

# Authority and Identity Requirements and Electronic Signing of Documents

Interim Guideline 2020

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## Foreword

LINZ authority and identity requirements are set out in the following documents:

- [Authority and Identity Requirements for E-Dealing Standard 2018 - LINZS20018](#) (the Standard)
- [Authority and Identity Requirements for E-Dealing Guideline 2018 - LINZG20775](#) (the Guideline)

As noted in the Foreword to the Guideline:

“Two key objectives of the land registration system are ensuring:

- transactions are completely and accurately entered and maintained in the register; and
- all transactions are authorised by or on behalf of entitled parties.

A key mechanism contributing to these objectives are the E-dealing certifications by Practitioners prior to lodging Electronic Instruments for registration.

Practitioners can only make the certifications where they believe on reasonable grounds, they are true, after taking appropriate steps to ensure their accuracy. This is a requirement of Practitioner’s Client Care Rules.”

## Purpose of this interim guideline

The response to COVID-19 has introduced new challenges for practitioners in meeting the requirements of the Standard and the Guideline where practitioners and their clients are unable to meet due to COVID-19.

This interim guideline is intended to be an interim supplement to the Standard and the Guideline while the restrictions related to COVID-19 persist. The requirements of the Standard and Guideline continue to apply, but they have been modified in the ways set out below.

This interim guideline will continue to have effect until it is revoked, and notice of its revocation is published on LINZ’s website.

## References

The following documents are relevant to this guideline:

- [Authority and Identity Requirements for E-Dealing Guideline 2018 - LINZG20775](#)
- [Authority and Identity Requirements for E-Dealing Standard 2018 - LINZS20018](#)

- [Contract and Commercial Law Act 2017](#)
- [Land Transfer Act 2017](#)
- [Land Transfer Regulations 2018](#)

## Interpretation

References in this interim guideline to sections, parts, subparts and regulations refer to the Land Transfer Act 2017 and Land Transfer Regulations 2018 (as applicable) unless otherwise stated.

Terms used in this guideline that are defined in the Land Transfer Act 2017 have the meaning given to them in that Act, unless otherwise stated.

## Terms and definitions

Term	Definition
A&I Form	Means the Authority and Instruction Form; this authorises the practitioner to act on behalf of the client. The approved forms can be found <a href="#">here</a> .
Acceptable Photo ID / Photo ID	Means photo identification that can be used to verify the identity of the client in accordance with the guidance in clause 4.1.1, 6 and Table 1 of the Guideline and includes expired photo ID in the circumstances described in section 2.2.2 of this document.
Bank	A bank registered with the Reserve Bank of New Zealand.
CCLA	<a href="#">Contract and Commercial Law Act 2017</a>
Certifier	See Practitioner.
Client	Means the party on whose behalf the practitioner is certifying.
Delegate	As defined in section 4.6 of the Guideline.
DIA	Department of Internal Affairs.
E-Dealing Certifications	Means the Standard Certifications and Special Certifications.

Term	Definition
Equally Effective Means	Is a process practitioners may adopt to satisfy the Standard Requirements that relate to verifying client identity set out in regulation 7(3)(a), (b) and (d) of the Regulations.
Electronic Signature, in relation to information in electronic form	Means a method used to identify a person and to indicate that person's approval of that information (see section 209 of the CCLA).
Existing Client	Means a party who the practitioner (or their firm) has previously acted for, and identified within the last 5 years where that relationship provides assurance that enables a departure from the best practice requirement to meet the client in person. Excludes situations where AML Act verification in anticipation of the current transaction is the only previous work done for a client.
High Risk	As defined in section 4.2.1 of the Guideline.
ID	Identity Document.
LINZ	Land Information New Zealand.
LTA	<a href="#">Land Transfer Act 2017</a>
Photo ID	See Acceptable Photo ID.
Practitioner	Means a lawyer or conveyancing practitioner who certifies; the Certifier.
Registrar-General of Land	Appointed in terms of section 231 of the LTA.
Regulations	<a href="#">Land Transfer Regulations 2018</a>
RMA	<a href="#">Resource Management Act 1991</a>
Safe Harbour	Means the actions that constitute reasonable steps by Practitioners which satisfy the Standard Requirements.

Term	Definition
Special Certifications	Means a Practitioner’s certifications relating to applicable additional matters that apply to particular instruments, prescribed in regulation 7(4) of the Regulations and Schedule 3 pursuant to section 27 of the LTA.
Standard Certifications	<p>Means a Practitioner’s certifications of the following standard matters for an electronic instrument, prescribed in regulation 7(3)(a) to (d) of the Regulations pursuant to section 27 of the LTA:</p> <ul style="list-style-type: none"> <li>(a) the Certifier has authority to act for the party and the party has legal capacity to give the authority; and</li> <li>(b) the Certifier has taken reasonable steps to confirm the identity of the party; and</li> <li>(c) if statutory requirements have been specified by the Registrar-General of Land for instruments of a particular type, the instrument complies with those requirements; and</li> <li>(d) the Certifier has evidence showing the truth of the certifications and has relied on the evidence in support of those matters, and the evidence will be retained for the retention period.</li> </ul>
Standard Requirements	Means the necessary actions required of Practitioners to enable them to make the certifications relating to authority and identity, as described in sections 3, 4 and 5 (including Table 1) of the Guideline.
Trusted Colleague	Means a person who works for the same firm or organisation as the Practitioner whom they can reasonably rely on to obtain authority and verify identity.

# 1 Introduction

This interim guideline has been developed to assist practitioners who, due to COVID-19 restrictions, are for the time being unable to interact with their clients otherwise than by remote means of communication. It sets out requirements for remote verification of client identity and the legal framework and required standards for the use of electronic signatures.

This interim guideline is intended only as a guide to how practitioners may meet LINZ standards while COVID-19 restrictions apply. In deciding whether or not a property transaction can proceed in the current environment practitioners and their clients must, of course, consider the implications of COVID-19 restrictions for the other aspects of the transaction, including whether or not settlement should be deferred. Practitioners should follow relevant advice and guidance published by the Property Law Section of the New Zealand Law Society in that regard.

**The ultimate responsibility for e-dealing certifications remains with the practitioner, and each practitioner must exercise their professional judgement when relying on the different means of verifying client identity outlined in this interim guideline.**

## 2 Authority and identity requirements

The standard for verification of identity set out in section 6 of the Standard continues to apply. The practitioner's certification in relation to client identity remains an essential step in ensuring the validity of a transaction and preventing fraud.

However, the means by which a practitioner can satisfy the requirement to verify client identity have been expanded to reflect the fact that practitioners and clients may be unable to meet due to COVID-19.

**Practitioners must first consider whether the transaction is high risk as defined in section 4.2.1 of the Guideline.**

### 2.1 Additional actions to verify identity for high risk transactions

The requirement in section 4.2.2 of the Guideline that practitioners take additional actions to independently verify the identity of the client and to connect the client to the property for high risk transactions continue to apply.

The additional actions for high risk transactions apply in addition to the other reasonable steps for verifying ID when using audio-visual technology referred to in the following paragraph.

The requirement for further evidence linking the client to the property in section 8 of the Standard and section 4.3 of the Guideline may be satisfied by the client emailing a copy of the linking evidence to the practitioner after the practitioner has established the client's identity.

## 2.2 Use of audio-visual technology

Section 7 of the Standard describes the reasonable steps a practitioner may take to verify client identity. It refers to having the client “present in person”.

Section 4.7 of the Guideline sets out limited circumstances where the “in person” requirement can be satisfied via audio-visual technology provided certain conditions are met.

The Guideline does not allow the use of audio-visual technology for new clients, so the default position is that practitioners must meet new clients in person or have their identity verified by a suitable delegate where, for example, the client is located overseas.

*Where unable to meet due to COVID-19*

Where a practitioner is unable to meet their client face-to-face due to COVID-19 (for example, at alert levels 3 or 4, MIQ or other quarantine) the practitioner may choose to use audio-visual technology in cases which do not strictly comply with the first two requirements set out in section 4.7, which are that the practitioner:

- (a) has known the existing client for more than 12 months; and
- (b) holds a copy of the client's acceptable photo ID (that is current or expired within the previous 12 month) on file;

**provided that** the practitioner takes other reasonable steps to confirm their client's identity. These steps should be recorded in a file note to be held with the A & I form. This means that, where the practitioner is unable to meet their client face-to-face due to COVID-19, audio-visual technology may be used to verify client identity for new clients as well as existing clients.

Where audio-visual technology is used, the wording in section 5 of the A & I form should be modified to indicate that audio-visual technology was used (examples of audio-visual technology that may be used include Skype, FaceTime, Zoom, Microsoft Teams, etc.).

### 2.2.1 Other reasonable steps

The practitioner must take such reasonable steps as are necessary in the circumstances to verify client identity.

For example, additional steps could include one or a combination of the following:

- (a) Using a service that provides confirmation of *identity information* held by DIA. There is a list of organisations approved to act as intermediaries in applying for DIA's confirmation service on DIA's webpage. Further information can be found at <https://www.digital.govt.nz/services/show/Confirmation-Service>. For the avoidance of doubt, use of this service alone does not comprise identity verification.
- (b) Relying on an ID protocol in a robust electronic signing system, e.g. the ADLS Webforms digital signing service.
- (c) Obtaining written confirmation from the client's bank that the bank has identified the client in a way that complies with LINZ requirements for verification of identity in the Standard.

Such confirmation must come directly from the bank following a request from the practitioner, rather than being supplied by the client.

- (d) Once the ID has been verified in one of the ways above, requiring the client to hold their acceptable photo ID up to the camera during the audio-visual session so that the practitioner can assess that the photograph matches the person on-screen and that the signature on the ID matches the signature on the A & I form.

## 2.2.2 Types of identification

The types of acceptable photo ID are listed in Section 5.1, Table 1 of the Guideline. These types of identification are divided into two classes, one that will satisfy the safe harbour requirements and another that may be regarded as equally effective means.

### *Expired photo ID*

Practitioners may rely on expired photo ID provided that they can identify their client from the photo. For example, if the photo ID is damaged or the photo is so out of date that it is not possible to identify the client from it, the practitioner should not rely on the expired photo ID.

## 2.2.3 Delegate witnesses

When using audio-visual technology to verify identity, it is not generally appropriate for the certifying practitioner to delegate witnessing to another party because the practitioner is not in control of that audio-visual communication and cannot gain sufficient assurance that the client was adequately identified.

The only exception to this is where it is not possible for the practitioner to use audio-visual technology to verify identity, in which case the practitioner may rely on a trusted colleague as defined in the Guideline but only if that trusted colleague is a practitioner or a legal executive who works for the same firm or organisation as the practitioner. A sole practitioner may regard their attorney appointed to comply with Schedule 1 of the Lawyers and Conveyancers Act 2006 as a trusted colleague for this purpose.

## 2.2.4 Practitioner's obligations

While this interim guideline has expanded the circumstances in which practitioners may use audio-visual technology to verify client identity, it is important to emphasise that the responsibility for e-dealing certifications remains with the practitioner and that the practitioner must be satisfied of the client's bona fides before proceeding with the transaction.

Practitioners must ensure that:

- (a) the other reasonable steps taken to confirm their clients' identity when using audio-visual technology to verify client identity; and
- (b) where required because the transaction is high risk, the additional actions to independently verify the identity of the client and to connect the client to the property;

are documented in a file note to be held with the A & I form and other supporting documents, so that those documents can be produced if the transaction is the subject of a compliance review.

Ultimately, if in doubt, the practitioner should not proceed with a transaction unless they are satisfied as to the identity or bona fides of their client.

## 2.2.5 Alternatives where practitioner not satisfied

Where the practitioner cannot be satisfied as to their client's identity using the methods described in this interim guideline, then the practitioner will need to consider what alternative courses of action are available. For example, they may elect to contact the practitioner for the other party and seek to defer settlement until the requirements can be met.

# 3 Electronic signatures

## 3.1 Legal requirements

The standard for electronic signatures is set by Part 4 Subpart 3 of the Contract and Commercial Law Act 2017 (CCLA). All electronic signatures must comply with the CCLA. This interim guideline is designed to assist practitioners in complying with the CCLA requirements in relation to land transfer documents.

Section 218 of the CCLA provides that Subpart 3 applies to every enactment that is part of the law of New Zealand and that is passed either before or after the commencement of the CCLA. However, the provisions do not apply in the circumstances listed in s218(2). It is the responsibility of practitioners and parties to ensure that the legal requirement they are complying with can be met by electronic means.

Section 226 provides as follows:

- 1) A legal requirement for a signature other than a witness's signature is met by means of an electronic signature if the electronic signature—
  - (a) adequately identifies the signatory and adequately indicates the signatory's approval of the information to which the signature relates; and
  - (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.
- 2) However, a legal requirement for a signature that relates to information legally required to be given to a person is met by means of an electronic signature only if that person consents to receiving the electronic signature.

Whether an electronic signature adequately identifies the signatory and is as reliable as appropriate is informed by section 228(1) of the CCLA. The criteria in s228(1) are that:

- (a) the means of creating the electronic signature is linked to the signatory and to no other person; and

- (b) the means of creating the electronic signature was under the control of the signatory and of no other person; and
- (c) any alteration to the electronic signature made after the time of signing is detectable; and
- (d) where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

## 3.2 Electronic signing systems

An electronic signing system must comply with the criteria in s228(1) of the CCLA and a practitioner must satisfy themselves that the system complies before using it.

**An image of a signature that is simply inserted into a document will not be acceptable in any circumstances.**

In addition to the criteria listed in s228(1), an electronic signing system used to sign any land transfer documents must also provide:

- (a) Audit records – the steps taken by any signatory and witness are recorded in a digital signing log that can be produced if the transaction is audited.
- (b) Practitioner assurance – the system provides sufficient information and safeguards to ensure that practitioners can make certifications on the basis of the information supplied to them.

The following examples are scenarios where electronic signatures may and may not be used.

### 3.2.1 Approved scenarios

#### *Banks signing Land Transfer Act consent forms*

In many cases, banks will already be sending letters to practitioners electronically confirming their consent to registration under the LTA and authorising the practitioner to certify they have obtained the mortgagee's consent.

Where banks elect to complete annexure schedule consent forms, they may sign such consent forms electronically provided that the electronic signing system used by the bank complies with s228(1) of the CCLA. The bank must ensure that it has assessed its system and is satisfied that it is appropriate for the purpose.

Consents required under the LTA will be relied upon by practitioners in providing their e-dealing certifications under the LTA, therefore the system will need to give practitioners sufficient assurance to make these certifications.

#### *Banks signing Resource Management Act consents*

The consent of a bank as mortgagee is required under section 224 of the RMA where land shown on a survey plan will vest in the Crown or a territorial authority on deposit of the plan. These consents are not the subject of a practitioner certification but are instead lodged with the deposit documents and form part of the register.

These consents may be signed electronically by a bank provided that the digital signing system complies with s228(1) of the CCLA as set out above.

The bank must ensure that the consent refers to the relevant plan and does not contain any personal client information, as an image of the consent will be publicly available in the register.

#### *Clients signing A & I forms*

An A & I form may be signed by means of an electronic signature using a system that meets the criteria in s228(1) of the CCLA, e.g. the ADLS's webforms digital signing service.

**Verification of client identity is separate from electronic signature of an A & I form and must be completed to LINZ standards regardless of whether an electronic or traditional method of signing is used.**

The ways in which witnessing and verification of identity may be completed remotely are dealt with in the first section of this interim guideline.

If the client in self-isolation is not able to use an electronic signing system that meets the criteria in s228(1) of the CCLA, then they will need to wet-sign a paper copy of the A & I while the practitioner witnesses their signature and completes identity verification remotely using audio-visual technology in the manner set out in this interim guideline and then send a scanned copy of that A & I form to the practitioner.

#### *Clients signing image only documents*

These documents may be signed using an electronic signing system that meets the criteria set out in s228(1) of the CCLA and this interim guideline.

#### *Clients signing paper instruments*

These documents cannot be signed using an electronic signing system and must have the client's original signature.

## Afterword

The contents of this interim guideline have been designed as an interim measure to address issues relating to Covid-19. LINZ will continue to monitor the situation and may issue further guidance if necessary.