

Torrens *talk*

Survey and Title Information for Land Professionals

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Framework in Place for Electronic Lodgement

Over the last few months LINZ has put in place the remaining elements of the regulatory framework for electronic lodgement, under the authority of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (the amendment Act). The key aspects are:

- the 'electronic transactions land' declaration and removal of duplicate titles
- requirements for supporting evidence for certifications
- statutory compliance certifications
- specification of forms for electronic instruments.

1. Regulatory Requirements for Landonline Stage Two

1.1 Electronic Transactions Land – Removal of Duplicate Titles

Electronic transactions land

To pave the way for the lodgement of eDealings, requirements relating to the production of duplicate certificates of title have been removed. This change took effect on 14 October 2002. This is the operative date of the notice published in the New Zealand Gazette¹ declaring land to be electronic transactions land pursuant to section 25 of the amendment Act.

The electronic transactions land declaration has been made in respect of every freehold, unit title or leasehold estate held in a computer register. Section 18 of the amendment Act expressly prohibits the Registrar from issuing new certificates of title for electronic transactions land and deems existing certificates of title to be cancelled.

Banks and other lending institutions have been consulted on these matters and are making the necessary changes to their letters of instruction and mortgage memoranda. Practitioners should be aware that the removal of duplicate titles does not release their clients from any obligations they may have to seek mortgagee consent before transferring, mortgaging or otherwise dealing with their property.

Security of title and protection against fraud

The removal of duplicate titles has naturally led to some debate about the risk of fraud and the coverage provided by the compensation provision of the Land Transfer Act 1952.

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1 See the New Zealand Gazette 2002, Issue No.150, Page 3895.

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Landonline Stage Two, due for implementation early in 2003, will introduce digital lodgement of cadastral survey datasets (CSDs).

The Office of the Surveyor-General has been busy helping to facilitate what will be one of the most significant changes in the history of cadastral surveying.

The Surveyor-General's Rules for Cadastral Survey have been revised to incorporate provision for digital lodgement of cadastral survey data, and new processes for attaching Territorial Authority certifications to digital cadastral survey datasets are being developed (see articles in this issue).

The conversion of existing survey plan data to digital data is well advanced (see below). The resulting Survey-accurate Digital Cadastre (SDC) will provide for the more efficient validation and integration of new surveys lodged into Landonline. It will also provide an accurate spatial framework for a wide range of land development, resource management, facilities management and administrative activities.

LINZ has contributed to the development of the LandXML data exchange format which will be used for the transfer of survey data between Landonline and survey software packages. A new version of the Cadastral Survey Guidelines has been prepared for eSurveys (digital survey data). The pilot version of these guidelines is currently being tested by surveyors involved in the Landonline Stage Two pilot, and their feedback will be incorporated into the final version. This will be introduced in conjunction with the full implementation of Landonline Stage Two early in 2003.

The eSurvey version of the Cadastral Survey Guidelines version 5 (initially available only to surveyors involved in the pilot) has retained the same chapter and section layout as the previous version of the guidelines.

The existing guidelines will also be updated to reflect changes to the Surveyor-General's Rules for Cadastral Survey and will continue to be available for use with the production of hardcopy survey plans.

Updates to the guidelines will be published on the LINZ website and can be accessed via links on the Surveyors page or the Survey System page.

Tony Bevin
Surveyor-General

Check out the latest quarterly statistics for activity volumes and performance information on the Titles and Records section of the LINZ website www.linz.govt.nz

Did you know you can access back issues of *Torrenstalk* on the Internet? Check out the Publications section of the LINZ website www.linz.govt.nz

Change to SG Rules for Cadastral Survey

The Surveyor-General's Rules for Cadastral Survey have been revised to provide for digital lodgement of cadastral surveys under **Landonline** Stage Two.

The new rules, known as the **Surveyor-General's Rules for Cadastral Survey 2002/2** were made under Sec 49 of the Cadastral Survey Act 2002. They were gazetted on 17 October 2002 and came into effect on 29 October 2002.

Copies of the new Rules are available from the LINZ web site – www.linz.govt.nz – via the 'Surveyors' page. Alternatively, a print of the Rules can be obtained at a cost of \$10 from:

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The main change is a new schedule (Schedule 3) which sets out the standards for a digital cadastral survey (eSurvey). This mirrors the requirements for hard copy surveys as set out in Schedule 2. A number of other changes have been made after consultation with surveyors and other affected groups. A document describing the changes from the current Rules is also available from the Surveyors page on the LINZ website.

The main changes, in addition to the requirements for digital surveys, are:

- changes in the definition of survey classes to extend the usage of Class II
- changes to the scope of Class IV dispensations
- a slight relaxation to the accuracy requirement for Class I boundaries
- explicit extension of the boundary to origin accuracy standard to also apply between boundary and traverse marks
- a requirement to provide unique references for new boundary marks (similar to the existing requirements for new traverse marks)
- clarification that adopted marks cannot act as witness marks and, conversely, that adopted boundaries do not need to be witnessed
- a requirement to include all balance parcels on digital surveys (without full survey definition in some cases)
- the terms "survey sheet" and "title sheet" to replace "survey plan" and "title plan"
- removal of the requirement to show Land District, survey district, survey block, territorial authority and registration district boundaries
- dominant tenement not required to be shown for existing easements
- removal of the requirement for unit appellations in multi-level developments to refer to the level number.

Survey Conversion Milestone

In August 2002, EDS completed the conversion of the South Island paper survey records and loaded the digital data for the 410,000 parcels into **Landonline**. Conversion of the Wellington Land District commenced at the same time and is scheduled for completion at the end of the year. This will be followed, in order, by Hawke's Bay, Gisborne, South Auckland,

Taranaki, and North Auckland. EDS has doubled conversion throughput since the start of the year and with further improvements are planning to complete the project by the end of 2003.

Territorial Authority (TA) Certification for eSurveys (Digital Plans)

Landonline Stage Two, due to be implemented early in 2003 following the current pilot, provides for TA Certifications to be on a print of the digital plan title graphic or on a separate page. The certification is to be scanned and the image attached to the digital cadastral survey dataset (CSD).

The existing **Landonline** Stage One process will continue to apply to plans lodged in hard copy format.

LINZ is proposing to develop an optional online certification process as a future enhancement to **Landonline** following the introduction of **Landonline** Stage Two. TAs have been consulted on the options for online certification and there is general support for the concept. Details of the design have yet to be worked through. The **Landonline** Stage Two process of attaching an image of the TA certification to the CSD will continue to be an option.

As an alternative to attaching the TA certificates to the plan before submission for survey approval, they can be lodged with the deposit documents. LINZ recommends that the Resource Management Act Section 223 certificate, and other certificates relating to the content of the CSD, be obtained prior to submission (lodgement) of the eSurvey for approval by LINZ. Otherwise should the TA require any changes, a new or amending eSurvey will need to be submitted and more fees paid. eSurveys cannot be modified in **Landonline** after approval.

Where the certificates are incorporated in the CSD before submission, the **Landonline** Stage Two TA Certification process will be based on draft versions of the digital plans prepared by the surveyor using the **Landonline** Plan Generation facility.

The plan supplied to the TA for certification is draft because the final digital plans are generated only at the time of formal

submission of the eSurvey, and incorporate the TA certification as a page of the multi-page plan image. By the time the final eSurvey is submitted, it is too late to obtain and attach a TA certificate. The digital plan supplied to the TA must be an earlier version of the digital plan, which is labelled Draft to make this clear.

The digital plans will be in the form of a multi-page TIFF image so the TA has the option of receiving the draft plan in printed or digital image format.

There are two versions of the digital plan available (depending on TA preference):

- the Digital Survey Plan which includes survey and title sheets
- the Digital Title Plan that includes only title sheets and shows boundary distances but not bearings.

This process of having certification based on a draft plan will allow the surveyor to facilitate TA processing in parallel with completion of field requirements for the survey. The title sheets of the digital plan could be generated prior to completion of the field work (including pegging). The surveyor will need to ensure that subsequent field work does not result in a material change to the title sheets, or else re-certification may be required.

The surveyor will generate the certificate to be signed by the TA. Often there will not be sufficient space to add the TA certificates to the draft plan graphic. The certificates can be on a separate page which shall include the LINZ survey reference number as a unique identifier relating the endorsement being applied to the particular CSD.

More detail on the TA certification process will be provided in the Office of the Surveyor-General Guideline 4 'Guideline for Certification of eSurveys by Territorial Authorities'. A pilot version of this guideline has been distributed to survey firms and Territorial Authorities participating in the **Landonline** Stage Two pilot.

For more information on **Landonline** Stage Two see: www.landonline.govt.nz/whatisit/stagetwo.htm

RGL Rulings



This section contains rulings and decisions of the Registrar-General of Land arising from appeals, legal opinions and practice issues agreed to by all Senior Advisers Regulatory (Titles). A principal aim has been standardisation of interpretation and practice nationwide. The information is applicable in all LINZ offices.

Robbie Muir
Registrar-General of Land

Framework in Place for Electronic Lodgement *continued from page 1*

The integrity of the Land Transfer system has been a paramount consideration during the development of **Landonline** and extensive controls have been put in place to ensure there is an appropriate level of security in the Stage Two environment. This includes:

- the Registrar-General of Land's (RGL's) certification requirements and audit regime
- the ability to bar access to the **Landonline** system if audit requirements are not met
- criminal sanctions for fraudulent certifications
- NZLS Rules and Guidelines for eDealings
- the use of digital certificates, intrusion detection and other system security measures to ensure only authorised users can access **Landonline**
- system monitoring to flag unusual activity or transactions with a high-risk profile
- new requirements for identification and the ability to call for further proof of execution for registrations lodged in paper form.

With these measures in place, LINZ is confident that the risk of title fraud will not be any greater under the new regime. The controls around electronic registration may in fact prove to be more effective for preventing fraud, given the added emphasis on verification of identity.

The system does, of course, rely on the integrity of the conveyancing professional. However, this is also true of the traditional paper environment where, because of their trusted position, lawyers have always had access to title documentation.

Compensation for fraud

Although relatively uncommon, fraud occasionally occurs in the paper-based registration environment. A determined fraudster may find a way around any system, no matter how robust. It would be unrealistic to expect that the Stage Two environment will be completely immune from such activity.

If fraud does occur, a registered proprietor who suffers loss as a result will be entitled to claim compensation in terms of s172 of the Land Transfer Act 1952.

The case law on this subject establishes that s172(b) provides for compensation in the event of fraud and such payments are made by the RGL from time to time. This will apply equally in the electronic environment.

1.2 Requirements for supporting evidence for certifications

The electronic lodgement process is underpinned by the certification regime authorised under sections 164A to 164E of the amendment Act. The certifications provide confirmation as to authority, verification of identity and capacity, compliance with statutory requirements and retention of supporting evidence. The form of the required certifications is prescribed in regulation 12 of the Land Transfer Regulations 2002.

LINZ will undertake regular audits to provide assurance that certifications are being made in an appropriate manner. Section 164C(3) authorises the RGL to require production of supporting documentation for this purpose.

In order to provide some flexibility, the legislation is non-prescriptive as to the form of documentation that may be retained as supporting evidence for certifications. Section 164C(3) does, however, enable the RGL to specify non-mandatory requirements, which, if followed, must be regarded as satisfying the evidentiary requirements. The New Zealand Law Society has prepared a set of guidelines for lawyers to follow to ensure compliance. The specifications gazetted pursuant to section 164C(3) endorse these guidelines.²

² See the New Zealand Gazette 2002, Issue No.166, Pages 4175-4181.

An important feature of the New Zealand Law Society Guidelines is the 'Authority and Instruction' form. Practitioners can use this form to obtain the necessary authorisation from their client for the lodgement of eDealings via **Landonline**. The form provides a means of documenting and evidencing the steps taken to verify identity and capacity in accordance with the certification requirements.

The guidelines establish a threshold for what constitutes reasonable inquiry as to identity and capacity for the purposes of electronic registration. An effort has been made to strike a sensible balance so that sufficient controls are in place without imposing unrealistic requirements on practitioners.

Identity can therefore be verified on the basis of the practitioner's personal knowledge of the client (where the practitioner has known the client for at least twelve months) or by sighting photo identification, such as a passport or driver's licence.

Establishing a reasonable threshold in relation to legal capacity has proved to be more of a challenge. Some aspects, such as age and minority, are straightforward and can be verified fairly easily. When it comes to soundness of mind, however, a practitioner cannot be expected to provide an absolute assurance that their client has the necessary capacity to enter into the transaction. When making an assessment as to such matters, a practitioner must rely on their experience, judgement and observations, given the particular circumstances of the transaction. The nature of the assessment to be made is similar to that required of an attesting witness to a paper transaction where further proof of execution is required. In that context, the witness must make a declaration (see Form 28 of Schedule 2 of the Land Transfer Regulation 2002) that includes a clause stating that the executing party "appeared to be of sound mind and did freely and voluntarily sign the instrument".

Legal capacity has other dimensions when dealing with corporate entities. In the case of a corporate client, e.g., a company or incorporated society, a practitioner needs to be satisfied that the party who authorised the

transaction has the capacity to do so under the Constitution or Rules of the corporate. A special authority and instruction form has been devised for this purpose.

The Law Society Guidelines provide practical guidance as to the scope of the practitioner's responsibilities in these matters.

1.3 Specifications for statutory compliance certifications

The scope of the statutory compliance certification is determined by the legislative requirements specified by the RGL under section 164A(3)(c) of the amendment Act.³ This is designed to cover any statutory requirements that would otherwise have been policed through the registration process, which the **Landonline** system cannot check automatically. Examples might be the restrictions that apply where a territorial authority disposes of land under section 230 of the Local Government Act 1974, or the confirmation requirements for alienation of Maori freehold land under Te Ture Whenua Maori Act 1993.

To assist those giving certifications, a data-matching exercise has been undertaken to identify land that is or could be Maori freehold land. The identification process is not absolutely definitive because only the Maori Land Court can make authoritative determinations in regard to such matters. Accordingly, such details will not appear in a title search unless documentation establishing land status via the Maori Land Court has been registered. The results of the matching exercise will, however, be used to flag titles so that when an electronic instrument is prepared for lodgement under **Landonline** Stage Two, the system will notify the certifying lawyer that a certification as to compliance with Te Ture Whenua Maori Act 1993 may be required.

It should be noted that the statutory certifications listing only aims to cover statutory requirements that would otherwise have been policed in some way via the registration process. It is not intended to be a comprehensive conveyancing checklist for all legal requirements. Requirements that fall outside the registration process must be addressed by practitioners in the usual way.

1.4 Specification of forms for electronic instruments

Forms for electronic instruments have been specified pursuant to section 26 of the amendment Act, by notice in the New Zealand Gazette.⁴ These are not forms in the traditional sense, as no paper document is required for registration in the electronic environment. Rather, the electronic instrument is made up of the transaction details and certifications entered electronically via the data fields provided in the Stage Two workspace. The specifications for electronic forms therefore focus primarily on information content rather than layout.

Electronic instruments need not contain an operative clause, as the act of registration gives effect to the instrument by virtue of section 41(4) of the principal Act.

2. Commencement of s167A of the Land Transfer Act 1952

An Order in Council bringing into force section 58 of the amendment Act was gazetted at the beginning of November and takes effect from 5 December 2002.

This inserts a new section 167A into the principal Act, authorising a new conveyancing instrument called a 'deposit document'. The deposit document is an alternative method for supplying territorial authority approvals and other consents that may be required for the deposit of survey plans or issue of titles.

Once this provision is in force, the Registrar-General of Land will specify forms for deposit documents by notice in the Gazette. Standard formats will be provided for the various types of plan approvals, including those required under the Resource Management Act 1991 and the Unit Titles Act 1972.

These documents will initially be available for use by territorial authorities in paper form. This procedure will also facilitate the future introduction of an electronic system for submission of territorial authority approvals.

3,4 See the New Zealand Gazette 2002, Issue No.166, Pages 4175-4181.

3. New consent form

A new form for consents has been specified in the Gazette pursuant to section 238 of the Land Transfer Act 1952.⁵ This form has been devised for use where the consent of a mortgagee or some other party is required to enable registration. The completed consent form should be attached to the instrument concerned in the same manner as an annexure schedule.

Other forms of consent will still be accepted provided the relevant details are supplied.

An example of the consent form is reproduced on page 7.

4. Form approvals

There has been considerable interest in the availability of the new Land Transfer forms following the commencement of the Land Transfer Regulations 2002.

Several applications for form approvals have been received in recent months and the full range of forms in the new format should be available from the usual commercial suppliers shortly.

As advised in *Torrenstalk* 22 (September, 2002), existing approved forms may continue to be used, despite the slight differences in format. For the time being, this also applies to easement certificates which, with the necessary modifications, may be adapted for use as easement instruments.

One-off documents that correspond exactly with the forms prescribed in the regulations will not incur a form approval fee. If, however, the standard wording is altered or there is any change in the layout of the form, an approval fee may be charged. Standing approval should therefore be sought for any forms intended to be used on an ongoing basis. This allows the form to be produced with an approval number issued by LINZ, thus providing the user with some assurance that it is acceptable for registration purposes.

5. Sections 70 and 145A of the Land Transfer Act 1952

Sections 42 and 58 of the amendment Act insert new sections 70 and 145A into the principal Act. Section 70 sets out a new procedure for the removal of redundant easements while section 145A provides another option for triggering the lapsing process for caveats. The commencement of these provisions was deferred when the amendment Act came into force earlier this year. It is anticipated that these provisions will be brought into force early in 2003.

6. Creation of easements on deposit of plan

Section 90B of the principal Act provides a facility for creating easements directly upon the deposit of a plan. This procedure is not available as yet, but will be activated in the near future when the relevant forms are specified pursuant to Section 90B(4).

⁵ See the New Zealand Gazette 2002, Issue No.166, Pages 4175-4181.

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