax Act 2007](#)), and does not have a RLWT exemption certificate, you will need to:

- (a) calculate the amount of RLWT to be deducted (the IRD has a calculator on its website); and
- (b) hold that amount back from the amount required to settle; and
- (c) complete a RLWT return form ([IR1100](#)) and return it with payment of the RLWT amount to IRD by the 20th day of the month following settlement.

If the vendor refuses to provide the RLWT declaration form (IR1101) to you, you must treat that client as being an "offshore RLWT person" and carry out the steps in (a) to (c) above.

4.75 Other documentation required: Receive or prepare any other documents that are required for settlement. These may include trustee resolutions or director resolutions. If the transaction

is a major transaction as defined by the [Companies Act 1993](#),²⁸ make sure that your client obtains a special resolution from the company's shareholders.

- 4.76 Arrange signing:** Meet with your client to arrange execution of the loan documents, A & I form, land transfer tax statement and any other documentation required. If your client is signing the documents remotely, refer to [Section L of Part 6](#).
- 4.77 Insurance:** Make sure that the purchaser has made the necessary insurance arrangements. Obtain a certificate of currency from your client's insurer. Your solicitor's certificate to the mortgagee should not be sent until you have the certificate of currency.
- 4.78 Consent of any other interest holder:** Make sure any necessary consents required to be obtained by your client have been obtained. These might include consent to the transfer or to the mortgage. Your solicitor's certificate to the mortgagee should not be sent until you have these consents.
- 4.79 Prepare solicitor's certificate:** Complete your solicitor's certificate to the mortgagee on the mortgagee's form. Ensure that all certificates are correct and that you can comply with all undertakings contained in the solicitor's certificate. You may need to discuss alterations to the solicitor's certificate with the mortgagee. See also [Guideline 1.31](#).
- 4.80 Return signed loan documentation:** Send the signed loan documentation to the mortgagee with your:
- (a) confirmation of the settlement date;
 - (b) confirmation of the amount of drawdown; and
 - (c) solicitor's certificate.
- 4.81 KiwiSaver withdrawal:** Complete a letter or statement to the KiwiSaver provider to draw down the purchaser's KiwiSaver funds, if applicable. Many KiwiSaver providers have a standard form for requesting draw down. Ensure that you provide the letter or statement to the KiwiSaver provider a reasonable time before the settlement date so that you have time to receive cleared funds as at the date of settlement. Make sure that you can comply with your undertakings to the KiwiSaver provider.
- 4.82 Purchaser's cash contribution:** Your client may need to transfer an additional cash contribution to your trust account so that you have enough funds to complete settlement. Ensure that the payment is made in plenty of time to be available as cleared funds on settlement.
- 4.83 Draft trust account statement:** Ensure that you will have enough funds in your trust account to be able to pay the settlement funds as set out in the settlement statement. It may be useful to prepare a draft trust account statement at this point to assist with this.
- 4.84 Payment instructions:** You must obtain your client's instructions as to any payments to be made by you from your client's funds (except payment of the settlement funds to the vendor's lawyer). This includes the payment of excess funds to your client. Where appropriate, obtain from your client a bank deposit slip or written confirmation of your client's bank account details with instructions to deposit the excess funds direct into the account. Separately verify your client's bank account number (eg by phone) before depositing funds into their bank account (refer to [Guideline 2.2](#) for AML/CFT requirements).

- 4.85 Pre-settlement disclosure statement:** If the property is a unit title get a pre-settlement disclosure statement (properly certified by the body corporate) under [section 147 of the Unit Titles Act 2010](#) from the vendor or the vendor’s lawyer and a copy of the body corporate insurance policy or certificate from the vendor’s lawyer at least 5 working days before settlement. Obtain instructions from the purchaser as to the purchaser’s desired course of action if the statement is received out of time or not provided.
- 4.86 Other documentation:** Seek copies from the vendor’s lawyer of any other documents that are required for settlement. These may include resource consent transfers, share transfers, licence transfers, trustee resolutions, director resolutions, bond forms, change of landlord forms and letters to tenants.
- 4.87 Guaranteed search:** Obtain a guaranteed search of the title:
- (a) no earlier than four working days before settlement, and
 - (b) no later than settlement.
- 4.88** It is best practice to obtain the guaranteed search the day before settlement in case Landonline is not accessible on the settlement date. Ensure that no instruments have been added or removed from the record of title since the date of the agreement.
- 4.89 Certify and sign:** You must pre-validate and certify and sign all instruments for which you are responsible in the e-dealing workspace (refer to [Part 6](#)). You should certify and sign the instruments before the settlement date in case of a Landonline outage on the settlement date. You should pre-validate the e-dealing at this stage to identify any issues.
- 4.90 Keys:** Confirm with your client that it has made arrangements to collect all keys, electronic door openers and security codes for the property after settlement (if relevant). Generally, these will be held by the real estate agent and released to the purchaser on settlement.
- 4.91 Pre-settlement inspection:** Ask your client whether it is going to complete a pre-settlement inspection of the property and ask your client to report back to you before the settlement date on the results of the inspection.
- 4.92 Utilities:** Remind the purchaser to make the necessary arrangements for power, gas, telephone and other utilities and to re-direct mail to the property effective from the date of settlement, if appropriate.

On the settlement date

- 4.93 Receive vendor undertakings:** Obtain from the vendor’s lawyer an undertaking regarding certification and signature and the release of the instruments immediately on settlement (refer to [Guideline 5.11\(c\)](#)). Follow up with the vendor’s lawyer if these have not been provided by 12pm on the settlement date.
- 4.94 Additional undertakings:** Seek the following undertakings from the vendor’s lawyer in addition to the standard undertakings (if relevant):
- (a) if the property is a unit in a unit title development, provide the vendor’s lawyer with any information about the purchaser required for the purposes of [section 85\(2\) of the Unit Titles Act 2010](#) and obtain an undertaking from the vendor’s lawyer that on settlement

the vendor's lawyer will, on behalf of the vendor, promptly notify the body corporate in writing of the change of ownership;

- (b) if there is a resource consent that does not run with the property, prepare a resource consent transfer form and provide it to the vendor, and obtain an undertaking from the vendor's lawyer that the resource consent transfer form has been signed and will be delivered to your client on settlement;
 - (c) if the chattels, plant and equipment are subject to a financing statement on the PPSR, make sure you receive an undertaking that the financing statement will be discharged on or before settlement;
 - (d) if the property is subject to a lease, make sure you receive an undertaking that the tenants have been notified of the change of ownership and that you will receive the original lease documentation on settlement; and
 - (e) to send the compliance schedule, Independent Qualified Person (IQP) reports and a copy of the warrant of fitness (if relevant).
- 4.95 Vendor's lawyer's settlement requirements:** Make sure you have received and understand the vendor's lawyer's settlement requirements. If, in your view, the settlement requirements are unreasonable or not achievable, seek the vendor's lawyer's agreement to vary or waive that aspect of their settlement requirements.
- 4.96 Receive the loan advance:** You should receive advice from the mortgagee that the loan advance has been paid early in the day. Follow up with the mortgagee if this has not been provided by 12pm on the settlement date.
- 4.97 Pay the settlement funds:** Pay the settlement funds by SCP (or an electronic payment system other than SCP permitted by the vendor's lawyer) to the vendor's lawyer's trust account in accordance with [Part 5 of the Guidelines](#). If payment will be effective after 4pm, you may need to include interest with that payment if required under the provisions of the agreement.
- 4.98 Release by the vendor's lawyer:** After the settlement funds have been paid and the settlement undertakings received, the vendor's lawyer should release all instruments for which they are responsible in the e-dealing and should notify you that they have done so. You should follow up with the vendor's lawyer if you have not heard from the vendor's lawyer within a reasonable period of emailing your settlement undertakings.
- 4.99 Advise your client:** Advise your client that settlement has been completed and that they may uplift the keys, electronic door openers and security codes (if any).
- 4.100 Release and submit the e-dealing:** Release any instruments within your control (eg new mortgage) and submit the e-dealing. If the e-dealing is an AUTO-REG dealing, it should be registered immediately. Check that registration has been completed correctly.

After settlement

- 4.101 Documents:** You should receive any paper documents (eg copies of leases) from the vendor's lawyer by courier unless otherwise agreed. If these are not received within 2 working days, you should request an update from the vendor's lawyer.

- 4.102 Check with the vendor:** You may wish to check with the vendor’s lawyer that the rates have been paid and that the notice of sale has been sent.
- 4.103 Report to client:** Refer to Guidelines [2.38](#) and [2.39](#). Your report should include a trust account statement and a search copy of the updated record of title. You should confirm that your trust account balance is zero after all receipts and payments (including disbursements) have been recorded.
- 4.104 Report to mortgagee:** You should report to the mortgagee once registration is completed. You should send the mortgagee the updated record of title, view instrument details of the security and any other documents it requires in accordance with the mortgagee’s post-settlement requirements.

5. Settlement requirements

5.1 This Part sets out obligations applying at settlement of a property transaction. Accordingly, a lawyer may not impose any requirements on settlement other than those set out in Part 5 and in the Agreement, including for example, specifying a time for payment or a time from which penalty interest will apply that is earlier than that set out in the agreement.

When this Part has contractual force

5.2 The obligations of the parties and the parties' lawyers specified in this Part have contractual force between the parties:

- (a) if the transaction is documented using any existing version of the REINZ/ADLS Agreement commencing with the Ninth Edition (2012);
- (b) if the transaction is documented using any existing version of the Realforms Agreement; or
- (c) if the parties have otherwise agreed that this Part 5 will apply to the settlement. This may be the case for sale and purchase transactions as well as other types of transaction (e.g. relationship property settlements, mortgage advances and repayments).

5.3 In all other circumstances, this Part reflects recommended practice for the settlement of property transactions.

5.4 Where [Guidelines 5.20 to 5.29](#) apply to the settlement, the requirements of those Guidelines take precedence over any conflicting requirements in [Guidelines 5.11 to 5.19](#).

5.5 The notes included in this Part do not have contractual force between the parties.

Note: For further information:

- Check the version of the REINZ/ADLS Agreement you are working with for contractual clauses and the definition of 'Cleared funds', 'PLS Guidelines' and 'Remote settlement'; and
- Check the Realforms Agreement you are working with for contractual clauses and any operative definition of "Guidelines".

Note: See Guidelines:

- [5.20 to 5.25](#) for a settlement where a third party is separately represented;
- [5.26 to 5.28](#) for a settlement where the vendor is represented by a conveyancer; and
- [5.29](#) for a settlement where the purchaser is represented by a conveyancer.

Requirement to use SCP

5.6 The purchaser's lawyer must pay the amount required to be paid on settlement of the transaction by electronic payment of cleared funds from the purchaser's lawyer's trust account into the vendor's lawyer's trust account by:

- (a) SCP; or

- (b) an electronic payment system other than SCP but only if permitted by the vendor's lawyer.
- 5.7 The settlement funds will be treated as being paid only when the vendor's lawyer has received:
- (a) an undertaking from the purchaser's lawyer in the form set out at [Guideline 5.14\(b\)](#); and
 - (b) a copy of the report from the purchaser's lawyer's banking system confirming that the payment:
 - (i) is fully processed; and
 - (ii) was paid using:
 - SCP; or
 - an electronic payment system other than SCP permitted by the vendor's lawyer; and
 - (c) if the payment was made using SCP, email advice from either the purchaser's lawyer's bank or the vendor's lawyer's bank (whichever advice is first received) that cleared funds have been paid into the vendor's lawyer's trust account.
- 5.8 Despite any non-delivery of the documents specified in [Guideline 5.7](#), the settlement funds will be treated as being paid when the vendor's lawyer transfers or makes a payment from the settlement funds, including putting the settlement funds on deposit, except any payment to return the settlement funds to the purchaser's lawyer.
- 5.9 The vendor's lawyer must not require the payment of settlement funds by cheque or bank cheque, except where agreed with the purchaser's lawyer in exceptional circumstances. The purchaser's lawyer must not (except where the purchaser's lawyer elects to settle in person by bank cheque under [Guideline 5.27](#)) pay the settlement funds by cheque or bank cheque, except where agreed with the vendor's lawyer in exceptional circumstances. If the parties agree to settle by bank cheque, the bank cheque must be accompanied by a written undertaking from the purchaser's lawyer that the bank cheque derives from cleared funds in the purchaser's lawyer's trust account and that the purchaser's lawyer will not seek to stop payment under the bank cheque.

Note: The REINZ/ADLS Agreement modifies the common law requirement for the purchaser to tender settlement in order to obtain judgment in the case of a defaulting vendor.

Communication method for settlement undertakings

- 5.10 Settlement undertakings should be sent by email. However, if the purchaser's lawyer is unable to send the undertaking and payment confirmation required by [Guideline 5.14\(b\)](#) by email, then:
- (a) the purchaser's lawyer may send the undertaking and payment confirmation by fax to the vendor's lawyer's fax number, in which case payment will be deemed made at the time stated on the successful transmission report printed by the purchaser's lawyer's fax; or
 - (b) if fax is not available, the purchaser's lawyer must contact the vendor's lawyer immediately by telephone to advise that the payment has been made, and it will be for the vendor's lawyer to decide, acting reasonably, whether to accept another form of confirmation as satisfactory evidence of payment.

Note: Refer to the Agreement for particulars of when notices are deemed received.

When you act for the vendor

5.11 A reasonable time before settlement, you must send to the purchaser's lawyer:

- (a) written confirmation that payment of settlement funds must be made:
 - (i) by electronic transfer of cleared funds using SCP; or
 - (ii) if you accept payment by an electronic payment system other than SCP, by electronic transfer of cleared funds using that system;
- (b) an encoded deposit slip or details of your trust account, together with:
 - (i) the email address for the notification of payment;
 - (ii) any other details that must be included with the electronic transfer to enable the payment to be identified; and
 - (iii) any other settlement requirements which have been agreed by the parties
- (c) your undertaking that:
 - (i) any documents to be provided by the vendor to the purchaser on settlement are, or will on settlement be, in your possession (with a list of those documents);
 - (ii) you have pre-validated and certified and signed the instruments to which your client is party in the e-dealing created for the transaction (including any discharges and the transfer) in your capacity as lawyer for the vendor and you will not withdraw or alter those instruments or any other instrument in the e-dealing before their release;
 - (iii) on payment of the settlement funds by SCP or another electronic payment system permitted by you and receipt of the purchaser's lawyer's undertaking and payment confirmation(s) required by [Guideline 5.7](#), you will:
 - immediately release the instruments (subject only to the qualification in [Guideline 5.11\(c\)\(v\)](#));
 - not prevent or reverse the release of any instruments or withdraw any instruments after their release;
 - immediately send to the purchaser's lawyer by courier (or any other agreed method) any documents specified in [Guideline 5.11\(c\)\(i\)](#);
 - immediately authorise the release of any keys, electronic door openers and security codes if applicable; and
 - where [Guideline 5.19](#) applies, pay the rates and any other outgoings so that they are paid to the date specified in the settlement statement;
 - (iv) if the e-dealing is rejected or requisitioned, you will assist in relation to the instruments you have certified and signed and take all reasonable steps within your control to correct the instruments so that registration is completed as soon as possible; and

- (v) if, due to a Landonline, electricity or telecommunications outage or an emergency, you are not able to immediately release the instruments, you will:
 - advise the purchaser's lawyer of the delay and the cause of the delay;
 - take all available steps to effect the release as soon as possible; and
 - not disburse the balance of the settlement funds remaining after the payment(s) required under [Guideline 5.11\(c\)\(iii\)](#) until the release has been effected.

Note: Where practicable, the information set out at [Guideline 5.11\(a\)](#) and [\(b\)](#) should be sent before the settlement date.

Note: Where you have given an undertaking to a mortgagee to preserve the mortgagee's position (or similar), the undertaking set out at [Guideline 5.11\(c\)](#) should not be given before you are in a position to ensure compliance with that undertaking.

Note: The only event that should delay release after payment is a technical outage outside the control of the vendor's lawyer or an emergency.

When sending settlement requirements a lawyer need not restate the purchaser's obligations under this part. It is expected that all lawyers and other persons practising in the conveyancing context are familiar with their obligations under these guidelines.

- 5.12 Once settlement funds have been paid and you have received the undertaking and confirmation(s) required under [Guideline 5.7](#), you must promptly:
- (a) release all instruments in the e-dealing for which you are responsible;
 - (b) make any payments you have undertaken to make on or following settlement;
 - (c) send to the purchaser's lawyer by courier (or any other agreed method) any documents specified in [Guideline 5.11\(c\)\(i\)](#);
 - (d) authorise the release of any keys, electronic door openers and security codes; and
 - (e) provide notice of sale to the territorial or unitary authority and, where relevant, the regional council and water authority.

When you act for the purchaser

- 5.13 A reasonable time before settlement, you must prepare the notice of sale (which may be prepared electronically) and supply it to the vendor's lawyer by email/post or by providing online access to it.

- 5.14 To pay the settlement funds, you must:

- (a) initiate the electronic transfer from your trust account by SCP or by another electronic payment system permitted by the vendor's lawyer, with the payment direction containing the following:
 - (i) the amount of the payment;
 - (ii) the vendor's lawyer's trust account number;
 - (iii) the name of the vendor's lawyer's practice;

- (iv) if the payment is by SCP, the email address for the notification of payment;
 - (v) your client's identification number with your law practice; and
 - (vi) any reference details reasonably requested by the vendor's lawyer; and
- (b) as soon as the payment has been made, send the vendor's lawyer your written undertaking, with a copy of the report from your banking system confirming that the payment is fully processed, containing the following:

Purchase of [address] – [vendor] to [purchaser]

I/we undertake that, in settlement of the above transaction:

I/we instructed my/our bank today to pay \$_____ to your trust account by SCP (as defined in Guideline 7 of the New Zealand Law Society's Property Transactions and E-Dealings Practice Guidelines); and

OR

I/we instructed my/our bank today to pay \$_____ to your trust account by [insert electronic payment system other than SCP] as specified in your settlement requirements dated [insert]; and

The payment is from cleared funds in my/our trust account and I/we will not cancel or change the payment instruction in any respect.

I/we attach a copy of the report from our banking system confirming that the payment is fully processed.

Partner/Principal/Director (or as accepted by vendor's lawyer)

- 5.15 Your undertaking and payment confirmation required by Guideline 5.14(b) must be sent by email to the address supplied by the vendor's lawyer or, if the vendor's lawyer has failed to supply an address, to the person or persons in the vendor's lawyer's practice with whom the purchaser's lawyer has been dealing.

Generally

- 5.16 Payment of the settlement funds should include any interest that may be payable in terms of the underlying agreement to cover the period ending when payment is deemed to have been received by the vendor's lawyer.
- 5.17 You must comply with the [Lawyers and Conveyancers Act \(Lawyers: Conduct and Client Care\) Rules 2008](#)⁷, in particular:
- (a) [rule 10.3](#)⁷, requiring that all undertakings be honoured; and
 - (b) [rules 10.4 to 10.6](#)⁷, dealing with stopping payments.
- 5.18 Documents sent by the vendor will be at the purchaser's risk in transit. Documents must be sent by courier unless otherwise agreed.

5.19 The vendor's lawyer must give an undertaking as to rates and other outgoings apportioned on the settlement statement where the vendor's lawyer is instructed to pay the rates or other outgoings on behalf of the vendor.

Note: Check for clauses in the Agreement that make rates and other outgoings a matter of contract between the parties. Undertakings should only be necessary where the vendor's lawyer is instructed to make a payment on behalf of the vendor. See Guidelines [3.56](#) and [3.57](#).

Settlement where a third party is separately represented

5.20 Guidelines 5.21 to [5.25](#) apply where a third party is separately represented. Common examples of third parties who may be separately represented include:

- Transferor under prior transfer
- Mortgagee (at lending and at repayment)
- Executor under a transmission
- Caveator
- Authority holding a charging order
- Grantee under an easement being granted or surrendered on settlement
- Lessee under lease being surrendered on settlement

Guidelines 5.23 to [5.25](#) should be amended to the extent required where the third party is transacting with the purchaser (eg. a mortgagee at lending).

5.21 The vendor's lawyer should obtain the agreement of the lawyer for the third party to comply with [Guideline 5.25](#).

5.22 In Guidelines 5.23 to [5.25](#), a "third party instrument" is an instrument to be released by a third party who is separately represented.

When you act for the vendor, and the third party is separately represented

5.23 A reasonable time before settlement, you must send to the purchaser's lawyer:

- (a) written confirmation that payment of settlement funds must be made:
 - (i) by electronic transfer of cleared funds using SCP; or
 - (ii) if you accept payment by an electronic payment system other than SCP, by electronic transfer of cleared funds using that system;
- (b) an encoded deposit slip or details of your trust account, together with:
 - (i) the email address for the notification of payment;
 - (ii) any other details that must be included with the electronic transfer to enable the payment to be identified; and
 - (iii) any other settlement requirements, which must not be inconsistent with this Part;

- (c) notification that a third party is separately represented, with identification of the third party, the third party instrument and the third party's lawyer;
- (d) your undertaking that:
- (i) any documents to be provided by the vendor to the purchaser on settlement are, or will be, in your possession (with a list of those documents);
 - (ii) you hold undertakings from the third party's lawyer in the form required by [Guideline 5.25](#);
 - (iii) you have pre-validated and certified and signed the instruments to which your client is party in the e-dealing created for the transaction (including any discharges and the transfer) in your capacity as lawyer for the vendor and you will not withdraw or alter those instruments or any other instrument in the e-dealing before their release;
 - (iv) on payment of the settlement funds by SCP or another electronic payment system permitted by you and receipt of the purchaser's lawyer's undertaking and payment confirmation(s) required by [Guideline 5.7](#), you will:
 - immediately release the instruments except the third party instrument (subject only to the qualification in [Guideline 5.23\(d\)\(v\)](#));
 - not prevent or reverse the release of any instruments or withdraw any instruments after their release;
 - immediately instruct your bank to pay to the third party's lawyer's trust account, in cleared funds by SCP or another electronic payment system permitted by the third party's lawyer, the full amount of the funds required to settle the vendor's transaction with the third party;
 - immediately send to the purchaser's lawyer by courier (or any other agreed method) any documents specified in [Guideline 5.23\(d\)\(i\)](#);
 - immediately authorise the release of any keys, electronic door openers and security codes; and
 - where [Guideline 5.19](#) applies, pay the rates and any other outgoings so that they are paid to the date specified in the settlement statement;
 - (v) if the e-dealing is rejected or requisitioned, you will assist in relation to the instruments you have certified and signed and take all reasonable steps within your control to correct the instruments so that registration is completed as soon as possible;
 - (vi) if, due to a Landonline, electricity or telecommunications outage or an emergency, you are not able to immediately release the instruments, you will:
 - advise the purchaser's lawyer of the delay and the cause of the delay;
 - take all available steps to effect the release as soon as possible; and
 - not disburse the balance of the settlement funds remaining after the payment(s) required under [Guideline 5.23\(d\)\(iv\)](#) until the release has been effected;

- (vii) immediately following receipt of the documents specified in the undertakings from the third party's lawyer, you will forward these to the purchaser's lawyer by courier (or any other agreed method);
 - (viii) you will comply with all requirements of the undertakings from the third party's lawyer necessary to ensure that the third party's lawyer releases the third party instrument and will notify the purchaser's lawyer when the third party instrument has been released; and
 - (ix) you will enforce the undertakings from the third party's lawyer for the benefit of the purchaser if requested to do so by the purchaser's lawyer and act in the best interests of the purchaser's lawyer in doing so; and
- (e) a copy of the undertakings from the third party's lawyer addressed to you in the form required by [Guideline 5.25](#).

Note: Where practicable, the information set out at [Guideline 5.23\(a\)](#), [\(b\)](#) and [\(c\)](#) should be sent before the settlement date.

Note: Where you have given an undertaking to a mortgagee to preserve the mortgagee's position (or similar), the undertaking set out at [Guideline 5.23\(d\)](#) should not be given before you are in a position to ensure compliance with that undertaking.

Note: The only event that should delay release after payment is a technical outage outside the control of the vendor's lawyer or an emergency.

5.24 Once settlement funds have been paid and you have received the undertaking and confirmation(s) required under [Guideline 5.7](#), you must promptly:

- (a) release all instruments in the e-dealing for which you are responsible;
- (b) instruct your bank to pay to the third party's lawyer's trust account, in cleared funds by SCP or by another electronic payment system permitted by the third party's lawyer, the full amount of the funds required to settle the vendor's transaction with the third party in the same manner as set out at [Guideline 5.14\(a\)](#);
- (c) send the third party's lawyer your written undertaking, with a copy of the report from your banking system confirming that the payment is fully processed, containing the wording set out at [Guideline 5.14\(b\)](#) and in the manner set out at [Guideline 5.15](#) (with all required amendments);
- (d) do everything else required to ensure that the third party's lawyer releases the third party instrument and the documents specified in [Guideline 5.23\(d\)\(vii\)](#);
- (e) advise the purchaser's lawyer when the third party instrument has been released;
- (f) make any other payments you have undertaken to make on or following settlement;
- (g) send to the purchaser's lawyer by courier (or any other agreed method) any documents specified in [Guideline 5.23\(d\)\(i\)](#);
- (h) authorise the release of any keys, electronic door openers and security codes;
- (i) send the notice of sale to the territorial or unitary authority and, where relevant, the regional council and water authority; and

- (j) send to the purchaser's lawyer by courier (or any other agreed method) any documents specified in Guideline [5.23\(d\)\(vii\)](#) once received from the third party's lawyer.

When you act for a third party and are not also acting for the vendor

5.25 A reasonable time before settlement, you must send to the vendor's lawyer:

- (a) written confirmation that payment of the funds required to settle the transaction between the vendor and the third party, must be made by:
 - (i) electronic transfer of cleared funds by SCP; or
 - (ii) if you accept payment by an electronic payment system other than SCP, electronic transfer of cleared funds by that system;
- (b) an encoded deposit slip or details of your trust account, together with:
 - (i) the email address for the notification of payment;
 - (ii) any other details that must be included with the electronic transfer to enable the payment to be identified; and
 - (iii) any other settlement requirements, which must not be inconsistent with this Part;
- (c) your undertaking that:
 - (i) any documents to be provided by the third party to the vendor or to the purchaser on settlement are, or will on settlement be, in your possession (with a list of those documents);
 - (ii) you have pre-validated and certified and signed the third party instrument in the e-dealing created for the transaction in your capacity as lawyer for the third party and you will not withdraw or alter the third party instrument or any other instrument in the e-dealing before its release;
 - (iii) on payment of the full amount of the funds required to settle the transaction between the vendor and the third party to your trust account in cleared funds by SCP or another electronic payment system permitted by you and receipt of the vendor's lawyer's undertaking and payment confirmations required by [Guideline 5.24\(c\)](#), you will:
 - immediately release the third party instrument (subject only to the qualification in Guideline 5.25(c)(v));
 - not prevent or reverse the release of the third party instrument or withdraw that instrument after its release; and
 - immediately send to the vendor's lawyer by courier (or any other agreed method) any documents specified in Guideline 5.25(c)(i);
 - (iv) if the e-dealing is rejected or requisitioned, you will assist in relation to the instruments you have certified and signed and take all reasonable steps within your control to correct the instruments so that registration is completed as soon as possible; and
 - (v) if, due to a Landonline, electricity or telecommunications outage or an emergency, you are not able to immediately release the third party instrument, you will:

- advise the vendor's lawyer of the delay and the cause of the delay;
- take all available steps to effect the release as soon as possible; and
- not disburse any of the funds received by you until the release has been effected.

Where the vendor is represented by a conveyancer

5.26 Where the vendor is represented by a conveyancer, the parties must complete settlement by “reverse undertaking” as follows:

- (a) the purchaser's lawyer must give an undertaking to the conveyancer that:
 - (i) following the release of all instruments required to be released by the vendor into the control of the purchaser's lawyer and the delivery of all documents required to be delivered by the vendor to the purchaser, the purchaser will immediately pay the settlement funds to the conveyancer under Guideline 5.26(b); and
 - (ii) until payment of the settlement funds to the conveyancer under Guideline 5.26(b), the purchaser's lawyer will not deal in any way with any instruments released or delivered to the purchaser; and
- (b) following the release of all instruments required to be released by the vendor into the control of the purchaser's lawyer and the delivery of all documents required to be delivered by the vendor to the purchaser, the purchaser's lawyer must:
 - (i) pay the settlement funds to the conveyancer in cleared funds by SCP (or another electronic payment system permitted by the conveyancer) in the manner as set out at [Guideline 5.14\(a\)](#) (with all required amendments); and
 - (ii) send the conveyancer the purchaser's lawyer's written undertaking, with a copy of the report from the purchaser's lawyer's banking system confirming that the payment is fully processed, containing the wording set out at [Guideline 5.14\(b\)](#) and in the manner set out at [Guideline 5.15](#) (with all required amendments); and
- (c) [Guidelines 5.6 to 5.19](#), but excluding [Guideline 5.11\(c\)](#), otherwise apply (with all required amendments) to settlement.

5.27 If the conveyancer representing the vendor does not agree to complete settlement by “reverse undertaking” in the manner specified in [Guideline 5.26](#), the purchaser's lawyer may complete settlement by paying the settlement funds to the conveyancer in person by bank cheque, in which case:

- (a) the bank cheque must be accompanied by a written undertaking from the purchaser's lawyer that the bank cheque derives from cleared funds in the purchaser's lawyer's trust account and the purchaser's lawyer will not seek to stop payment under the bank cheque;
- (b) the conveyancer must immediately:
 - (i) release all instruments required to be released by the vendor into the control of the purchaser's lawyer;
 - (ii) give to the purchaser's lawyer all documents required to be delivered by the vendor to the purchaser;

- (iii) release or authorise the release of any keys, electronic door openers and security codes;
 - (iv) send the notice of sale to the territorial or unitary authority and, where relevant, the regional council and water authority; and
 - (v) make any payments required to be paid by or on behalf of the vendor; and
- (c) settlement funds will be treated as paid at the time the purchaser's lawyer delivers the bank cheque and undertaking to the conveyancer.

5.28 If the purchaser does not complete settlement under [Guideline 5.27](#), the purchaser will not be in default of its obligations under the agreement and will not prejudice any rights that the purchaser may have against the vendor solely by reason of the purchaser not completing settlement under [Guideline 5.27](#).

Where the purchaser is represented by a conveyancer

5.29 Where the purchaser is represented by a conveyancer, the parties must complete settlement as follows:

- (a) the vendor's lawyer must give the undertakings required by [Guideline 5.11](#), modified to state that the vendor's lawyer will complete the matters in [Guideline 5.11\(c\)\(iii\)](#) following receipt of the settlement funds by SCP or another electronic payment system permitted by the vendor's lawyer and:
 - (i) if the payment was made using SCP, after receipt of confirmation under [Guideline 5.7\(c\)](#) that the payment has been made; or
 - (ii) if the payment was made by another electronic payment system permitted by the vendor's lawyer, after confirming that the payment has cleared;
- (b) the purchaser's conveyancer must:
 - (i) pay the settlement funds to the vendor's lawyer in cleared funds by SCP (or another electronic payment system permitted by the vendor's lawyer) in the manner as set out at [Guideline 5.14\(a\)](#); and
 - (ii) send the vendor's lawyer the purchaser's conveyancer's written confirmation that payment has been made by SCP (or another electronic payment system permitted by the vendor's lawyer), with a copy of the report from the purchaser's lawyer's banking system confirming that the payment is fully processed, containing the wording set out at [Guideline 5.14\(b\)](#) (with all required amendments to replace the undertaking with confirmation) and in the manner set out at [Guideline 5.15](#);
- (c) the vendor's lawyer must complete the matters set out in [Guideline 5.12](#) once the vendor's lawyer has received the settlement funds and:
 - (i) if the payment was made using SCP, has received confirmation under [Guideline 5.7\(c\)](#) that the payment has been made; or
 - (ii) if the payment was made by another electronic payment system permitted by the vendor's lawyer, has confirmed that the payment has cleared; and
- (d) [Guidelines 5.6 to 5.19](#) otherwise apply (with all required amendments) to settlement.

6. E-dealing guidelines

A. Purpose of e-dealing guidelines

- 6.1 This Part is endorsed by the Registrar-General of Land for recommendation to lawyers using Landonline. Compliance by Lawyers with this Part of the Guidelines will be relevant on any compliance review undertaken by LINZ.

B. Introduction to e-dealing guidelines

Responsibilities

- 6.2 The responsibility of lawyers certifying e-dealings is subject to close scrutiny.
- 6.3 The certification and signing by a lawyer of each instrument in an e-dealing leads to an alteration of the Register. The responsibility on the lawyer to ensure that all matters are in order to justify a change to the Register prior to certifying a document cannot be overstated.
- 6.4 It is the high level of responsibility arising from certification and signing that justifies a rule requiring lawyers to take all reasonable steps to protect the security of their Digital Certificate and accompanying Password and Passphrase. See rule [11.4 of the Rules](#) and [Section J of this Part 6](#).
- 6.5 Responsibility for the consequences of the alteration of the Register (criminally, civilly and professionally) rests with the lawyer whose Digital Certificate is used for the certification.

Digital Certificates and their Use

- 6.6 The registration authority within LINZ will on request issue a Digital Certificate with an accompanying Password and Passphrase, along with a profile which allows the holder of a current practising certificate to certify and sign instruments as part of an e-dealing. Digital Certificates will be issued to other staff of the lawyer's practice on the application of the lawyer concerned for searching, creating workspaces, preparing instruments, releasing instruments and submitting e-dealings.
- 6.7 It is a matter for each lawyer's practice to determine those within the practice who are to be the holder of a Digital Certificate, and further to determine the levels of activity that each individual holder of a Digital Certificate is authorised to undertake.
- 6.8 The system permits lawyers to add and delete the names of those individuals permitted to operate using the licences held by the lawyer's practice and to control the use of Landonline within the practice.

Disbursements

- 6.9 Landonline allows for a splitting of registration fees between the parties to an e-dealing. The vendor's discharge registration fee will show on the vendor's lawyer's account from LINZ and the transfer and mortgage registration fees will (unless the default setting is altered) show on the purchaser's lawyer's account.

Reliance on Certifications

- 6.10 The lawyer for the other party is entitled to rely upon the certifications made without the need for further inquiry. For example, in [Section N of this Part 6](#), the certifying lawyer is required to be satisfied on matters affecting corporate clients and the use of powers of attorney.

Communication Courtesy

- 6.11 Lawyers should provide email updates of progress about e-dealings, as a matter of professional courtesy.

C. E-dealing prerequisites

Guidelines

- 6.12 All lawyers must prepare, certify and sign and submit instruments electronically unless a particular instrument is not capable of electronic registration.
- 6.13 When the agreement becomes unconditional, the purchaser's lawyer should set up the e-dealing. The vendor's lawyer must provide the name or user ID of the vendor's Primary Contact and Conveyancing Professional to the purchaser's lawyer on request.

D. Nominating a Primary Contact

Guidelines

- 6.14 The Primary Contact will usually be the person who prepares the instruments and attends to settlement and registration. The Primary Contact need not be a lawyer.
- 6.15 The Primary Contact must be a registered named user of Landonline and have access privileges to prepare instruments. (Access privileges are set by each lawyer's practice and can be altered by the practice's Landonline system manager).
- 6.16 Only one Primary Contact can be nominated per instrument. However, any other person in the lawyer's practice with the privileges of Primary Contact can access and work on any e-dealing within that practice. The lawyer acting for a party can change their Primary Contact for each instrument.
- 6.17 As the purchaser's lawyer needs to insert their own and the vendor's Primary Contact and Conveyancing Professional, it is essential that the vendor's lawyer advises the purchaser's lawyer of the name or user ID of the vendor's Primary Contact and Conveyancing Professional exactly as it is shown for their Digital Certificate. When inserting names into the workspace the system will recognise only exact matches of names. If inserting user IDs ensure you have the correct suffix (eg. asmith004). As there are some users with the same name ensure you have the correct name, user ID and lawyer's practice. A wildcard (*) can be used for searching where required.

Commentary

The vendor's lawyer should advise details of the vendor's Primary Contact and Conveyancing Professional as soon as practicable after the agreement becomes unconditional. The same

requirement applies in the case of any third party to the e-dealing, such as a separately-represented mortgagee.

E. Creating an e-dealing

Guidelines

- 6.18 The e-dealing should be created by the purchaser's Primary Contact.
- 6.19 The purchaser's Primary Contact should insert **all** of the instruments that will form the e-dealing into the Create Dealing screen, including the vendor's discharge(s).
- 6.20 The purchaser's Primary Contact should insert the names of the Primary Contact and Conveyancing Professional for each of the instruments.

F. Nominating a Conveyancing Professional

Guidelines

- 6.21 The Conveyancing Professional for each party to the transaction is the lawyer who will certify and sign each instrument in the e-dealing. That lawyer takes full responsibility and is accountable for any update or change to the Register effected by the registration of any instrument certified and signed by him or her.
- 6.22 The Conveyancing Professional need not be directly involved in all aspects of settlement or registration. The critical aspect of the Conveyancing Professional's involvement is in certifying and signing. The Conveyancing Professional must have sufficient knowledge of the transaction to make informed and factually accurate certifications (refer [section 27\(2\) of the Land Transfer Act 2017](#) and [regulation 7](#) and [schedule 3](#) of the Land Transfer Regulations 2018). Criminal sanctions may flow from any reckless certification made. Professional sanctions apply to negligent or careless verification of the identity of clients and certifications generally. (Refer also to Sections **L** and **N** of this Part 6.)

Commentary

In fulfilling his or her obligations to a client, a sole practice lawyer who wishes to use Landonline must ensure that his or her attorney pursuant to [schedule 1 of the Lawyers and Conveyancers Act 2006](#), is the holder of a Digital Certificate with certifying and signing privileges.

A sole practice lawyer needs to link his or her attorney to the sole practice lawyer's licence to enable that attorney to access an e-dealing in the sole practice lawyer's absence and to make the necessary certifications to enable settlement to proceed.

As with the need for a sole practice lawyer to have an attorney in place for contingencies before they arise, it is equally important to have systems in place to complete e-dealings if the lawyer is absent. The Primary Contact can nominate an alternative Conveyancing Professional (lawyer) for any e-dealing prior to submission for registration. There is considerable advantage in the linking of the sole practice lawyer's attorney (by the law practice's Landonline system manager) to the licence, when Landonline e-dealing functionality is first acquired.

If the sole practice lawyer's attorney is not e-dealing capable, it is possible to link any other e-dealing registered lawyer with the sole practice lawyer's licence for the purpose of certifying an e-dealing if the sole practice lawyer is unavailable.

Internal protocols for the use of an alternate Conveyancing Professional should be clearly documented so that there is no doubt as to what triggers alternative procedures and there is a clear trail on file of the steps taken.

With respect to a locum the licence link will need to be made, as the need arises, by the law practice's Landonline system manager.

G. Instrument preparation

Guidelines

- 6.23 The purchaser's lawyer is responsible for preparation of the transfer and all instruments to be registered after the transfer (including any new mortgage). This task may be undertaken by a Primary Contact at the law practice.
- 6.24 The vendor's lawyer is responsible for preparation of all instruments to be registered ahead of the transfer (including the discharge of existing mortgages).
- 6.25 The vendor's lawyer is responsible for preparation of all withdrawals of caveats, unless the caveat was lodged to protect the purchaser's interest.

Commentary

Where an instrument is not capable of e-dealing, that instrument must be registered in a separate paper dealing.

Landonline accommodates the registration of all mortgages, including those with non-standard provisions.

Refer Guidelines [2.14](#) and [2.15](#) for the duty of care owed when second and subsequent mortgages are involved.

H. Back to back transactions

Guidelines

- 6.26 The most straightforward method of dealing with a back to back transaction (e.g. an 'on sale' of the same property on the same day) is to set up both transactions in the same workspace.
- 6.27 The lawyer for the final purchaser should prepare the workspace and insert all required instruments into the Create Dealing screen. The lawyer for the initial purchaser can amend the names of the Primary Contacts and Conveyancing Professionals if necessary.
- 6.28 The law practice acting for the final purchaser should normally submit a back to back e-dealing and the 'submitting firm' field should therefore be amended as necessary to allow this.

Commentary

Ideally the lawyer for the final purchaser should create the workspace in consultation with the other lawyer(s). The benefit of one e-dealing is:

- the final purchaser can pre-validate the entire e-dealing;
- there are no administrative/processing delays; and
- greater transparency.

The subsequent transfer relies on the transferee name in the prior transfer. Accuracy is paramount, as any change to the transferee name will impact on the subsequent transfer. This issue is more problematic if the transfers were to be in separate e-dealings.

A less desirable option is to set the transaction up as two separate e-dealings. If this approach is used the Primary Contacts and Conveyancing Professionals for the prior e-dealing must not delay in releasing or submitting that e-dealing.

The wording of settlement undertakings is extremely important with back to back settlements. The lawyers should agree in advance the wording of undertakings and settlement procedures.

I. Mortgagee separately represented

Guideline

6.29 Separate third-party representation, generally for a mortgagee, requires the insertion of a separate Conveyancing Professional and Primary Contact for the third party. This should be inserted as early as possible. Instrument release and fees responsibilities will need to be reviewed and amended if required.

Commentary

A mortgagee can be separately represented on the grant, variation or discharge of a mortgage.

Where a mortgagee is separately represented, the default position is that the mortgagee's lawyer will certify and sign the instrument for the mortgagee.

However, the mortgagor's lawyer can sign the instrument for the mortgagee if the mortgagee's lawyer provides to the mortgagor's lawyer a suitable A & I form or, if the mortgagee is an Institutional Chargeholder, a complying letter of instruction. The A & I form or letter must be addressed to the mortgagor's lawyer's practice, not to the mortgagee's lawyer's practice.

The mortgagee's lawyer cannot delegate to another lawyer instructions from the mortgagee addressed to the mortgagee's lawyer. A & I forms or Institutional Chargeholders instruction letters addressed to one law practice cannot be transferred to another law practice.

The mortgagee's lawyer must provide clear instructions to avoid confusion as to who will be signing for the mortgagee.

The name of the Primary Contact and Conveyancing Professional must be noted for the relevant role for the instrument in the Create Dealing screen.

The check boxes allow the party liable to pay the registration fee for that instrument to be selected if it is different from the default.

Where a mortgage is granted, and the mortgagee is separately represented, normally the lawyer for the mortgagee is the submitting lawyer. However, that lawyer could permit another party's lawyer to submit the e-dealing.

J. Digital Certificate protocols

Guidelines

6.30 Lawyers are required to comply with [rule 11.4 \(and footnote\) of the Rules](#)², which provides:

11.4 A lawyer must take all reasonable steps to prevent any person perpetrating a crime or fraud through the lawyer's practice. This includes taking reasonable steps to ensure the security of and access to electronic systems and passwords.*

* The protection of passwords and systems will include the protection of digital certificates and associated passwords, and passwords, usernames, and personal identification numbers relating to electronic banking.

6.31 Lawyers must take all reasonable steps to ensure the security of the Password and Passphrase for his or her Digital Certificate. Passwords and Passphrases must not be written down and must not be shared with anyone, including partners or any other person in the law practice. The lawyer is personally responsible for all instruments that are registered that have been certified and signed using that lawyer's Digital Certificate.

6.32 A lawyer must not give a third party an opportunity to interact with the Register by leaving a logged-in Landonline session unattended.

Commentary

Anyone who has been given the profile to certify and sign an instrument for an e-dealing has the ability to alter the Register.

Accordingly, if the security of the Digital Certificate or its Password or Passphrase is compromised there is a risk that an unauthorised person could alter the Register using that lawyer's Digital Certificate. This could include transferring ownership and/or discharging a mortgage.

If the designated Conveyancing Professional is not available when certification and signing is required, another Conveyancing Professional linked to the licence of the law practice acting for the party should certify and sign. The named Conveyancing Professional does not need to be changed in the Roles field.

K. Completion of A & I forms

Guidelines

6.33 The A & I form completed by the client(s) is the lawyer's usual way of obtaining and recording proof of authority to implement the e-dealing and provides protection against later challenges to the transaction and resulting changes to the Register. The appropriate A & I form must be completed in its entirety with all dates, full names and instrument details before

execution by the clients, and retained in a manner which allows it to be presented to LINZ on a compliance review.

- 6.34 The A & I form must specify the Base Document and set out the instruments authorised to be registered. Where the instrument contains complex registration details, those details must be set out in full.
- 6.35 Where a property is held by the registered proprietors as trustees and there is a change in the trustees, a transfer instrument is required. A & I forms must be completed in the usual way by the transferors and transferees.
- 6.36 The appropriate A & I form to use depends on whether the client is an individual, a Private Corporate or a Public Corporate. The Appendix to these Guidelines sets out the required A & I forms approved by the New Zealand Law Society.
- 6.37 The client should indicate that they have read and understood every aspect of the A & I form.
- 6.38 The instrument(s) **cannot** be certified and signed until the A & I form has been signed by the client and appropriately witnessed or equivalent proof of identity, authority and capacity is held.
- 6.39 Each client must sign the form personally or by an attorney under a properly-completed power of attorney with an appropriate certificate of non-revocation. See [Section N of this Part 6](#) for requirements in relation to execution by an attorney.
- 6.40 A client cannot sign for and on behalf of a partner or spouse. Each client must sign personally, or a power of attorney is required.

Commentary

The following A & I forms are attached in the Appendix to these Guidelines:

- Individual A & I form
- Private Corporate A & I form
- Public Corporate A & I form

An explanation of the institutions which comprise Private Corporates and Public Corporates is set out in the glossary in [Part 7 of these Guidelines](#).

The A & I forms in the Appendix to these Guidelines are intended to be identical with the A & I forms within Landonline. A benefit of the Landonline-generated form is that it will include some pre-populated information originating from instruments in the e-dealing.

Lawyers must ensure that clients sign the appropriate A & I form. If any doubt exists as to whether an institution is a Private Corporate or a Public Corporate, the Private Corporate A & I form should be used.

All details should be completed before the form is signed by the clients. A & I forms created from within Landonline will not include all required information, such as the property address and base document. This information will need to be added manually.

The disclosure requirements under the [Credit Contracts and Consumer Finance Act 2003](#)²⁷ must also be considered.

A & I forms must be directed to the law practice that is responsible for certifying the identity, capacity and authority for the client signing the A & I form in relation to transaction. Delegation to another practice is not acceptable. Any lawyer in the practice with certifying and signing privileges can certify and sign the instruments in the e-dealing. The certifying lawyer (as opposed to the law practice) is responsible for the certifications made.

Separate A & I forms should be obtained for each e-dealing. However, a single A & I form may be obtained for a series of related or similar transactions, such as the transfer of lots in a subdivision or a series of partial discharges of mortgage. The Conveyancing Lawyer must ensure that the appropriate instructions are obtained in this situation.

Where an easement or other instrument affecting multiple titles is to be registered, the full registration details of the easement must be inserted. It may be prudent to copy the relevant part of that instrument into the A & I form in full. Alternatively, a copy of the instrument could be attached to the A & I form and initialled by the client (or otherwise authorised in writing by the client), with the A & I form stating that the instrument is attached (eg. by inserting "See attached easement instrument" rather than setting out the survey details of the easement).

Issues of legal capacity are also addressed in the A & I form (refer [Section O of this Part 6](#)).

Where a lawyer is to certify and sign on behalf of a client of another law practice, the lawyer certifying and signing needs to hold an A & I form instructing that lawyer or that lawyer's practice to certify and sign the instrument. A & I forms (and Institutional Chargeholders instruction letters) addressed to one law practice cannot be transferred to another practice. It is however possible for more than one law practice to be listed as the law practice authorised to register under a single A & I form.

Where a lawyer is certifying and signing an instrument for more than one party to that instrument or is certifying and signing an instrument for a person who is not a client of that lawyer's practice, the lawyer should consider whether there is a conflict of interest and obtain a waiver of independent legal advice if appropriate in the circumstances.

L. Client identity

Guidelines

- 6.41 The lawyer takes responsibility for all certifications made. The lawyer must be reasonably satisfied as to the **identity, capacity and authority** of the client on whose behalf certifications are being made. There is no independent checking carried out by LINZ before registration.
- 6.42 In all cases it is essential that the client's identity is verified. All lawyers must be familiar with and comply with the latest LINZ A & I Standard and LINZ A & I Guideline.
- 6.43 It is not necessary for a lawyer personally to witness the A & I form being signed. The lawyer may have identity verification carried out by a trusted colleague (from the same practice as the lawyer) or by a delegate. The delegate must be an independent trusted person on whom the lawyer can reasonably rely. Further details are included in the LINZ A & I Standard and the LINZ A & I Guideline.

- 6.44 The lawyer may witness the signing of A & I forms by videoconferencing (eg. Skype, FaceTime, WhatsApp, Google Hangouts, Zoom or FaceMe) where the lawyer who will be certifying and signing the transaction:
- (a) has known their client for more than 12 months;
 - (b) has a copy of their client's acceptable photo ID on file (the original having previously been sighted); and
 - (c) is able to clearly see their client and confirm what documentation is being signed.
- 6.45 Where videoconferencing is used, the witness certification in the A & I form should be modified (or a further certification added) to indicate that videoconferencing was used and confirm that each of the conditions in Guideline 6.45 is met.
- 6.46 Witnessing an A & I form involves verification of the client's identity, capacity and authority. The videoconference witnessing session must be abandoned if the lawyer:
- (a) has any doubts whatsoever as to the identity or capacity of the client;
 - (b) has any concerns that the client may be acting under duress or at the direction of another person; or
 - (c) is unable to clearly see and confirm what documentation is being signed in the course of the videoconference session.
- 6.47 Compliance with rules [2.5](#) and [2.6](#) of the Rules is necessary. These provide:
- 2.5 A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.
 - 2.6 If a lawyer subsequently discovers that a certificate given by the lawyer was or has become inaccurate or incomplete to a material extent, the lawyer must immediately take reasonable steps to correct the certificate.
- 6.48 Lawyers have a general responsibility to be satisfied as to the identity, capacity and authority of a client on whose behalf they make representations or issue certificates. Electronic transactions under the [Land Transfer Act 2017](#)²⁸ place an added responsibility on lawyers. The Conveyancing Professional is accountable for the valid establishment of the client's identity, and the discretion rests with the Conveyancing Professional as to the acceptability or otherwise of the person establishing the identity.
- 6.49 A copy of the photo ID should be retained and attached to the A & I form. The original should be sighted by the person confirming the identity. The requirement on the A & I form to record that the photo ID is a true copy is met when the person verifying the identity signs an Individual or a Private Corporate A & I form. This section includes the statements "(b) I have sighted the original form(s) of identities ticked above" and "(c) I have attached a copy of the ID(s) used". It is not necessary to also endorse a 'true copy' certification on the copy of the photo ID. The same copy ID may be 'recycled' for clients seen on a regular basis. (On the expiration of that photo ID a new one should be obtained.)
- 6.50 Notaries public witnessing A & I forms outside New Zealand might not complete the witnessing section of the A & I form correctly and may instead attach their own certification, which

might be in their own language (in which case an English translation should be included). Satisfaction of the A & I form requirements must then be evaluated by the Conveyancing Professional before signing and certifying the instruments.

- 6.51 Where an owner's name as registered on a record of title differs from that shown on their photo ID the discrepancy should be reconciled and the record of title updated (unless that owner is selling the land or discharging or surrendering an interest). A statutory declaration should be obtained from the client. The statutory declaration should account for the discrepancy and confirm that the client as named on the record of title and in the photo ID is the same person. Relevant corroborating evidence (eg. a copy of the client's marriage certificate) should be attached to the statutory declaration as an exhibit. The declaration should be retained as supporting evidence with the client A & I form. Further information is set out in Making applications to Change or Correct names in the Register Guideline 2018 (LINZG20780) published by LINZ (linz.govt.nz/regulatory/20780)
- 6.52 In most cases of a discharge of mortgage, the lawyer will be acting for the mortgagor and mortgagee and the mortgagee will be an Institutional Chargeholder. Subject to normal practice, it is acceptable to rely on the face of the Institutional Chargeholder's instruction to discharge a mortgage without verifying the identity of the individual who signed or authorised the discharge on behalf of the Institutional Chargeholder. The lawyer must be satisfied that the authority appears to be from the Institutional Chargeholder and, if not, further inquiry must be made as to the veracity of the documentation provided.
- 6.53 If the lawyer has received discharge instructions from an Institutional Chargeholder, but has not requested that discharge, then further inquiry must be made as to the veracity of the authority.
- 6.54 Standard ID procedures must be followed in the case of mortgagees who are not Institutional Chargeholders.
- 6.55 Where an A & I form is signed and verified outside the lawyer's practice, receipt of an emailed or faxed copy of the A & I form and photo ID is sufficient (although best practice is that the originals are returned and retained on file).

Commentary

Lawyers must comply with the LINZ A & I Standard should comply with LINZ A & I Guideline.

For "high risk" transactions, the lawyer must, in order to manage the risk of fraud or improper dealing:

- obtain a document connecting the client to the property;
- make reasonable further inquiries to confirm that the transaction is genuine; and
- record and retain a file note setting out those additional actions.

Further inquiries for "high risk" transactions could include:

- checking the historical view of the title to identify potential inconsistencies (eg to confirm there is no obvious age discrepancy between the purported landowner and the registered landowner); and

- independently obtaining contact details for the property and contacting the landowner using those details.

A lawyer who is confident as to the identity of a landowner on the basis of their own personal knowledge or the personal knowledge of a trusted colleague (within the same law practice) may choose to dispense with the requirement to obtain evidence linking the client to the property or to treat a transaction as not being a "high risk" transaction. A file note of this decision should be recorded and retained.

Witnessing by delegate

Additional care must be taken where identity of the client has been verified by anyone other than a trusted colleague (i.e. someone outside the lawyer's practice). See the A & I Guideline for further details about witnessing by delegates.

The A & I form is not an instrument for the purposes of the [Land Transfer Act 2017](#), so there is no need to have it notarised if signed overseas (unless that level of independent verification is warranted in the circumstances).

Photo ID

The acceptable forms of photo ID for safe harbour are set out in the LINZ A & I Guideline, as follows:

- New Zealand passport;
- New Zealand driver licence;
- New Zealand firearms licence;
- passport issued by a country other than New Zealand or by the United Nations or an agency of the United Nations for the purpose of international travel (with the holder's photograph);
- SuperGold card (with the holder's photograph);
- New Zealand certificate of identity, New Zealand refugee travel document or emergency travel document issued in New Zealand under the [Passports Act 1992](#) (with the holder's photograph); and
- certificate of identity issued under the Immigration New Zealand Operational Manual (itself issued under [section 25 of the Immigration Act 2009](#)).

Other forms of photo ID which may provide an equally effective means of satisfying the legal requirements are set out in the LINZ A & I Guideline. If lawyers seek to rely on other forms of photo ID, lawyers must:

- exercise care and good judgment;
- treat the transaction as "high risk"; and
- record and retain a file note setting out the steps that the lawyer took to verify the identity of the client.

The A & I Guidelines state that the photo ID must be current or have expired within the previous 12 months.

A lawyer can reuse an earlier photo ID in limited circumstances – refer to clause 4.1.1.2 of the LINZ A & I Guideline.

Although it is unusual for a person not to have any form of photo ID, this does occur from time to time. In these circumstances the lawyer should consider the alternative means of verification set out in the LINZ A & I Guideline, particularly re-use of earlier verified photo ID, verification in the absence of photo ID and relying on expired photo ID in limited circumstances – see clauses 4.1.1.2, 6.1.2 and 4.1.2 of the LINZ A & I Guideline. How this can be achieved will depend on the circumstances, but the key points to remember are:

- the purpose is to gain adequate assurance as to the identity of your client;
- a file note must be recorded and retained setting out the steps taken to verify identity; and
- the requirements of Guidelines [6.48](#) and [6.49](#) must be met.

In the absence of acceptable photo ID, attestation as to the identity of the client should be by a person who does have adequate photo ID. For additional information and guidance, see clause 7(1)(b) of the LINZ A & I Standard and 4.1.2 of the LINZ A & I Guideline.

Witnessing by videoconference

When witnessing the signing of an A & I form by videoconference, lawyers should also be mindful of:

- whether videoconferencing is appropriate for the client, such as a very elderly client or a client with limited technical knowledge;
- whether the lawyer can recognise the client, such as where the lawyer has not had direct contact with the client for a significant period;
- whether the photo ID held on file is still current; and
- whether the lawyer and the client both have adequate videoconferencing facilities to ensure adequate image clarity/audibility throughout the videoconference connection.

M. Format of A & I forms

Guidelines

- 6.56 The format of A & I forms may be changed to accommodate the template of a lawyer's practice, but the content of the form must not be reduced.
- 6.57 The A & I form may be generated within Landonline and will pre-populate some information but must be completed with all necessary information.
- 6.58 Reference to instruments that are not part of the transaction or not required to be included in the A & I form may be deleted from the A & I form.

N. Execution of A & I forms by attorney

Guidelines

- 6.59 Where an A & I form is executed by an attorney, the lawyer needs to exercise special care and attention relative to both identity of the attorney and currency of the power of attorney.

- 6.60 The lawyer must verify the identity of the attorney as if the attorney were the client.
- 6.61 Where the lawyer has not previously acted for the client or the attorney, the lawyer should make additional inquiries as to the veracity of the power of attorney.
- 6.62 The lawyer must ensure that the appropriate form of certificate of non-revocation of power of attorney is attached to the A & I form, especially in the case of an enduring power of attorney or a power of attorney given by trustees.
- 6.63 If the power of attorney has been deposited with LINZ, the certificate of non-revocation of power of attorney must refer to the instrument number of the power of attorney. If the power of attorney has not been deposited with LINZ, a copy of the power of attorney must be held on file with the A & I form.
- 6.64 The lawyer must ensure that the transaction is within the scope of the power of attorney.

O. Capacity

Guideline

- 6.65 The certifying and signing lawyer is required to make certifications as to the capacity of the client to give the authority (refer [section 27\(2\) of the Land Transfer Act 2017](#) and [regulation 7\(2\) of the Land Transfer Regulations 2018](#)). In order to do this, the lawyer should make the appropriate inquiry to confirm that the client exists, is not a minor, has mental capacity and is not an undischarged bankrupt.

Commentary

The lawyer is expected to make reasonable inquiries of the client as to capacity. The scope and extent of this inquiry will depend on the circumstances.

Minor

The LINZ A & I Guideline prevents lawyers from certifying and signing instrument for minors. The client makes his or her own statement as to age. If the client is a minor, the lawyer should seek the District Court's approval under [sections 98 to 101 of the Contract and Commercial Law Act 2017](#). The Court order should be attached to the A & I form granting the certifying lawyer the necessary authority to act, and the form should be modified by deleting the word "not" from the "minor" certification. If a minor acquires an interest in a property, evidence of the lack of capacity must be noted on the title.

Mental Capacity

In the absence of any background information or obvious behavioural indicators to the contrary, it may be assumed that the client has the necessary mental capacity to authorise the transaction.

Provided a lawyer has dealt with a client enough to reasonably form the view that the client is of sound mind, that knowledge should be sufficient. The lawyer or other witness needs to make that assessment at the time of establishing the identity of the client.

If the certifying lawyer has any doubts as to the client's mental capacity, it may be appropriate to make further inquiries or, if necessary, seek the opinion of a qualified health professional.

If the client appears to lack mental capacity, this will not necessarily preclude the client from dealing with their property (by e-dealing or otherwise). If an appropriately-qualified health professional provides written confirmation that the client has the capacity to understand the nature of what is being signed, then that is sufficient to meet the lawyer's statutory requirements. If a Manager has been appointed under the [Protection of Personal and Property Rights Act 1988](#)⁷, the Manager may sign the A & I form. Alternatively, a Court order can be obtained under the [Protection of Personal and Property Rights Act 1988](#)⁷.

A copy of the appointment of the property manager should be attached to the A & I form.

Bankruptcy

The lawyer must deal with the Official Assignee where the client is an undischarged bankrupt. The Official Assignee signs the A & I form. A copy of the appointment should be attached to the A & I form, and the form should be modified by deleting the word "not" from the "bankruptcy" certification.

Corporates

In the case of a corporate client, the lawyer needs to be satisfied that the corporate has in fact been incorporated by or under a statute, and has not been struck off.

Lawyers should satisfy themselves that the constitution of a corporate does not preclude the transaction. In the case of Public Corporates, governing legislation should be checked to confirm that the transaction is permitted (eg the [Crown Entities \(Financial Powers\) Regulations 2005](#)⁷ and the [Public Finance \(Departmental Guarantees and Indemnities\) Regulations 2007](#)⁷).

Public Corporates can nominate any authorised signatory for signing the A & I form. Lawyers are not required to confirm that the signatory holds sufficient authorisation, unless the circumstances warrant additional scrutiny.

The Private Corporate and Public Corporate A & I forms contain a statement that the client has passed the necessary resolutions as required by its empowering constitution, rules or statute to authorise the transaction. In the absence of any background information to the contrary and assuming the lawyer has, in the case of a Private Corporate, taken reasonable steps to identify the persons signing the A & I form, the lawyer can reasonably rely on the authorised signatory's statement. This statement may be deleted from the Public Corporate A & I form where the client is a Ministry or Government department.

In the case of a company under the [Companies Act 1993](#)⁷ regard should be had to section 18 of that Act.

P. Retention of authorities

Guideline

- 6.66** Lawyers must retain for a period of not less than 10 years (or such other prescribed period) from the date on which the instrument is lodged for registration the evidence in support of the certifications made in an e-dealing.

Commentary

The retention requirement is contained in [section 30 of the Land Transfer Act 2017](#)⁷ and [regulation 7\(6\) of the Land Transfer Regulations 2018](#)⁸.

Examples of supporting evidence include:

- executed A & I form and photo ID;
- Institutional Chargeholder's authority to discharge a mortgage;
- if the A & I form is signed by an attorney:
 - the certificate of non-revocation of power of attorney; and
 - a copy of the power of attorney unless the power of attorney has been deposited at LINZ, in which case the certificate of non-revocation must record the LINZ instrument number for the power of attorney;
- a document showing the landowner's name and the physical address of the property (eg rates demand, bank statement or utility account) or a file note of any decision to dispense with linking the client to the property (where the lawyer or a trusted colleague (at the same law practice) knows the landowner personally and can vouch for their identity);
- a statutory declaration and corroborating evidence for any name discrepancy;
- client approval of the form of any new easements, leases, covenants or other instruments;
- consents given by mortgagees, caveators, local authorities or similar;
- file note of additional actions taken to verify "high risk" transactions;
- file note recording the basis on which a delegate is an independent trusted person upon whom the lawyer can reasonably rely; and
- file note recording, when the lawyer has used equally effective means of satisfying the requirements of the LINZ A & I Standard rather than a safe harbour method, why the lawyer opted out of using safe harbour and how the chosen means are effective.

Lawyers may elect to retain A & I forms beyond the 10-year period. This may be prudent where there are actual or pending proceedings. A check should be made of any mortgagee requirement or undertakings given in a solicitor's certificate as to a longer retention period.

A lawyer must be able to confirm, if the need arises, his or her authority to act after the transaction has been completed. The A & I form or other authority needs to be readily available for review.

Electronic retention of A & I forms must be in accordance with the opinion provided to the New Zealand Law Society in April 2014 entitled "Ownership and retention of records on termination of retainer" (available on the NZLS website at lawsociety.org.nz/for-lawyers/regulatory-requirements/guidance). This should also be cross checked against any mortgagee requirement.

If a client uplifts a file and/or deeds packet, care should be taken to retain the original A & I form or other authority (and any consents etc) as evidence of the authority for the lawyer effecting registration.

Similar considerations apply for lawyers who have certified and signed electronic instruments when leaving a law practice. Although the A & I form is generally addressed to the law practice, the lawyer who certified and signed remains personally responsible for its retention for 10 years in accordance with that specific certification on each instrument. While it would be usual for the recipient law practice to retain the A & I form and associated documentation, it would be prudent for the departing lawyer to obtain an indemnity and agreement from the law practice that the retention period and any requests made pursuant to a Compliance Review will be complied with. Ideally these are matters that should be incorporated in employment and partnership agreements. Given the law practice's contingent obligations for A & I form retention in the case of undertakings provided to mortgagees in solicitor's certificates, the law practice should retain the original and co-operate with any compliance review request.

Q. Mortgages

Guidelines

- 6.67 Unless there is a separate lawyer for the mortgagee, the purchaser's lawyer is responsible for preparation in the workspace of any mortgages to be granted by the purchaser on settlement. Mortgages cannot be certified and signed before receipt of A & I forms or other authority from both the mortgagor and the mortgagee (rule [2.5](#) of the Rules applies).
- 6.68 If the mortgagee is an Institutional Chargeholder, a letter of instruction from the mortgagee to prepare and register the mortgage is sufficient authority to certify and sign the mortgage for the mortgagee. An A & I form is not required from an Institutional Chargeholder.
- 6.69 An A & I form is required from the mortgagor and from any mortgagee who is not an Institutional Chargeholder. A signed mortgage in paper form is not an adequate substitute for an A & I form.
- 6.70 If a mortgagee refers to a priority amount under [sections 90 to 94 of the Property Law Act 2007](#), that amount must be included in the appropriate place in the A & I form and included in the mortgage instrument in the workspace. The phrase "plus interest" must be included in both the A & I form and mortgage instrument if required by the mortgagee.
- 6.71 If a mortgagee refers to mortgage terms set out in a memorandum, the memorandum number must be included in both the A & I form and mortgage instrument.

Commentary

Instruments

This Section Q applies to mortgage variation instruments and mortgage priority instruments (with any required amendments) in addition to mortgages.

Institutional Chargeholders

No A & I form is required from an Institutional Chargeholder where instructions:

- are in writing and sent by the mortgagee (including if sent by email);
- identify the law practice or lawyer authorised to certify and sign the mortgage;

- state the record of title references or otherwise clearly identify the subject property (eg by street address or legal description);
- if applicable, state the number of the memorandum to be used;
- state the names of the mortgagors; and
- if applicable, specify the priority amount (which may or may not be "plus interest").

Not all banks include all of the above information in their letter of instruction. It is acceptable if the omitted information is contained in the associated loan agreement.

Fixed sum mortgages

Where the mortgage is for a fixed amount with no accompanying loan agreement, the lawyer should include details of the mortgage within the text of the A & I form or attach the details to the A & I form and have it initialled or authorised in writing by the mortgagor. The disclosure requirements under the [Credit Contracts and Consumer Finance Act 2003](#) must also be considered.

Mortgagee separately represented

Where a mortgagee is separately represented, see the requirements of [Part 1](#).

R. Discharges

Guidelines

- 6.72 Unless there is a separate lawyer for a mortgagee or other chargeholder, the vendor's lawyer is responsible for preparation in the workspace of all discharges to be registered on settlement. Discharges cannot be certified and signed before receipt of A & I forms or other authority from both the mortgagor and the mortgagee ([rule 2.5 of the Rules](#) applies).
- 6.73 The lawyer must check the "reserve personal covenants" box in the discharge instrument if required by the mortgagee or other chargeholder.
- 6.74 If the mortgagee or other chargeholder is an Institutional Chargeholder, a letter of instruction from the mortgagee or other chargeholder to prepare and register the discharge is sufficient authority to certify and sign the discharge for the mortgagee or other chargeholder. An A & I form is not required from an Institutional Chargeholder. If the letter of instruction is received electronically, the email attaching the letter must also be retained.
- 6.75 An A & I form should be obtained from any mortgagee or other chargeholder who is not an Institutional Chargeholder. A signed discharge in paper form is not an adequate substitute for an A & I form.
- 6.76 An A & I form is not required from the mortgagor to register a discharge (see [schedule 3 of the Land Transfer Regulations 2018](#)).

Commentary

This Section R applies to all discharges, withdrawals, releases and satisfactions of mortgages, encumbrances and charges. Virtually all discharges (and partial discharges) may be registered via e-dealing.

The vendor's discharges should be in the same e-dealing as the transfer and any new mortgage being granted by the purchaser. This allows the purchaser's lawyer to confirm that clear title will be provided on settlement and to control registration of all required instruments.

No A & I form is required from an Institutional Chargeholder where instructions:

- are in writing and contain the Institutional Chargeholder's logo or letterhead;
- identify the law practice or lawyer authorised to certify and sign the discharge;
- state the record of title references or otherwise clearly identify the subject property (eg. by street address or legal description);
- state the type and registered number of the instrument to be discharged;
- identify the names of the signatories for the chargeholder and include a statement that those signatories have appropriate authority;
- state the names of the mortgagors; and
- if applicable, state whether the "reserve personal covenants" box must be checked.

The instructions must be received from the Institutional Chargeholder and either be:

- in letter form, on the letterhead of the Institutional Chargeholder and signed by a named representative of the Institutional Chargeholder; or
- in email form, sent from an email address at the Institutional Chargeholder and contain details of a contact person at the Institutional Chargeholder.

In addition, no A & I form is required from an Institutional Chargeholder where instructions are in the form of a signed paper discharge.

If an authority to discharge is received that has not been initiated by the law firm then further inquiry must be made to verify its veracity.

Where the person discharging the interest is separately represented, see the requirements of [Part I](#).

S. Transfers and other instruments

Guidelines

- 6.77 The purchaser's lawyer is responsible for preparation of the transfer in the workspace, along with any other instruments for which the purchaser is responsible under the base agreement.
- 6.78 The vendor's lawyer is responsible for preparation in the workspace of any instruments for which the vendor is responsible under the base agreement.
- 6.79 Transfers and other instruments cannot be certified and signed before receipt by a lawyer of the appropriate authority from their client ([rule 2.5 of the Rules](#) applies).

Commentary

Most instruments require certifying and signing by lawyers for each of the parties. In the case of a transfer, lawyers for the transferor and transferee must both certify and sign the instrument. The same applies for the grant, variation and surrender of leases, easements and covenants.

As a general rule, the minimum information to be included for each instrument on an A & I form is disclosed when an A & I form is populated from Landonline. This can be added to but should not be reduced.

Instruments

This Section S applies to most instruments, including:

- leases, easements, covenants, profits, encumbrances, and the variation and surrender or withdrawal of those interests;
- the transfer of any interest (eg the transfer of a lease, easement or mortgage); and
- transfer in exercise of a power of sale.

Approval of instruments to be uploaded

Where an instrument is required to be uploaded into Landonline, it is necessary to hold confirmation that the client has instructed the lawyer to upload that form of the instrument. This confirmation may be evidenced by:

- a copy of the instrument being attached to the A & I form and initialled by the client; or
- holding on file sufficient correspondence confirming the client's approval to the instrument.

Instructions required for instruments even if no A & I form is required

Some instruments do not require certification. These include:

- administrative items (e.g. notices, consents, certificates and applications) authorised by legislation; and
- orders for new records of title.

Despite there being no requirement for certification, the law practice must still hold sufficient instructions to submit the instrument.

Consent forms

Signed consent forms should be held with the proof of authority to register for the instrument to which consent has been given. Consent forms should not be uploaded into the workspace unless the required consent certification is not included in the Landonline certifications.

Transfer in exercise of power of sale

When an Institutional Chargeholder has exercised its power of sale under a mortgage, the letter of instruction to its lawyer should (in addition to meeting the requirements set out above for transfers) state that, following default by the mortgagor, the default notice required under the [Property Law Act 2007](#) was served and has expired with the default remaining unremedied and that the power of sale has been validly exercised.

Nomination

It is best practice for the A & I form for the transferor to record the name of the transferee followed by the words "or nominee" if a nomination could occur. If a nomination does occur, a clear paper trail evidencing the nomination should be retained with the A & I form.

T. Caveats, notices of claim and withdrawals of caveats and notices of claim

Guidelines

- 6.80 An A & I form is not required for a caveat if the certifying lawyer holds a letter, email, file note or other record of the client's instructions to lodge the caveat along with reasonable evidence of the caveatable interest claimed. It is, however, best practice to obtain an A & I form from the client in the usual way.
- 6.81 An A & I form is not required for a notice of claim under the [Property \(Relationships\) Act 1976](#) if the certifying lawyer holds a letter, email, file note or other record of the client's instructions to lodge the notice of claim, along with reasonable evidence of the interest claimed. This must include instructions of the date and location of a marriage or civil union or the duration of a de facto relationship, but does not need to include a copy of any marriage or civil union certificate. It is, however, best practice to obtain a copy of any marriage or civil union certificate and an A & I form from the client in the usual way.
- 6.82 Before certifying and signing a withdrawal of caveat or notice of claim, the lawyer must hold either:
- (a) an A & I form or other suitable proof of identity, capacity and authority signed by the client; or
 - (b) in the case of an Institutional Chargeholder only, written authorisation which:
 - (i) identifies the law practice or lawyer authorised to certify and sign the withdrawal;
 - (ii) states the record of title references or otherwise clearly identifies the subject property (eg. by street address or legal description);
 - (iii) states the registered number of the caveat to be discharged;
 - (iv) identifies the names of the signatories for the chargeholder and includes a statement that those signatories have appropriate authority; and
 - (v) states the names of the landowners.

U. Process of certification

Guideline

- 6.83 Every lawyer certifying and signing an instrument needs to be satisfied **personally** that the authorisation from the client is in order, that the identity of the client has been established to the lawyer's satisfaction and that all certifications relating to that instrument are true and correct.

Commentary

Lawyers must have systems in place for inspecting and checking all documents necessary to support the certifications given.

The lawyer is personally responsible for all certifications made for each signed instrument. This applies even if the A & I form has been witnessed by another lawyer, an employee of the law practice or someone outside the practice.

V. Certification by lawyer not from law practice named on A & I form

Guideline

6.84 If the attorney for a sole practice lawyer (pursuant to the [Lawyers and Conveyancers Act 2006](#) *) is certifying and signing pursuant to that power of attorney, there is no need to obtain a new A & I form from the client. In all other situations, a new A & I form will need to be obtained. This cannot be obtained retrospectively.

Commentary

In order for the attorney to have access to all of the sole practice lawyer's e-dealings it is necessary to have the attorney linked to the sole practice lawyer's e-dealing licence. This should be done at the time of appointment of the attorney. The linking enables access in an emergency without the need for any action by the sole practice lawyer. It is too late to arrange the linking when the sole practice lawyer is incapacitated as he or she needs to authorise the linking process via LINZ.

Refer also to [Section F](#) above. It is not necessary to change the named Conveyancing Professional in the Roles field if another Conveyancing Professional from within the law practice (or the sole practitioner's attorney) certifies and signs.

W. Releasing and submitting

Guidelines

- 6.85** Lawyers should have in place, with their employees, clear protocols dealing with the release of instruments and the submission of e-dealings.
- 6.86** Release should occur immediately after the receipt of payment of settlement funds. The vendor's lawyer should advise the purchaser's lawyer when instruments have been released.
- 6.87** The purchaser's lawyer will normally be responsible for the submission for registration of all instruments in the e-dealing, but this may be altered to the lawyer for another party (such as the lawyer for a mortgagee).
- 6.88** The e-dealing should be submitted as soon as practicable after settlement. In usual circumstances, this should be the same day.

Commentary

Release of an instrument gives effective control to the lawyer responsible for submitting the e-dealing.

The release of instruments is a core settlement obligation of the vendor. The vendor has not completed its settlement obligations until the vendor's lawyer has released the instruments.

X. Evidence of registration

Guideline

6.89 The lawyer for the purchaser should obtain a search of the record of title immediately following confirmation of registration from LINZ, and confirm that registration has been recorded correctly.

Y. Perfection of transaction

Guideline

6.90 Lawyers are required to co-operate with the lawyers for the other parties to a transaction to ensure that registration is completed as intended by the parties.

7. Glossary

This Part defines all words and phrases used in the Guidelines. The definitions set out in this Part apply unless inconsistent with the context in which a word or phrase is used.

In the Guidelines:

- **"A & I form"** means the Authority and Instruction form giving a lawyer the necessary authority to change the Register on behalf of the client;
- **"Agreement"** means any agreement for sale and purchase of residential property;
- **"AML/CFT"** means Anti-Money Laundering and Countering Financing of Terrorism (see the [Anti-Money Laundering and Countering Financing of Terrorism Act 2009](#) ⁷);
- **"Base Document"** means, for the purposes of A & I forms, the document describing the underlying contractual basis of the transaction (for example, an agreement for sale and purchase, property relationship agreement or survey plan);
- **"Conveyancer"** means a person, not being a lawyer or a person acting under the supervision of a lawyer, who provides conveyancing services (Lawyers and Conveyancers Act 2006, s6)
- **"Conveyancing Practitioner"** means a person who holds a current practising certificate issued by the New Zealand Society of Conveyancers (Lawyers and Conveyancers Act 2006, s6)
- **"Conveyancing Professional"** means the Practitioner who Certifies and Signs an instrument in Landonline;
- **"Digital Certificate"** means a certificate issued digitally by LINZ which allows secure access to Landonline;
- **"FATCA"** means the Foreign Account Tax Compliance Act (US);
- **"Institutional chargeholder"** means:
 - a. an institution, such as a bank, building society, credit union, financier, lawyer's nominee company, Private Corporate, Public Corporate or other organisation which regularly lends money or provides credit in the course of its business activities (but excluding individuals or contributors under a contributory mortgage advance); or
 - b. an institution (excluding an individual or individuals) which makes a practice of entering into mortgages as trustee, nominee or as a custodian or custodian bank or global custodian for institutions of the type referred to in paragraph (a) despite the institution not itself engaging in lending money or providing credit; or
 - c. a territorial authority, Ministry, government department, Crown entity or other similar organisation which registers encumbrances or charges against land in the normal course of its activities;
- **"LIM"** means a Land Information Memorandum issued under [section 44A of the Local Government Official Information and Meetings Act 1987](#) ⁷;
- **"LINZ"** means Land Information New Zealand;

- "LINZ A & I Standard" means the Authority and Identity Requirements for E-Dealing Standard 2018 published by LINZ and which commenced on 12 November 2018 (available at linz.govt.nz/regulatory/20018);
- "LINZ A & I Guideline" means the Authority and Identity Requirements for E-Dealing Guideline 2018 published by LINZ and which commenced on 12 November 2018 (available at linz.govt.nz/regulatory/20775);
- "OIA" means the [Overseas Investment Act 2005](#) ⁷;
- "OIO" means the Overseas Investment Office;
- "Passphrase" means a password used by Conveyancing Professionals for Certifying and Signing instruments with the Conveyancing Professional's Digital Certificate;
- "Password" means the password used to login to Landonline;
- "PPSR" means the Personal Property Securities Register;
- "Practitioner" means a "practitioner" as defined in the [Land Transfer Act 2017](#) ⁷ (i.e. a lawyer or a conveyancing practitioner);
- "Primary Contact" means the person responsible for the day to day management of the e-dealing, including the preparation of instruments and (unless restricted by the law practice's Landonline system manager) will be able to Release instruments and Submit e-dealings;
- "Private Corporate" means any corporate entity which is not a Public Corporate, and includes companies which are not listed on the main board of the New Zealand stock exchange (NZSX), limited partnerships, charitable trusts, incorporated societies, building societies and Māori incorporations;
- "Public Corporate" means:
 - a. a company which is listed on the main board of the New Zealand stock exchange (NZSX);
 - b. a local authority listed in [schedule 2 of the Local Government Act 2002](#) ⁷;
 - c. a council-controlled organisation as defined in [section 6 of the Local Government Act 2002](#) ⁷;
 - d. the Crown acting by and through a Minister or government department;
 - e. a State enterprise listed in [schedule 1 of the State-Owned Enterprises Act 1986](#) ⁷ and any subsidiary of a State enterprise;
 - f. a trustee company defined in [section 2 of the Trustee Companies Act 1967](#) ⁷;
 - g. a company listed in schedule [4](#) ⁷, [4A](#) ⁷ or [5](#) ⁷ of the Public Finance Act 1989;
 - h. a Crown entity as defined in [section 7 of the Crown Entities Act 2004](#) ⁷ (including Crown entities listed in schedule [1](#) ⁷ or [2](#) ⁷, Crown entity subsidiaries, school boards of trustees and tertiary education institutions);
 - i. NZ Defence Force acting through the Chief of Defence Force; and
 - j. a registered bank within the meaning of [section 2 of the Reserve Bank of New Zealand Act 1989](#) ⁷.

- **"Realforms Agreement"** means the Agreement for Sale and Purchase of Real Estate published by Realforms New Zealand Limited;
- **"Register"** has the meaning set out in [section 5 of the Land Transfer Act 2017](#) [↗];
- **"REINZ/ADLS Agreement"** means the Agreement for Sale and Purchase of Real Estate approved by the Real Estate Institute of New Zealand Incorporated and Auckland District Law Society Incorporated;
- **"RLWT"** means Residential Land Withholding Tax;
- **"RMA"** means the [Resource Management Act 1991](#) [↗];
- **"Rules"** means the [Lawyers and Conveyancers Act \(Lawyers: Conduct and Client Care\) Rules 2008](#) [↗] (available from legislation.govt.nz/regulation/public/2008/0214/latest/DLM1437806.html); and
- **"SCP"** means the same day cleared payments system of direct transfer between bank accounts operated by banks participating in Payments New Zealand's high value clearing system (the list of which is set out at paymentsnz.co.nz/join-us/participation/)