

# Torrens *talk*

Survey and Title Information for Land Professionals

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## Amendments to the Land Transfer Act In Place

As outlined in *Torrenstalk* 21 (June, 2002), the Land Transfer Act 1952 (the principal Act) has been extensively amended by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (the amendment Act). These changes have been made to support **Landonline** Stage Two, and rationalise and update provisions of the principal Act.

Most of the changes to the principal Act came into force by Order in Council on 26 August 2002. New regulations have also been promulgated in place of the Land Transfer Regulations 1966. This article explains:

- new requirements for transfers, mortgages, leases, easements, covenants, caveats, notices and other matters
- Land Transfer Regulations 2002 (the 2002 Regulations)
- the proposed timing for the abolition of duplicate certificates of title, and
- the repeal of the Landbroker licensing provisions.

### 1. Amendments to the Principal Act


#### General requirements for Land Transfer forms

Section 62 of the amendment Act repeals sections 237 and 238 of the principal Act, which set out the current regime under which printed forms are approved and variations to prescribed forms are authorised. New sections 237 and 238 have been substituted in place of these provisions.

The new section 237 sets out general requirements for paper forms. As well as containing the information required under the principal Act, paper instruments must also comply with requirements prescribed in regulations. Regulation 7 of the 2002 Regulations restates existing requirements as to paper size, colour and density. Forms for paper instruments may be prescribed by regulations or specified by the Registrar-General of Land (RGL). If properly completed, such forms must be regarded as containing the information required by the principal Act. A paper instrument that meets all these requirements is in an acceptable form for registration.

An updated set of forms is prescribed in Schedule 2 of the 2002 Regulations.

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# Survey Information

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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](http://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](http://www.linz.govt.nz)



A major focus for the Office of the Surveyor-General is currently on preparations for the introduction of **Landonline Stage Two**, which provides for digital lodgement of cadastral survey datasets (**eSurvey**). The New Zealand Institute of Surveyors and Land Information New Zealand are working together to deliver education seminars to surveyors, and the current Surveyor-General's Rules (former Survey Regulations) are being reviewed for the introduction of Rules required for **eSurveys**. Feedback from the seminars is showing a very encouraging interest by surveyors in digital lodgement.

Tony Bevin  
Surveyor-General

### Update of the Surveyor-General's Rules for Cadastral Survey

The Cadastral Survey Act 2002:

- provided for the Surveyor-General to set standards for cadastral surveys in the form of rules which have the power of regulations; and
- created the first set of rules based on the Survey Regulations 1998 and Sections 57, 58 and 60 of the Survey Act 1986.

These rules, known as the "Surveyor-General's Rules for Cadastral Survey 2002/1", are available on the Survey System section of the LINZ website.

In order to allow digital lodgement of cadastral surveys under **Landonline** Stage Two, a new set of rules will be required. These will set out the requirements of a digital survey or **eSurvey** in a new Schedule 3. This new Schedule 3 will be similar to Schedule 2, which sets out the provisions applying to hard copy plans.

A number of other minor amendments are proposed to the rules, which are designed to offer additional flexibility in cases where experience indicates a change to the current Regulations/Rules is desirable.

The Surveyor-General is required, in setting rules, to consult with a body or bodies representing cadastral surveyors. Consultation has started with representatives of the New Zealand Institute of Surveyors.

The new set of rules, which will be known as the "Surveyor-General's Rules for Cadastral Survey 2002/2" will need to be in place for the start of the **Landonline** Stage Two Pilot which is currently scheduled for 14 October 2002.

### Connection of Cadastral Surveys to NZ Geodetic Datum 2000

In response to the question of whether surveyors have to start using NZGD 2000 as soon as **Landonline** rolls out in a Land District, section 3.5.1.2 of the Cadastral Survey Guidelines states:

*No. Once **Landonline** rolls out in a Land District, NZGD 2000 becomes an official geodetic datum, which means that you can use it.*

*You will be required to use it after completion of Survey Conversion in that Land District (subject to the distance limit of 1km or other dispensation from the Chief Surveyor (now Senior Advisor to Surveyor-General) on the grounds of practicality).*

Surveyors will be advised when Survey Conversion has been completed in each Land District – this being the date from which the requirement to start using NZGD 2000 will apply. Even then, the requirement that surveys be in terms of NZGD 2000 will generally only apply to those surveys where the survey work started after that date. If you had already obtained an NZGD49 origin before the completion of Survey Conversion (or Old Cadastral if more than 1km from NZGD49 control or surveys), you can continue to use that origin for the remainder of that survey. It will be necessary to explain this in the survey report.

The Survey Conversion project has been somewhat delayed since this policy was set. At the time, it was expected that completion of Survey Conversion in a region would follow several months after roll out of **Landonline**.

**Landonline** has now completed roll out in all parts of New Zealand. The NZGD 2000 control that supports the survey conversion project is in place in all conversion areas. Information about NZGD 2000 control points can be obtained from **Landonline** or from the LINZ web site.

Therefore, as of 1 October 2002, all new surveys which are within 1km of NZGD 2000 geodetic control marks will be expected to connect to those marks – either directly with new observations or through adoption of existing approved survey observations.

As a transitional measure, where a survey is lodged after 1 October 2002 but the definition of an origin and the traversing work was completed before that date, it will not be necessary to connect the survey to NZGD 2000 (although it may still be necessary for the survey to be in terms of NZGD49). In this case, a note should be added to the survey report indicating that the survey has not been connected to adjacent NZGD 2000 control because the survey traverse work was completed before 1 October 2002.

The answer to Frequently Asked Question 2 in section 3.5.1.2 of the Cadastral Survey Guidelines will be updated to reflect this decision. The existing responses to the other questions still apply.

### Provision of Unique Names for Boundary Marks in Landonline

Under the current SG Rules for Cadastral Survey (and the former Survey Regulations 1998) traverse marks are required to have unique reference numbers (Schedule 2, clause 7(e)). This requirement has not applied to boundary marks although some surveyors do provide unique references for boundary marks also.

Provision of unique mark references assists with cross-referencing in survey reports, traverse sheets, etc. For surveys lodged into **Landonline** (which is now all cadastral surveys) it provides even greater assistance with interpretation of automated survey validation reports.

For hard copy surveys captured by LINZ staff, the validation reports generated by the system can speed up confirming both that the survey has been captured correctly, and the correctness of the survey itself. The assistance of these reports is limited, if though, (for example) a problem is reported with PEG DP 3##### and there are 20 or more such pegs with identical mark names.

This issue will become more apparent to surveyors in the future with the implementation of **Landonline** Stage Two when surveyors will also be reading pre-validation reports on eSurveys and attempting to interpret them.

Unique mark references also assist with spatial searching for marks in **Landonline** and will help make referencing of these marks easier in the future when other surveyors incorporate them as old or adopted marks in their surveys. The capture or import of mark details into **Landonline** Stage Two will also be easier and more reliable if all marks have reference numbers.

Consideration is therefore being given to making the provision of unique mark references mandatory for new marks in a future revision of the Surveyor-General's Rules for Cadastral Survey. In the meantime surveyors are encouraged to provide unique references for all new boundary marks (and unmarked but dimensioned boundary points) on new cadastral surveys.

At this stage, no specific format is proposed for these mark references although the following characteristics should be considered.

- It is helpful to have a logical system for numbering as this assists with quickly locating a given mark on a large survey plan. This logical system could be based on the number of the traverse mark from which the boundary mark was placed, parcel lot numbers, or similar.
- Ideally the mark references should be short and not easily confused. This counts against roman numerals where a number like XXXVIII is less clear and convenient than 38. Also data entry in **Landonline** is optimised as much as possible for use of the numeric keypad. For these reasons, the use of Arabic numerals (0-9) is encouraged for *all* new marks (boundary and traverse) on a survey.
- The references should be unambiguous in upper case, which is how they are captured, presented and searched in **Landonline**. Therefore "2A" and "2a" will be indistinguishable – as will "Ili" and "III".

### LandXML Data Exchange Format Ratified

In *Torrenstalk* 20 (March, 2002) we outlined proposals to adopt LandXML as the data exchange format for transferring digital data between **Landonline** and survey software packages.

In July 2002 LandXML version 1.0 was accepted as an industry standard by the USA-based Land Development and Transportation Industry Consortium. This is good news for LINZ, survey software vendors and for surveyors as it means that software support can progress on the basis of the ratified version 1.0 schema.

LandXML had been developed by Autodesk in consultation with the LandXML Advisory Board comprising 180 land development and transportation industry professions from 86 organisations including a number of international organisations. LINZ has participated in the development of LandXML so that it incorporates the data elements required for the digital submission of cadastral survey data to **Landonline** and for the extraction of survey data from **Landonline**.

Most of the survey software vendors active in New Zealand have indicated support for LandXML and are currently developing facilities to enable the transfer of digital survey data to and from **Landonline**.

For more information refer to:  
[www.landxml.org](http://www.landxml.org) and [www.landonline.govt.nz](http://www.landonline.govt.nz)

or contact Mack Thompson  
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### Geodetic Survey and Maintenance Contracts

Over the past three years geodetic survey and maintenance contracts have focused on the provision of NZGD2000 5th order control in the Survey Conversion areas. This control has been developed by upgrading existing standard traverse networks and by resurveying existing cadastral marks. In these areas the distance between a boundary mark and an NZGD2000 5th or higher order mark should in general be no more than:

- 200m in an urban area
- 600m in a peri-urban area, and
- 2km in a rural areas.

The focus of the geodetic survey and maintenance programme is now on the upgrading of selected existing NZGD49 control to NZGD2000 status and placement of new control in developing areas. Marks selected for upgrading included beacons trig stations often used for bearing control. The 2002/03 programme will focus on the South Island.

### Use of Plan Forms with Old Certification Text

Plan forms with the surveyor's declaration referring to *Registered Surveyor, Survey Act 1986* and *Survey Regulations 1998* may be used if the survey was commenced before 1 June 2002, when the Cadastral Survey Act 2002 came into force. This is allowed under Section 68(4)(a) of the Cadastral Survey Act.

The savings provisions under Section 68(4)(a) Cadastral Survey Act will not be allowed to extend beyond a reasonable period, such as three years.

The Surveyor-General has decided that plan forms with the above-mentioned superseded references may be used for surveys commenced after 1 June 2002, while the Surveyor-General's Rules remain the same as the Survey Regulations 1998. This is on the basis that this version of the rules is the first implemented by the Cadastral Survey Act 2002 and is exactly the same, as to survey practice requirements, as the Survey Regulations 1998.

When these rules change, at some stage in the future, the declaration will need to be updated for surveys carried out in accordance with those rules

# 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 Regional 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

## Amendments to the Land Transfer Act In Place *continued from page 1*

### Form approvals and non-complying forms

The process for approving and registering memoranda will remain the same. New form approvals will be granted in terms of the new prescribed forms. A form that does not fully comply with the new requirements may be accepted provided the non-compliance relates to a minor matter that will not affect the operation of the instrument once registered. Existing approved forms can therefore still be used after 26 August 2002.

### Execution of paper instruments

Sections 157 to 162 of the principal Act, which set out the execution and witnessing requirements for Land Transfer instruments, are repealed by section 56 of the amendment Act. They are replaced by a new section 157, which allows requirements for execution and witnessing of paper instruments to be prescribed by regulation. A modified version of the existing execution regime is now set out in regulation 16 of the 2002 Regulations, effectively maintaining the current rules for execution and witnessing.

If there is any doubt as to the authenticity of signatures, further proof of execution may be requested pursuant to regulation 16(3). Although this should occur only rarely, this power may become more important when duplicate titles are removed.

### Forms for notices and consents

Forms for notices and consents may be prescribed by regulations under the new section 238. If no form is prescribed the RGL may specify one.

Section 238(3) makes it mandatory to use the prescribed or specified form. A minor difference that does not affect the operation or effect of the notice or consent will not invalidate the form.

The 2002 Regulations do not include prescribed forms for notices or consents. These matters will instead be specified in accordance with section 240A of the principal Act. This will include forms for all the notice types provided for under the principal Act and a generic form for consents. The relevant details will be published in the *New Zealand Gazette*.

As there is currently no standard form for consents it can be expected that LINZ will continue to receive such documents in a variety of formats after the new form is specified. As a transitional measure, such consents will be accepted despite non-compliance with the specified form provided the relevant details are supplied.

### Transfers

New sections 90 to 90F of the principal Act have been substituted in place of the existing ones. The new section 90 provides that a "transfer instrument" may be used for transferring land or creating easements. This is equivalent to a memorandum of transfer. Section 90 sets out the essential elements of a transfer instrument and the execution requirements. A transfer instrument must be executed by:

- the registered proprietor of the land to be transferred
- if an easement or profit a prendre is created or the transfer contains covenants binding on that party; the person who takes the interest, and
- if an easement is reserved, the transferee.

The prescribed form for a transfer instrument is Form 2 in Schedule 2 of the 2002 Regulations.

### Creation and surrender of easements

The new section 90A provides that an "easement instrument" may also be used for creating or surrendering easements. This replaces the easement certificate procedure. The essential elements for an easement instrument are set out in section 90A(3). This

includes matters such as the computer register references for the dominant and servient tenements, the nature and extent of the easement and the rights and powers that apply. An easement instrument must be executed by:

- in the case of an easement not in gross, the registered proprietors of dominant and servient tenements, and
- in the case of an easement in gross, the registered proprietor of the servient tenement and the grantee.

The prescribed form for an easement instrument is Form 3 in Schedule 2 of the 2002 Regulations.

The new section 90D of the principal Act allows implied rights and powers for certain classes of easements to be prescribed by regulation (see below).

### **Easements over land in common ownership**

One of the more significant changes for easements is contained in the new section 90E of the principal Act. Under this provision, it is possible for easements to be created even where the dominant and servient tenements are in common ownership, thus reversing the position at common law.

Landowners will now have greater ability to put in place easement arrangements before disposing of individual allotments in a subdivision. Because easements created in this manner will come into being immediately upon registration, subsequent variations or surrenders can be effected without difficulty. This was not the case under the easement certificate regime, where technicalities sometimes prevented the use of easement certificates and there were no simple mechanisms to vary or cancel uncreated easements.

### **Repeal of easement certificate provisions**

The sections dealing with easement certificates have been repealed. The transitional provisions set out in section 66 of the amendment Act provide that any uncreated easements in registered easement certificates are deemed to be created.

As some easement certificates will already be in the pipeline, and it will probably be some months before easement instruments come into regular use, LINZ will continue to receive such documents for some time. As a transitional measure, easement certificates may still be accepted for registration, but from 26 August 2002 they will operate to create the specified easements immediately upon registration in the same manner as an easement instrument.

### **Removal of redundant easements**

The new section 70 provides for the removal of redundant easements. Where an application is made under this section, the RGL may remove an easement if satisfied that it is determined, extinguished or redundant. Unless the determination or extinguishment was by effluxion of time, the RGL is required to serve notice on the registered proprietor of the dominant tenement. A form has been prescribed for such applications in the 2002 Regulations (see Form 1 in Schedule 2). The new section 70 did not come into force on 26 August 2002 as it has been deferred.

### **Creation of easement upon deposit of plan**

To further streamline registration requirements for new subdivisions, provision has also been made to enable easements to be created or surrendered upon the deposit of a plan under section 90B. The details of the easements must be set out either in a deposit document pursuant to section 167A of the principal Act or on a plan in a form specified in rules made under the Cadastral Survey Act 2002. This procedure will become available when section 167A has been brought into effect (the commencement of this section has been deferred for the time being) and the relevant forms have been specified pursuant to section 90B(4).

### **Variation of easements**

Section 90C provides for the use of an "easement variation instrument" for varying the terms, covenants or conditions of any easement. The execution requirements are the same as for easement instruments.

The prescribed form for an easement variation instrument is Form 5 in Schedule 2 of the Land Transfer Regulations 2002.

### **Mortgagee consent for easements**

Requirements for mortgagee consent are set out in section 90E(3). Such consent is needed from any mortgagee of the servient tenement for the creation or variation of an easement, and from any mortgagee of the dominant tenement for the variation or surrender of an easement. These consents will be required for registration purposes.

### **Profit a prendre**

By virtue of section 90E(5), a profit a prendre may be created in the same manner as easements and sections 90A, 90B, 90C, and 90D apply accordingly.

### **Land covenants**

Under section 90F, land covenants that fall within the ambit of section 126A of the Property Law Act 1952 may be created in the same manner as easements. The provisions of sections 90A to 90E apply accordingly. Section 90F(4) makes it clear that despite the mode of creation, a notification under section 126A of the Property Law Act 1952 does not give a covenant any greater force than it would have had if created in some other way.

Section 126A of the Property Law Act 1952 has also been modified to enable notifications to be entered on the title for the land that has the benefit of the covenant. Formerly, only the title for the land subject to the covenant could be noted. This is one of several amendments set out in Schedule 4 of the amendment Act, which came into force on 1 June 2002.

Some modification will be required to traditional approaches for creating land covenants as a consequence of these changes. Note especially:

- Instruments containing land covenants should identify the land which has the benefit of the covenant by reference to the relevant computer register(s).
- The registered proprietor(s) of the land which has the benefit of the covenant should be a party to the transaction.
- The register for the benefiting land may be noted whether or not the duplicate title is produced (updated duplicates will not be issued unless the outstanding versions are produced).
- A request to have the covenant noted on the register for the benefiting land should be included in the covenant instrument.
- The standard memorial ('Land Covenant in Transfer No...') will be used.
- In the case of building schemes and other reciprocal covenant arrangements affecting multi-lot subdivisions, the recommended approach is to create all the covenants under a single transfer (ie, A to A) or covenant instrument before the allotments are individually transferred off. This simplifies the registration process considerably as the covenants can be noted by way of a single memorial on each affected title, as opposed to cluttering the register with a multitude of covenant memorials.
- If, in the case of a multi-lot subdivision, land covenants are created separately as each allotment is transferred off, LINZ may revert to the traditional approach and note the covenants on the title for the subject land only.
- The \$5 multi-title fee is payable in respect of each additional register on which the covenant is to be noted.

## **Mortgages and encumbrances**

Section 101 provides for the use of a "mortgage instrument" when registering a mortgage over land. The details to be included in such instruments are set out in section 101(2). Execution by the registered proprietor is a requirement under section 101(3). Similar provisions are made for encumbrances.

The relevant forms are prescribed in Schedule 2 of the Land Transfer Regulations 2002:

- all obligations mortgage (Form 6)
- fixed sum mortgage (Form 7)
- encumbrance (Form 8)

### **Variation of mortgage**

Provisions relating to mortgage variations are set out in section 102. The prescribed form for a "mortgage variation instrument" is Form 9 in Schedule 2 of the 2002 Regulations. Such instruments must be executed by:

- the mortgagor, except where the variation only operates to reduce the amount secured or rate of interest
- the mortgagee, except where the variation only operates to increase the amount secured or rate of interest.

If the land is subject to another mortgage, the consent of the mortgagee under that mortgage must be obtained.

### **Variation of priority**

Under section 103, the priority of a mortgage may be varied by registering a "mortgage priority instrument". The prescribed form is Form 10 in Schedule 2 of the 2002 Regulations. Such instruments must be executed by the mortgagor, and by every mortgagee under every mortgage that, as a result of the mortgage priority instrument, will be ranked after any mortgage over which it previously had priority.

## **Discharge of mortgage**

The requirements for registering a discharge of mortgage are set out in section 111. The prescribed form for a mortgage discharge instrument is Form 11 in Schedule 2 of the 2002 Regulations. Execution by the mortgagee is required.

## **Leases**

Leases may be registered in the form of a "lease instrument" in accordance with section 115. The prescribed form is Form 12 in the Second Schedule to the 2002 Regulations. A lease must be executed by the registered proprietor, and by the lessee. If the land is subject to a mortgage, the consent of the mortgagee must be obtained.

### **Variation of lease**

Under section 116, a "lease variation instrument" may be registered for the purpose of varying the term of a lease by way of extension and/or the covenants, conditions, and restrictions contained in the lease. The prescribed form is Form 13 in Schedule 2 of the 2002 Regulations. Execution by the lessor and lessee is required. If the land is subject to a mortgage, the consent of the mortgagee must be obtained.

### **Surrender of lease**

Section 120 provides for the use of a "lease surrender instrument" for surrendering a lease. The prescribed form is Form 14 in Schedule 2 of the 2002 Regulations. Execution by the lessor and lessee is required. A lease subject to a mortgage or sublease cannot be surrendered without the consent of the mortgagee or sublessee.

## **Other forms**

New forms have also been prescribed for:

- transmission to survivor (Form 15)
- transmission to personal representative (Form 16)

- correction or change of name (natural person) (Form 23)
- change of name (company or incorporated society) (Form 24).

### Caveats

The provisions dealing with caveats have been rationalised and modified. The key changes are:

- **New caveat forms.** New forms have been prescribed in Schedule 2 of the 2002 Regulations. These are:
  - caveat against bringing land under the Act (Form 17)
  - caveat against dealings (Form 18)
  - withdrawal of caveat (Form 19)
  - caveat giving notice of estate of interest under Part XII of the Land Transfer Act 1952 (Form 20)
  - caveat forbidding issue of ordinary title (Form 21).
- **Address for service.** The caveator's address for service does not have to be located within the same land registration district as the land affected by the caveat (see section 137(2)(f)). Requirements for service of notice by registered post have been removed.
- **Transactions not prevented by caveats.** Section 141(5) identifies various transactions that may be registered despite the presence of a caveat.
- **Time periods for lapsing under 145.** The 14 and 28 day time periods for the lapsing process under section 145 are now prescribed in regulation 39 of the 2002 Regulations.
- **New lapsing process under s145A.** The new section 145A enables the lapsing process to be initiated by application to the RGL without lodging a dealing. This section was deferred and did not come into force on 26 August 2002.

- **Caveator's consent.** The new section 147A provides that an electronic instrument registered with the consent of a caveator must be regarded as having been made subject to the rights of the caveator for the purposes of section 147.
- **Second caveats.** The prohibition on second caveats has been retained in the new section 148 with these modifications:
  - a second caveat is prohibited only if lodged by the same person in respect of the same interest
  - the prohibition applies where a prior caveat has been removed under section 143 or lapsed
  - the RGL is not obliged to look behind the current title in order to determine whether a prior lapsed or removed caveat exists.
- **RGL not required to verify caveator's entitlement.** Section 148A makes it clear that the RGL is not obliged to verify that the caveator is in fact or at law entitled to the estate or interest claimed in the caveat. In other words, provided the interest specified is caveatable, a caveat may be accepted at face value.
- **Rejection of caveats.** Section 148B provides that a defective caveat may be rejected or requisitioned under section 43 as if it were an instrument not in order for registration.

## 2. Land Transfer Regulations 2002

The Land Transfer Regulations 2002 came into force on 26 August 2002. Regulation 44 revokes the Land Transfer Regulations 1966 (the 1966 Regulations) with effect from the same date. A number of the existing regulations have been brought forward in modified form into the 2002 Regulations. New provisions setting out requirements for electronic instruments and the certification regime for conveyancers are included.

### Part 2 – Instruments

Part 2 of the regulations sets out various requirements for paper and electronic instruments.

- **Scope of Landonline Stage Two.** The electronic lodgement process under **Landonline** Stage Two is designed to accommodate routine dealings. The exact scope of this is prescribed in some detail in Schedule 1 of the regulations.

Part 1 of Schedule 1 sets out the combination of instruments that may be lodged as an eDealing (referred to in the regulations as a "permissible transaction"). This allows for any number of discharges or withdrawals but only a single transfer and/or mortgage.

Parts 2 and 3 of Schedule 1 set out the various classes of instruments (referred to as "permissible instruments") that are within scope and the scenarios in which they can be lodged electronically. To comply with Part 3, a transfer or mortgage must affect the whole of the land, estate or interest comprised in one or more computer registers. This would effectively preclude dealings affecting the undivided share of a tenant in common, unless that share is separately held in its own computer register. Transfers indicating that land is to be held for a particular purpose are also excluded.

- **References to the register.** Regulation 5 prescribes the references that should be used when dealing with land. This effectively codifies existing practise.

Instruments affecting land held in a computer register must refer to the unique identifier (otherwise known as the CT reference) for the computer register. If no computer register has been issued, the reference number for the instrument or document that created the interest must be used. This would apply, for example, in the case of a transfer of mortgage where the mortgage number would also be specified.

- **Signing requirements.** Regulation 6 sets out who must sign the various types of paper instrument. This is derived from and consistent with the provisions of the principal Act that set out the execution requirement for each instrument type.

- **Requirements for paper documents.** Regulation 7 adopts existing requirements as to paper colour, size and quality, and to ink colour.

New provisions more fully codifying existing requirements for one page panel forms and annexure schedules have also been included. Regulation 7(2) makes it clear that the core elements (such as, for example, the CT reference or unique identifier panel, names of the parties, and operative clause), should ordinarily be set out on the first page of the panel form.

- **Forms of paper instruments.** As noted, an updated set of forms is prescribed in Schedule 2 of the 2002 Regulations. These forms are largely consistent with the panel format that has been in use for some years now. There are some differences, however:
  - the words “unique identifier(s)” have been added above the CT ref panel
  - a panel for the instrument barcode has been added in the top right hand corner of each form
  - a separate panel has been added to some forms (eg, mortgage and lease) for the memorandum number.
  - the consideration panel has been removed from the transfer form

Regulation 8 confirms that the prescribed forms contain the information required for the purposes of section 237(1)(a) of the principal Act. In other words, provided the correct type of paper is used and the details are properly completed, an instrument prepared in one of these forms is in an acceptable form for the purposes of registration.

- **Forms for use with s155A memoranda.** The forms that may be used in conjunction with s155A memoranda are identified in regulation 9:

- Transfer Instrument (Form 2)
- Easement Instrument (Form 3)
- Mortgage Instrument (all obligations) (Form 6)
- Mortgage Instrument (fixed sum) (Form 7)
- Encumbrance Instrument (Form 8)
- Lease Instrument (Form 12)

- **New implied rights and powers for easements.** The new section 90D of the principal Act allows implied rights and powers for certain classes of easements to be prescribed by regulation. Regulation 10 refers to a revised set of implied rights and powers for an expanded range of easements. This includes rights of way, rights to convey water, electricity, gas, telecommunications and computer media, and rights to drain water and sewage. The outdated implied rights and powers set out in the Seventh Schedule to the principal Act have been repealed, with effect from 26 August 2002.

### Part 3 – Certification and execution of instruments

Part 3 sets out requirements for the certification regime for conveyancers under **Landonline** Stage Two and execution requirements for paper instruments.

- **Form and effect of certifications.** The parties on whose behalf certifications for electronic instruments are required to be given are specified in regulation 11. The wording of the required certifications is prescribed in regulation 12.

Section 164E(1) of the principal Act provides that when an instrument certified under section 164A (other than a discharge of mortgage under section 111) is registered, the instrument has the same effect as a deed executed by the parties specified in regulations made under this Act.

Section 164E(3) states that when an instrument certified under section 164A is registered, the instrument must be regarded for the purposes of every enactment and rule of law as if:
 

- the instrument had been made in writing, and
- the instrument had been duly executed by every party specified for the purpose in regulations made under this Act.

Regulation 13 identifies the parties between whom electronic instruments are deemed to take effect as deeds and instruments executed in writing for the purposes of section 164E.

Under section 164A(3)(d) of the principal Act, conveyancers are required to retain supporting evidence to confirm the validity of their certifications. A retention period of ten years is prescribed under regulation 14.

- **Execution and certification of paper forms.** Regulation 15 provides for the traditional certificate of correctness for paper forms, in line with existing requirements. The execution provisions formerly set out in the principal Act have been repealed. A modified version of the existing regime is now set out in regulation 16 of the 2002 Regulations. This effectively maintains the current rules for execution and witnessing.

### Part 4 – Registration

Part 4 includes a range of provisions that have their origins in the existing regulations. The style of language used has been updated and some modifications have been made to align provisions with the amendment Act.

- **Production requirements.** Matters relating to production of certificates of title to enable registration are set out in regulations 17 and 18. There is no change to existing requirements for the time being. These provisions will become redundant when duplicate certificates of title are abolished.

- **Plan lodgement.** Plan deposit requirements are dealt with in regulations 19 and 20. Requirements for lodgement of paper plans have not changed. Under **Landonline** Stage Two it will also be possible for surveys to be lodged electronically in the form of digital cadastral survey datasets. Regulation 19(2) provides that the manual lodgement requirements do not apply to such data sets.
- **Non-complying instruments and alterations.** Regulation 21 prohibits registration in certain circumstances. This is substantially the same as regulation 8 of the 1966 Regulations, except that it also deals with instruments containing non-complying alterations. The requirements for alterations are set out in regulation 22. The initialing provisions are essentially the same as the current requirements.
- **Withdrawal from registration.** Provisions dealing with the withdrawal process are contained in Regulation 23. The requirements for withdrawing documents from registration have not changed.
- **Partial registration and merger.** Partial registration and noting of merger are dealt with under regulations 24 and 25 respectively. These provisions operate in the same way as the corresponding provisions in the 1966 Regulations (see regulations 9 and 37).
- **Change or correction of name.** A change or correction of name may be recorded in accordance with regulation 26. Two forms are prescribed for applications pursuant to this regulation:
  - correction or change of name (natural person) (Form 23)
  - change of name (company or incorporated society) (Form 24).

Use of these forms, while desirable, is not mandatory. An application presented in any of the forms currently in use would also be acceptable.

- **Caveat provisions.** Provisions dealing with service of notice to a caveator under s145, change of address for service and the death of a caveator are set out in regulations 27, 28 and 29 respectively. These regulations are largely consistent with the corresponding provisions in the 1966 Regulations. The differences are:
  - the requirement for a dealing to be accompanied by a request to serve notice under s145 is not expressly stated in regulation 27 (in practice such a request will still be necessary as the intention of the lodging party will not be clear otherwise)
  - regulation 28 includes a reference to the new lapsing procedure under s145A(1).

Regulation 28(2) is inconsistent with the principal Act in that it requires the new address for service to be within the same land registration district, whereas s137(1)(a) contains no such restriction. As the statute prevails over the regulations, a notice that specifies a new address for service outside the district will be acceptable.
- **Powers of attorney.** Regulation 30 gives the RGL discretion to decline to deposit a power of attorney unless it has been executed in accordance with regulation 16 and complies with the requirements for paper forms set out in regulation 7(1). This is substantially the same as the corresponding provision in the 1966 Regulations (see regulation 28).
- **Records and indexes.** The record-keeping requirements relating to journal information and indexes are set out in regulation 31. This is consistent with current requirements.
- **Alterations prohibited.** The existing prohibition against alterations to instruments and plans following registration or deposit have been brought forward, in regulations 32, 33 and 34.

## Part 5 – Certificates of Title

Existing requirements relating to the delivery of certificates of title have been brought forward from the 1966 Regulations and are now contained in regulations 35, 36 and 37.

The RGL's discretion as to the area of land or number of parcels that may be included in a computer register has also been retained, as set out in regulation 38.

## Part 6 – Administration

- **Notice periods.** The amendments to the principal Act include the removal of specific time periods for notices, caveat lapsing periods and other matters. Section 236(1)(b) of the principal Act instead allows these matters to be prescribed in regulations. This has been done to enable notice periods to be more easily adjusted as the conveyancing environment changes and business practises evolve.

The notices periods for the corresponding provisions of the principal Act are now set out in regulation 39. No changes have been made at this stage and the existing time periods will be retained for the time being.

- **Land registry offices and hours of business.** Requirements for land registry offices and hours of business are set out in regulation 40. This replaces regulation 3 of the 1966 Regulations.

The new provision confirms that a LINZ office need not be located within the land registration district it services, and does not preclude a LINZ office from operating as the land registry office for more than one district. The provision setting out the days upon which LINZ must be open for registry business has been updated and aligned to the Holidays Act 1981. The power to authorise closure on other days is now conferred on the RGL, in place of the State Services Commission. The authority for the RGL to fix the hours of business has been retained in modified form. The new provision allows the RGL to fix different opening hours for different purposes.

- **Assistance to persons searching.** Regulation 41 restates the existing restrictions that apply where persons searching the register are assisted by employees of LINZ.

### Part 7 – Fees

Requirements for the payment of fees are set out in regulations 42 and 43. These include provisions for credit arrangements and are largely the same as existing requirements.

The fee items are prescribed in Schedule 5. Some changes have been made to the fees structure for presentation of instruments, as set out in the table at the foot of this page.

Under these arrangements, electronic instruments will attract a lower fee whereas customers will pay a premium for counter service. The fee for postal lodgement or the new secure facility (or “Drop Box”) option is equivalent to the current lodgement fee. Drop boxes will be implemented on 14 October. Until the Pilot for **Landonline** Stage Two commences (currently scheduled for mid-October 2002) the counter presentation fee will be partially waived to bring it into line with the postal lodgement fee.

The fees structure for matters under the principal Act is otherwise largely unchanged. It should be noted that the fees applicable to title search products obtained online via **Landonline** are now set out in the Land Information New Zealand (Fees and Charges) Regulations 2002.

### 3. Electronic Transactions Land – Removal of Duplicate Titles

Under section 25 of the amendment Act, the Registrar may declare land to be “electronic transactions land” by notice in the *New Zealand Gazette* or by noting individual computer registers. This has the effect of

removing requirements for the issuance and noting of duplicate titles (these matters are covered in sections 18, 19 and 20 of the amendment Act).

The removal of duplicate titles is one of the key changes associated with **Landonline** Stage Two. This is an obvious prerequisite, as the system can only work if lodgement and registration can occur electronically without production of paper duplicate titles.

This change will be implemented for all titles on a national basis, by declaration in the *Gazette*. This will occur on 14 October 2002 which is the tentative start date for the Stage Two Pilot. From that date, production of existing duplicates will not be required for registration purposes and no new duplicates will be issued. This will apply to all title transactions, whether lodged electronically or in paper form.

These changes will necessarily lead to some adjustments in settlement procedures and mortgagee requirements, where production and custody of the duplicate certificate of title has traditionally been a matter of some importance. LINZ has consulted widely with the New Zealand Law Society and the banking and financial services industry on this issue and new practice guidelines are being developed.

The removal of duplicate certificates of title is a logical extension of the dispensations that already exist in relation to the production of duplicate copies of registered leases and other documents. Once the declaration takes effect, all duplicate certificates of title are deemed to be cancelled (see section 18(2) of the amendment Act) and cease to have any legal status as title documents. From then on, duplicate certificates of title will not be required for production or updated when new transactions are registered. Existing duplicate certificates of title will not be called in for cancellation by LINZ.

A registered proprietor may obtain an authoritative paper record of their title by requesting a search copy (or, if required for evidentiary purposes, a certified copy) from LINZ.

LINZ provides a registration confirmation notice when dealings are registered under **Landonline**. If further confirmation is required in lieu of an updated duplicate title, a title search may be obtained for the prescribed fee.

The removal of duplicate titles will streamline processes and eliminate the associated storage and retrieval costs. The delays involved in replacing missing duplicate titles will also be eliminated.

The timing of the Stage Two Pilot and information about removal of duplicate titles will be communicated widely when the dates are finalised.

### 4. Repeal of Landbroker Licensing Provisions

The Landbroker licensing provisions contained in sections 229 to 234 of the principal Act have been repealed (see section 64(1) of the amendment Act). This came into force by Order in Council on 26 August 2002. Transitional provisions are included in section 67 of the amendment Act to preserve the status of existing landbrokers until a new regulatory regime for non-lawyer conveyancers is introduced.

### New Fees Structure for Presentation of Instruments

Land Title Lodgement and Registration	Counter	Postal or Drop Box	Electronic
Discharge of Mortgage	\$58	\$38	\$30
Mortgage	\$58	\$38	\$30
Transfer of Ownership on title	\$148	\$128	\$120

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## How to contact LINZ

### National Office

#### Functions

Chief Executive  
 Automation Programme Manager  
 GM Policy  
 Business Support  
 Registrar-General of Land  
 Surveyor-General  
 Chief Topographer/Hydrographer  
 Chief Crown Property Officer  
 GM Property Regulation including:

- Valuer-General
- Commissioner of Crown Lands

GM Contracts  
 GM Operations  
 National Operations

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