

Residential Land Statement: guidance for conveyancers and lawyers

Requirement to make a statement

1. From 22 October 2018, section 51A of the Overseas Investment Act 2005 (Act) requires a person to make a statement (Residential Land Statement) relating to whether the transaction requires consent, if:
 - the person is acquiring an interest in **residential land** on or after 22 October 2018; and
 - the **interest** acquired is a freehold estate or lease, or any other **interest**, for a term of three years or more (including rights of renewal, whether of the grantor or grantee); and
 - a conveyancer will lodge, or direct the lodgement of, an instrument recording the acquisition of the interest.
2. The person must make a statement to best of their knowledge and belief relating to whether the transaction requires consent (i.e. if the person is eligible) under the Act.
3. Each person acquiring an interest in the residential land must make a statement, except in the following circumstances:
 - A person does not need to make a statement if the person is acquiring an interest under an existing security arrangement (like a mortgage), or an exempted interest.
 - The beneficiaries of a trust or the shareholders of a body corporate or company are not required to make a statement.
4. One trustee may make a statement on behalf of all trustees in a trust provided that the trustee has both the knowledge of whether or not consent is required, and the authority of the other trustees to do so.
5. One statement may be made on behalf of a body corporate. The person making the statement must be a member of the governing body (normally a director) and authorised to make the statement. The person making the statement must be the person who signs the statement.
6. One statement may be made on behalf of other entities (such as a New Zealand government department, ministry, Crown entity, foreign government, regional council, territorial authority or unitary authority under the Local Government Act 2002) provided the person making the statement has the knowledge and be authorised to do so. The person making the statement must be the person who signs the statement.
7. One statement may be made on behalf of a limited partnership by the general partner (or if the general partner is not an individual, a member of the governing body of the general partner), provided the person making the statement is authorised by the limited partnership to do so.

8. Note:
- If a person decides to nominate someone else to acquire the residential land, the nominated person (the nominee) must make a statement.
 - If a person is acquiring an interest on behalf of an overseas person, both the person (the associate) and the overseas person will need to obtain consent and make separate statements. A person associated with an overseas person, such as a New Zealand agent, may require consent to invest in New Zealand, even if they are a New Zealand citizen or resident. For example, a New Zealand agent acting on behalf of an overseas person is an associate and requires consent. The associate provisions are set out in section 8 of the Act.
9. The statement must be made using the approved form, the “Residential Land Statement” (RLS), as authorised by the Chief Executive, Land Information New Zealand (the regulator).

Your obligations as a conveyancer

10. Section 51C of the Act states that you must not lodge, or direct the lodgement of, an instrument recording the acquisition of residential land if you:
- have not obtained the required statement (or copy) from your client; or
 - have reasonable grounds for believing that the statement (or copy) is not correct in a material particular.
11. If it is reasonable to rely on the statement provided by your client, there is no requirement for you to independently verify any of the information in the statement, or to carry out any further investigation. For example, if your client indicates the transaction does not require consent on the basis they are a New Zealand citizen, you do not have to sight your client’s passport, unless you have reasonable grounds for believing your client is not a New Zealand citizen and needs consent.
12. Contact the Overseas Investment Office (OIO) if:
- your client needs consent, and has already entered into an unconditional agreement for sale and purchase without having obtained consent;
 - you have reasonable grounds for believing that your client is providing a statement that is false or misleading;
 - you have reasonable grounds for believing that your client is attempting to contravene the Act or may have committed an offence.
13. Section 51A of the Act states a person acquiring interest in residential land and completing the statement must make the statement to the best of their knowledge and belief.
14. Section 46 of the Act states that providing a statement that is false or misleading in a material particular is an offence and penalties apply.
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Penalties for non-compliance

15. You must take all reasonable steps to ensure that a copy of the statement is kept for a period of at least seven years after the date on which the instrument is lodged.
16. Conveyancers who do not comply with the conveyancing requirements under section 51C of the Act may be liable to a civil penalty of up to \$20,000 (section 48(2A) refers).
17. Providing a statement that is false or misleading in a material particular is an offence under section 46 of the Act and a person could be liable to a fine of up to \$300,000.
18. There are also fines of up to \$300,000 or imprisonment for a term of up to 12 months, if a person commits any other serious offences under the Act such as defeating, evading or circumventing operation of the Act, or resisting, obstructing or deceiving the OIO.

Landonline

There will not be any changes to the Landonline workspace, but the Registrar-General will be specifying additional statutory requirements covered by the standard certifications.

From 22 October 2018, the third standard certification given by practitioners (that the instrument complies with any statutory requirements specified by the Registrar for that class of instrument) will apply to compliance requirements under s51C of the Act.

The matter being certified is that where a statement is required by section 51A of the Act (which could be in relation to registration of a transfer, lease, lease variation, occupation licence, or a profit à prendre regulated by the Act) a statement has been obtained from the relevant party and is held by the practitioner.

This requirement will be specified in the Gazette for the Land Transfer Act 1952 and in the Certification of Electronic Instruments (Statutory Requirements and Retention of Evidence) Standard 2018 for the Land Transfer Act 2017.

Definitions

Residential land is defined in section 6 of the Act and means land (including bare land) that has a property category of residential or lifestyle in the relevant district valuation roll. It includes a residential flat in a building owned by a flat-owning company.

Interest is defined in section 6 of the Act and includes a legal or equitable interest. An interest could include the freehold or leasehold for a term of 3 years or more, of a house or lifestyle block. An interest is generally acquired when an unconditional agreement for sale and purchase is signed by both parties.

Conveyancer is defined in section 51A of the Act and means a lawyer or conveyancer (where lawyer or conveyancer have the same meanings as in the Lawyers and Conveyancers Act 2006).

Sensitive Land (land that is otherwise sensitive, in addition to being residential land) is defined in Schedule 1, Part 1 of the Act. Further information on sensitive land can be found at: www.linz.govt.nz/oio/sensitive.