

Waiving and Refunding Title Fees

Policy 2020

LINZ OP O 01249

Office of Registrar-General of Land

7 September 2020

Authority and regulatory attributes

LINZ OP O 01249

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1. About this policy

1.1. Purpose

This regulatory policy guides the Registrar as to circumstances when all or any part of a title fee may be waived or refunded.

1.2. Definitions and terms

In this policy, unless the context otherwise requires—

Term	Definition
Amount	means monetary worth
Charged	means a customer has been invoiced for a fee or has paid a fee
Customer	means a natural person or organisation who has purchased a service provided under the LTA or the LTR
Dealing	means dealing in estates and interests in land
Estate or interest	means every estate or interest in land, and includes a mortgage or charge on land
Fee schedule	Schedule 7 of the LTR
Fraud	has the meaning given to it in section 6 of the LTA
Individual	means a natural person
Instrument	has the meaning given to it in section 5 of the LTA
LINZ	Land Information New Zealand
LTA	Land Transfer Act 2017
LTR	Land Transfer Regulations 2018
Registrar	means Registrar-General of Land
Service	means the performance or exercise of a function, duty or power under the LTA or the LTR
Title fee	means a fee payable under the LTA
Titles resubmission fee	means the fee that is charged when an instrument that has been requisitioned or rejected is re-submitted (section 37 of the LTA)

Term	Definition
Waiver	means to dispense with the payment of a fee in accordance with section 229(3) of the LTA or regulation 23 of the LTR
Working day	has meaning given to it in section 5 of the LTA

1.3. Context

The principle¹ that underpins the policies in this document are customers should not have to pay fees where—

- (a) it is—
 - (i) unreasonable or unfair; or
 - (ii) necessary to maintain the integrity of title to estates and interests in land; and
- (b) the LTA permits the fee to be waived or refunded.

1.4. Statutory Matters

1.4.1 Section 229(3) of the LTA

Section 229(3) *LTA Fees and charges* states the Registrar may—

- (a) *dispense with payment of all or any part of a fee payable under this Act; or*
- (b) *refund all or any part of a fee paid under this Act.*

1.4.2 Regulation 23 of the LTR

Regulation 23(3) of the LTR *Withdrawing instruments after lodgement* states:

All or any part of a fee payable or paid under the Act in respect of the withdrawn instrument may be dispensed with or refunded (see section 229(3) of the Act).

1.5. Policy Objective

The substantive policy objective is to provide a system of principles to guide decision making when considering waivers and refunds of title fees, reflecting judgements that are ordinarily applied under business as usual conditions.

¹ LINZ Legal Services advice

1.6. Status of examples

The examples used in this policy only illustrate the provisions they relate to. They do not limit the provisions.

1.7. Application of this policy

This policy applies to:

- (a) all fees payable under the LTA, and
- (b) persons, classes of persons and holders of offices who have been delegated the powers and duties specified in section 229(3) of the LTA and in regulation 23 of the LTR.

2. The Policies

2.1 Title fees may be waived or refunded

The policy is the Registrar will consider waiving or refunding all or any parts of title fees where—

- (a) a service is supposed to be provided free of charge:
- (b) a customer acting on the guidance of LINZ has purchased a service they do not require:
- (c) the amount of work in a particular case does not justify charging a fee:
- (d) it is unreasonable to charge multiple fees in a particular case:
- (e) the Registrar is correcting an error or omission by LINZ:
- (f) a customer has withdrawn an instrument before it is registered or noted:
- (g) it is necessary to maintain the integrity of title to estates and interests in land.

2.2. A service supposed to be provided free of charge

- (1) If a customer is to be charged a fee for a service which is supposed to be provided free of charge, the policy is that the fee will be waived.
- (2) If a customer has been charged a fee for a service which was supposed to be provided free of charge and less than 21 working days have elapsed since the fee was charged, the policy is that fee will be waived or refunded.
- (3) To avoid doubt, the circumstances in which a service is supposed to be provided free of charge include (but is not limited to) where—

- (a) the fee is the titles resubmission fee; and
- (b) the instrument being re-submitted has a nil registration or lodgement fee attached to it in the fee schedule.

Example:

A Gazette notice is re-submitted. The Registrar elects to waive the *titles resubmission fee*, because the fee for registering a Gazette notice is nil.

2.3. The purchased service is not required

If a customer acting on the guidance of LINZ has purchased a service they do not require and less than 21 working days have elapsed since the title fee was charged, then in determining whether to waive or refund all or any part of the fee, the Registrar will ordinarily consider (but is not limited to) the following matters:

- (a) the extent to which any guidance provided to customer by LINZ contributed to the purchase:
- (b) whether it was reasonable for the customer to rely on the guidance provided by LINZ:
- (c) the extent to which the customer benefited from provision of the service.

Example:

A customer relied on guidance they happened across in an out of date LINZ pamphlet when deciding to purchase a service and the service is no longer required. The Registrar elects not to refund the title fee, as it was unreasonable for the customer to rely on the guidance provided by the pamphlet.

2.4. Charging a fee is not justified

- (1) If the Registrar considers that, in the circumstances, the amount of work in a particular case does not justify charging a title fee, the policy is the fee will be waived.
- (2) To avoid doubt, the circumstances in which the amount of work does not justify charging a title fee include (but is not limited to) where—
 - (a) the instrument code in an electronic document has to be corrected:
 - (b) instruments need to be re-ordered to enable registration.

Example:

A customer submits an electronic document using an incorrect instrument code but containing the correct image. No other amendments to the document are required. The Registrar elects to waive the *titles resubmission fee*, because the amount of work required to correct the code does not justify charging the *title resubmission fee*.

2.5. It is unreasonable to charge multiple fees

- (1) If it is unreasonable for a customer to be charged multiple title fees in a particular case, the policy is the fee of the highest amount will be charged. The remaining fees will be waived.
- (2) If it is unreasonable that a customer has been charged multiple title fees in a particular case and less than 21 working days have elapsed since the last fee was charged, the policy is the fee of the highest amount will have to be paid. The remaining fees will be waived or refunded.

Example:

An instrument is lodged without some of the required documents. The instrument is correct in all other respects. The instrument is returned to the customer, without charging a *new title fee*, because it cannot be processed without the missing documents. The Registrar elects to waive the *titles resubmission fee*, as is unreasonable for the customer to be charged both the *new title fee* and the *titles resubmission fee* when they resubmit the instrument.

2.6. Correcting an error or omission by LINZ

- (1) If a customer is to be charged a title fee for a service necessary to correct an error or omission by LINZ, the policy is that all or part of the fee will be waived.
- (2) If a customer has been charged a title fee for a service necessary to correct an error or omission by LINZ, the policy is all or part of the fee will be refunded where less than 21 working days have elapsed since the fee was charged.
- (3) To avoid doubt, the circumstances in which a service is necessary to correct an error or omission by LINZ include (but are not limited to) where—
 - (a) a dealing is requisitioned due to an error LINZ has made:
 - (b) a dealing is requisitioned for a second time by LINZ for items LINZ missed on the first requisition.
- (4) The circumstances referred to in subclause 3 do not include the Registrar exercising the power to alter the register under section 21 of the LTA.

Example:

LINZ provides incorrect advice, which results in an instrument being requisitioned. The Registrar elects to not charge the customer the *titles resubmission fee* for re-submitting the instrument, as the requisition was due to an error by LINZ.

2.7. An instrument is withdrawn before being registered or noted

If a customer withdraws an instrument before it is noted or registered, the policy is all or any part of the title fee will be waived or refunded, in accordance with Regulation 23(3) of the LTR.

2.8. Maintaining the integrity of title to estates and interests in land

- (1) If the Registrar is satisfied a customer has information necessary to maintain the integrity of title to certain estates and interests in land, the Registrar will ordinarily consider the waiver of the relevant title fee to ensure the information is lodged.
- (2) To avoid doubt, maintaining the integrity of title to estates and interests in land means:
 - (a) preventing fraud and improper dealings in land, and
 - (b) maintaining public confidence in the land titles system, and
 - (c) maintaining the integrity of the register and the right to claim compensation under subpart 3 of part 2 of the LTA.

Examples:

A customer holds information about improper dealings in land but is reluctant to provide the information, because doing so will incur a fee. The Registrar waives the fee, because they are satisfied that the information is necessary to maintain the integrity of title to estates and interests in land.

An instrument has been lost by LINZ. The customer finds a copy of the instrument and lodges it. The Registrar declines to waive the fee for *lodgement and registration of an instrument* on the grounds of maintaining the integrity of title to estates and interests in land, as this is not a systemic issue. Instead, the Registrar elects to waive the fee for *lodgement and registration of an instrument* on the grounds that it is correcting an error or omission by LINZ (see policy 2.6 above).