

LINZ OP G 01226

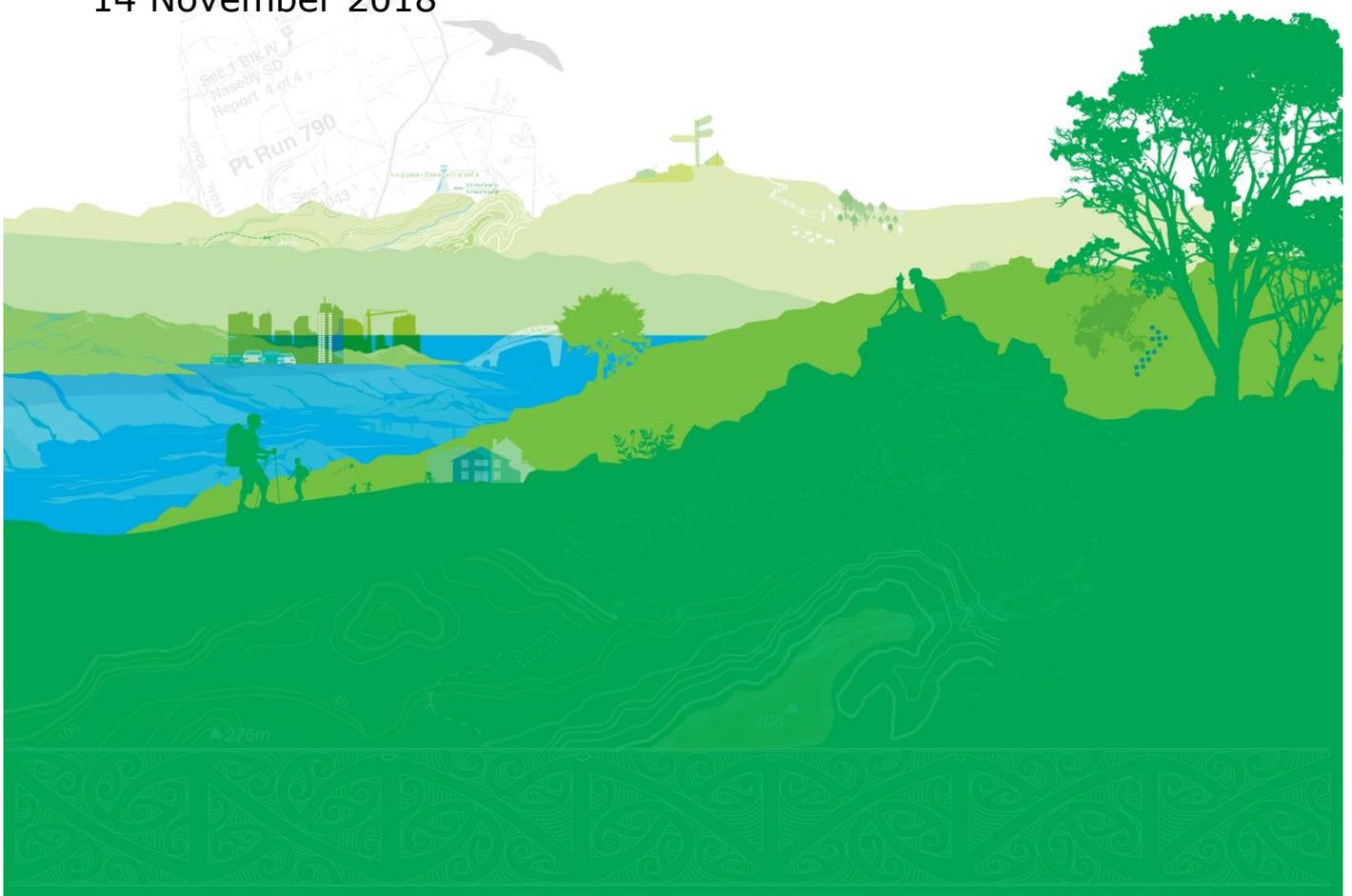
Identity Requirements for Paper Instruments

Guideline 2018

LINZG20776

Office of the Registrar-General of Land

14 November 2018



Contents

Foreword	2
Purpose of this guideline	2
References	3
Interpretation	3
Terms and Definitions	3
1 Witnesses’ obligations - Practitioner and other witnesses	6
1.1 Witness criteria	6
1.2 Required actions for witnessing	6
1.3 Verifying the identity of the signatory	6
1.3.1 Verify the signatory’s identity	6
1.3.2 Provide a statutory declaration.....	7
1.3.3 When a statutory declaration is not required.....	7
1.4 Instruments executed by Public Corporates	8
1.5 Instruments executed outside New Zealand	8
1.6 Changes to an instrument.....	8
1.7 Certifications.....	8
2 Signatories’ or their attorney’s obligations	9
2.1 Signing requirements.....	9
2.2 Witnesses.....	9
2.3 Verification of identity	9
2.4 Certification	9
3 LINZ’s obligation for verifying identity	9
3.1 Assessment of paper instruments by LINZ staff.....	9
3.2 Actions by LINZ staff when paper instruments not in order for registration.....	10
Schedule 1: Form of statutory declaration of witness	11
Schedule 2: Form of statutory declaration of signatory	13
Schedule 3: Paper Instruments requiring statutory declaration	14

Foreword

Two key objectives of the land registration system are ensuring:

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

A key mechanism contributing to these objectives are the obligations on witnesses, certifiers at the time a paper instrument¹ is signed, and LINZ staff upon receiving them by post and prior to registering them.

Witnesses and LINZ staff must take appropriate action to verify the identity of the signatory to safeguard against identity and property fraud in conveyancing transactions.

A signatory or their Practitioner must certify the required matters² before a paper instrument can be lodged.

Purpose of this guideline

This guideline is to assist witnesses of paper instruments, persons certifying them, and LINZ staff processing them understand their obligations regarding verification of the identity of the signatory. It is also to assist signatories of paper instruments understand their obligations.

It focuses on Practitioners' obligations, when witnessing a paper instrument to:

- verify the signatory's identity, based on appropriate Photo ID;
- consider the signatory's capacity;
- take additional actions for high risk transactions; and
- provide a statutory declaration in relation to the witnessing.

It also explains obligations on other witnesses, signatories, and LINZ staff processing these transactions.

This guideline cross-references obligations described in *LINZS20018 Authority and Identity Requirements for E-Dealing Standard 2018* and *LINZG20775 Authority and Identity Requirements for E-Dealing Guideline 2018* and should therefore be read in conjunction with those. They should also be referred to for guidance in relation to electronic lodgement of electronic instruments.

This guideline supercedes *LINZS20002 Standard for verification of identity for registration under the Land Transfer Act 1952*.

¹ The only instruments incapable of electronic lodgement are memoranda and powers of attorney (regulation 12).

² See regulation 14 and Schedule 3 of the Regulations

References

The following documents are relevant to this guideline:

- Land Transfer Act 2017
- Land Transfer Regulations 2018
- LINZS20018 Authority and Identity Requirements for E-Dealing Standard 2018
- LINZG20775 Authority and Identity Requirements for E-Dealing Guideline 2018
- New Zealand Law Society's Property Law Section *Property Transactions and E-Dealing Practice Guidelines*

Interpretation

References in this 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

Act	Land Transfer Act 2017.
Acceptable Photo ID/Photo ID	means photo identification that can be used to verify the identity of the client in accordance with clause 4.1.1, 6.2 and Table 1 of the E-dealing guideline.
E-dealing guideline	means LINZG20775 Authority and Identity Requirements for E-Dealing Guideline 2018.
E-dealing standard	means LINZS20018 Authority and Identity Requirements for E-Dealing Standard 2018.
Entitled Parties	means the persons legally able to authorise the transaction effected by the registration of land transfer instruments.
High Risk Transaction	as defined in section 3.1(c) of this Guideline.
Instrument	as defined in section 5 of the Act.
LINZ	Land Information New Zealand.

PLS Guidelines	The New Zealand Law Society’s Property Law Section <i>Property Transactions and E-Dealing Practice Guidelines</i> 2018.
Paper Instrument	as defined in section 5 of the Act.
Photo ID	See Acceptable Photo ID.
Practitioner	as defined in section 5 of the Act, and not limited to practitioners with <i>e-dealing</i> licences who make electronic certifications. For the purposes of this document, also includes a trusted colleague.
Public Corporate	<p>means:³</p> <ul style="list-style-type: none"> a. a company, or a wholly owned subsidiary of a company, which is listed on the main board of the New Zealand stock exchange (NZSX); b. a local authority listed in schedule 2 of the Local Government Act 2002; c. a council-controlled organisation as defined in section 6 of the Local Government Act 2002; d. the Crown acting by and through a Minister or government department; e. a State enterprise listed in schedule 1 of the State-Owned Enterprises Act 1986 and any subsidiary of a State enterprise; f. a trustee company defined in section 2 of the Trustee Companies Act 1967; g. a company listed in schedule 4, 4A or 5 of the Public Finance Act 1989; h. a Crown entity as defined in section 7 of the Crown Entities Act 2004 (including Crown entities listed in schedule 1 or 2, Crown entity subsidiaries, school boards of trustees and tertiary education institutions); i. NZ Defence Force acting through the Chief of Defence Force; and j. a registered bank within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989.
Registrar-General of Land (RGL)	appointed in terms of section 231 of the Act.
Regulations	means the Land Transfer Regulations 2018.

³ Refer PLS Guidelines.

Signatory	means a person required by regulation 13(2) and Schedule 3 of the Regulations to sign a paper instrument and can include the owner of a legal or an equitable estate or interest in land, a caveator, their attorney or any other signatory authorised by law.
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 Witnesses' obligations - Practitioner and other witnesses

1.1 Witness criteria

Practitioners and other witnesses⁴ must comply with regulation 13(3)(a) of the Regulations. This requires, amongst other things, that they **not** be a party to the instrument.

1.2 Required actions for witnessing

In addition, a witness to a paper instrument must ensure:

- a) they are present as the signatory signs in accordance with regulation 13(2); and
- b) they add below their signature as witness their:
 - (i) full name; and
 - (ii) occupation or description; and
 - (iii) location, meaning the city, town, or locality where the witness ordinarily resides and, if a Practitioner, the name and contact details of law firm.
 - (iv) email and telephone details (landline or cell) would be helpful should LINZ staff wish to make contact to verify the lodged documents.

When witnessing a signatory for an overseas government, a witness should ensure the signatory satisfies the criteria in regulation 15, and that the criteria relied upon is noted under the signatory's name.

1.3 Verifying the identity of the signatory

When witnessing paper instruments, verification of identity refers to the steps a witness must comply with 1.3.1 and 1.3.2:

1.3.1 Verify the signatory's identity⁵

The following sections of the E-dealing Standard and Guideline are applicable to verifying signatory identity on paper instruments being lodged by post:

- (i) **E-dealing Standard:**
section 6 (*Client Identity*); and
- (ii) **E-dealing Guideline:**

⁴ Of the type described in regulation 13(1).

⁵ See regulation 13(3)(b).

section **3.1.1** (*Ensuring client has legal capacity*)

section **4.1** (*Verify Identity - "safe harbour" method*); and

section **4.2**. (*Mitigate risk for high risk transactions*)⁶.

1.3.2 Provide a statutory declaration

The witness shall, in accordance with regulation 13(4)(b), provide a statutory declaration, that:

- (i) the signatory signed the instrument in the presence of the witness; and
- (ii) the witness signed the instrument; and
- (iii) that the witness knows, or established the identity of, the signatory (appropriate evidence should be attached); and
- (iv) that the signatory appeared to be of sound mind and signed the instrument voluntarily.

See Schedule 3 for list of instrument types requiring statutory declarations submitted with them.

A recommended form of statutory declaration by a witness is set out in Schedule 1.

See also 1.5 below.

1.3.3 When a statutory declaration is not required

A statutory declaration is not required for⁷ overseas witnesses of the type described in regulation 13(5) of the Regulations. Ensuring such witnesses have appropriate instructions about the witnessing obligations, and copies of applicable standards and guidelines is best practice. It may also be helpful to request such witnesses to obtain suitable contact details for the signatory, should enquiries need to be made of them when the dealing is processed by LINZ.

Declarations are also not required where the instrument is signed by a Government Agency, Local Authority, institutional chargeholder, public corporate, regardless of who the witness is.

⁶ For the purposes of manual lodgement of paper instruments, high risk transactions are defined in section 4.1(2) in this Guideline; the definition in section 4.2.1 of the E-dealing Guideline only applies to e-dealing.

⁷ The exception to the requirement of a section 13(4)(b) of the Act to obtain a statutory declaration only applies to overseas witnesses of the type described in regulation 13(5) of the Regulations. Declarations are also not required where the instrument is signed by a Government Agency, Local Authority, institutional chargeholder, public corporate, regardless of who the witness is.

1.4 Instruments executed by Public Corporates

If the paper instrument is signed by a Public Corporate⁸, 1.1 above applies but 1.2 and 1.3 do not.

If contact with the signatory was not initiated by the Practitioner, they must independently contact the Public Corporate to verify the document's authenticity.

1.5 Instruments executed outside New Zealand

Practitioners must exercise caution and apply sound judgment:

- when an instrument is executed outside New Zealand; and
- particularly if the transaction is 'high risk';

to ensure transactions are authorised and, to manage the risk of improper dealing or identity fraud.

If the paper instrument is executed outside New Zealand and witnessed by a commonwealth representative or notary public, 1.1 and 1.2 above applies, but 1.3.2 does not in accordance with regulation 13(5).

Practitioners should provide the overseas witness with clear instructions and a copy of E-Dealing Guideline⁹ as useful guidance.

1.6 Changes to an instrument

Ensure that any changes made to the instrument comply with regulations 16(2)-(5).

1.7 Certifications

Where applicable, practitioners must ensure the required certifications can be given¹⁰:

- a) that the instrument is in order for registration or notation; or
- b) the required matters are that the certifier is aware of the circumstances of the dealing set out in the instrument and does not know of any reason, in fact or law, why the instrument should not be registered or noted.

⁸ See Terms and Definitions and section 3.1.3 of the E-dealing Guideline which applies equally to manual lodgements/paper instruments.

⁹ Refer to sections 4.2.2 *Additional actions to verify identity in high risk transactions* and 4.6 *Delegating authority and identity verification checks* for guidance.

¹⁰ Regulations 14(3) and 14(4).

2 Signatories' or their attorney's obligations

2.1 Signing requirements

Signatories of paper instruments¹¹ must comply with the signing requirements in regulations 13(1), 13(2) and 15 of the Regulations, and section 33 of the Act.

2.2 Witnesses

In addition, signatories must sign¹² the instrument in the presence of a witness¹³ who complies with the requirements set out in section 1 above.

2.3 Verification of identity

If requested¹⁴, signatories must provide the RGL with a statutory declaration regulation 13(4)(b). A recommended form is set out in Schedule 2.

2.4 Certification

Where applicable, signatories must ensure the appropriate certification can be given depending on the instrument type, as set out in the Regulations¹⁵ being either:

- a) that the instrument is in order for registration or notation; or
- b) that the certifier is aware of the circumstances of the dealing set out in the instrument and does not know of any reason, in fact or law, why the instrument should not be registered.

3 LINZ's obligation for verifying identity

3.1 Assessment of paper instruments by LINZ staff

Necessary checks

- a) Signing and Witnessing Requirements
- b) Landowner ID verified
- c): High Risk transactions – extra steps

¹¹ Of the type described in regulation 13(1).

¹² Regulation 13(2).

¹³ Regulation 13(2).

¹⁴ Declarations may be sought where for example it is not possible to get a declaration from the witness or we want further evidence in addition to that provided by the application, supporting documents and witness' declaration.

¹⁵ The matters set out in column 6 of Schedule 3 of the Regulations against the type of paper instrument listed in column 1 of that Schedule, regulation 14(3) and (4).

When paper instruments are lodged with LINZ by post, the person registering the transaction with delegated authority from the RGL must ensure:

- a) the signing, certifying and witnessing requirements set out in sections 1.3 to 1.7 above are complied with; and

if a paper instrument is signed by a Public Corporate, 1.1 applies, but 1.2 and 1.3 do not. If the paper instrument is not witnessed by a Practitioner, LINZ staff must independently contact the Public Corporate to verify the document's authenticity; and

and in relation to paper instruments described in Schedule 3¹⁶:

- b) the execution of the instrument is verified by a statutory declaration given by the witness (and/or by the signatory¹⁷), where required in accordance with sections to 1.3 above;
- c) If a transaction is high risk¹⁸:
 - (i) independently contact the witness (and/or, where necessary, the signatory) to confirm the validity of the statutory declaration; and
 - (ii) carry out the additional steps set out in sections 4.2.2 and 4.3 of the E-dealing Guideline; and
 - (iii) ensure there is a record kept of all information and inquiries made towards verifying the identity of signatories including the lodger's details

whether or not the instrument is witnessed, certified or lodged by a practitioner.

3.2 Actions by LINZ staff when paper instruments not in order for registration

Where any of the requirements set out in section 3.1 above are not fulfilled, LINZ staff should requisition or reject the dealing in accordance with section 37 of the Act.

¹⁶ See Schedule 3 for full list.

¹⁷ Declarations may be sought where for example it is not possible to get a declaration from the witness or we want further evidence in addition to that provided by the application, supporting documents and witness' declaration.

¹⁸ As defined in the E-dealing Standard and Guideline, and where the reference in 4.2.1 to "the client is not previously known to the Practitioner or a trusted colleague, and" is omitted. For the avoidance of doubt, the following bullet pointed items in that subparagraph are other options. In addition, all paper transfers and mortgages are high risk, whether or not the conditions in the table in 4.2.1 apply.

Schedule 1: Form of statutory declaration of witness

Statutory declaration of witness

Regulation 13(4)(b), Land Transfer Regulations 2018

I *[insert full name]*, of *[insert address and occupation]*

solemnly and sincerely declare that—

1. I witnessed the signing of *[insert type of instrument]* dated *[insert date]* by the signatory, *[insert full name of signatory]*.
2. *[Insert full name of signatory]* appeared to be of sound mind and did freely and voluntarily sign (or seal) the instrument in my presence.
3. I have established the identity of *[insert full name of signatory]*, the person signing this instrument.
4. The photograph annexed to this declaration and marked with the letter "A" is a true likeness of *[insert full name of signatory]*.
5. I am aged 18 years or over and I am independent of the client and the transaction. In particular, in relation to *[insert full name of signatory]*:
 - (i) I am not related to them, their partner or spouse or part of their extended family group; and
 - (ii) I do not live at the same address as them and I am not involved with or benefitting from the transaction.

If the transaction is considered high risk:

6. *[Select one]* I have personally known *[insert full name of signatory]* for *[number of years]*

Or

7. I have obtained a document(s) connecting *[insert full name of signatory]* to the *[select one]* property¹⁹ or address above²⁰ a certified copy of which is annexed to this declaration and marked with the letter "B".
8. I am the holder of government-issued photographic identification, an extract of which, showing my photograph and the identification number, is annexed to this declaration and marked with the letter "B".
9. I can be contacted using the following contact details *[insert contact details, such as]:*

¹⁹ If you are landowner.

²⁰ If you are the owner of an equitable estate or interest in land, a caveator, their attorney or any other signatory authorised by law.

- a. *[Landline phone number], and*
- b. *[Mobile phone number], and*
- c. *[email address].*

AND I make this declaration conscientiously believing the same to be true by virtue of the [Oaths and Declarations Act 1957](#).

DECLARED at)
this day of 20)
before me:)

A person authorised to take a statutory declaration under the [Oaths and Declarations Act 1957](#)

Schedule 2: Form of statutory declaration of signatory

Statutory declaration of signatory

Regulation 13(4)(a), Land Transfer Regulations 2018

I [insert full name], of [insert full address and occupation]

solemnly and sincerely declare that—

1. I signed the [specify type of instrument] instrument dated [insert date] and lodged for registration under number [insert registration number].
2. The signature (or mark) purporting to be my signature (or mark) is in my own handwriting.
3. I am of sound mind, and I did freely and voluntarily sign the instrument.
4. I am the holder of current, government-issued photographic identification²¹, an extract of which, showing my photograph and the identification number, is annexed to this declaration and marked with the letter "A".

(If the transaction is considered high risk)

5. To confirm that I am the person legally able to authorise the registration of this instrument, I have a document(s) connecting me to the (select one) property²² or address above²³, a certified copy of which is annexed to this declaration and marked with the letter "B".

AND I make this declaration conscientiously believing the same to be true by virtue of the [Oaths and Declarations Act 1957](#).

DECLARED at _____)

this day of 20 _____)

before me: _____)

A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957

²¹ For example; a NZ drivers licence, NZ firearms licence or passport. See LINZG20775 Authority and Identity Requirements for E-Dealing Guideline 2018 for further guidance.

²² If you are the landowner.

²³ If you are the owner of an equitable estate or interest in land, a caveator, an attorney or any other signatory authorised by law.

Schedule 3: Paper Instruments requiring statutory declaration

A120	Release of Statutory Land Charge
C132	Cancellation/Revocation/Rescission of Licence to Occupy
C160	Revocation of s159 Certificate under Public Works Act 1981
<u>C241</u>	Cancellation of Certificate s241 Resource Management Act 1991
C243	Revocation of Conditional Easement under s243 Resource Management Act 1991
C309	Revocation of Condition Certificate s309 Local Government Act 1974
CBLR	Cancellation Building Line Restriction under Local Government Act 1974
CCNC	Cancellation of Consent Notice Condition Resource Management Act 1991
CCON	Cancellation of Condition
CCT	Cancellation of CT under s8 Foreshore and Seabed Endowment Revesting Act 1991
CFEN	Application to Cancel Fencing Covenant/Agreement
CJFH	Cancellation of Joint Family Home Application
CN	Change/Correction of Name
<u>CUTP</u>	Cancellation of Unit Title Plan
D115	Discharge of Certificate under s115 Public Works Act 1981
D221	Discharge of Irrigation Charge
D28	Discharge of s28(1) Certificate under Earthquake Commission Act 1993
D308	Discharge of Certificate under s308 Local Government Act 1974
D643	Discharge of Certificate under s643 Local Government Act 1974
DBON	Discharge of Bond under Local Government Act 1974
<u>DCC</u>	Discharge of Compensation Certificate

DCHO	Discharge of Charging Order
<u>DENC</u>	Discharge of Encumbrance
DFBC	Discharge of Family Benefit Charge
DLN	Discharge of Lien
<u>DM</u>	Discharge of Mortgage
DMM	Discharge Mortgage of a Mortgage
<u>DSL</u>	Discharge of Statutory Land Charge
DTC	Discharge of Tax Charge
EE	Extinguishment of Easement
<u>ENC</u>	Encumbrance
FMIL	Forfeiture of Mining Licence
LIM	Remove Limitations as to Title
<u>M</u>	Mortgage
MFL	Mortgage of Licence under Crown Forest Assets Act 1989
MM	Mortgage of a Mortgage
MVM	Mortgage Varying Mortgage
<u>P241</u>	Partial Cancellation Certificate under s241 Resource Management Act 1991
P25A	Partial Cancellation of Covenant - s25A(9) NZ Railways Corporation Restructuring Act 1990
P303	Partial Release of Completion Certificate
P308	Partial Discharge of Certificate under s308 Local Government Act 1974
P417	Partial Release of Certificate Specifying Mining Rights under s417 RMA 1991
PA	Power of Attorney
PBLR	Partial Cancellation of Building Line Restriction
PBON	Partial Discharge of Bond
PCHO	Partial Discharge of Charging Order
PCON	Partial Cancellation of Condition in CONO under Resource Management Act 1991
PDCC	Partial Discharge of Compensation Certificate

PDLN	Partial Discharge of Lien
<u>PDM</u>	Partial Discharge of Mortgage
PDTC	Partial Discharge of Tax Charge
<u>PENC</u>	Partial Discharge of Encumbrance
PFBC	Partial Discharge of Family Benefit Charge
PJFH	Partial Cancellation of Joint Family Home Application
PRAG	Partial Release of Agreement (All Types)
PRLC	Partial Revocation of Land Covenant
PSAG	Partial Surrender of Forestry Agreement
PSE	Partial Surrender of Easement
PSL	Partial Surrender of Lease
<u>PSLC</u>	Partial Discharge of Statutory Land Charge
PSML	Partial Surrender of Mining Licence
<u>PWNC</u>	Partial Withdrawal of Notice of Claim
<u>PWX</u>	Partial Withdrawal of Caveat
R25A	Cancellation of Covenant - s25A(9) NZ Railways Corporation Restructuring Act 1990
R306	Release of Completion Certificate - Local Government Act 1974
R417	Release of Certificate Specifying Mining Rights under s417 Resource Management Act 1991
RAG	Rescission/Revocation of Agreement (All Types)
RC37	Removal of Certificate 37 under s37(9) Building Act 1991
RC5A	Revocation of c5a under Earthquake and War Damage Regulations 1984
RCSN	Revocation of Amalgamation Condition under s240 Local Government Act 1974
<u>RE</u>	Application to remove redundant easement
RLC	Revocation of Land Covenant
RR42	Revocation of Restraining Order under Section 42 Proceeds of Crime Act 1991
SAG	Surrender of Forestry Agreement

SE	Surrender of Easement without Transfer
SL	Surrender of Lease/Licence
SML	Surrender of Mining Licence
SOL	Surrender of Licence to Occupy
SPP	Surrender of Profit a Prendre
<u>T</u>	Transfer
T417	Transfer of Certificate of Mining Rights under s417 Resource Management Act 1991
TAG	Transfer of Forestry Rights Registration Agreement
TBON	Transfer of Bond
<u>TE</u>	Transfer and Grant of Easement
TFL	Transfer of Licence under Crown Forest Assets Act 1989
TL	Transfer of Lease
<u>TM</u>	Transfer of Mortgage
TMEE	Transfer and Merger of Easement
TMEL	Transfer and Merger of Lease
TMEM	Transfer and Merger of Mortgage
TMIP	Transfer of Mining/Prospecting/Exploration Permit under Crown Minerals Act 1991
<u>TPS</u>	Transfer in Exercise of Power of Sale
<u>TSE</u>	Transfer and Surrender of Easement
W220	Withdrawal of Irrigation Notice under s220(5) Public Works Act 1981
WC18	Withdrawal of Notice
<u>WNC</u>	Withdrawal of Notice of Claim
<u>WX</u>	Withdrawal of Caveat
YRCV	Deed of Revocation of a Covenant