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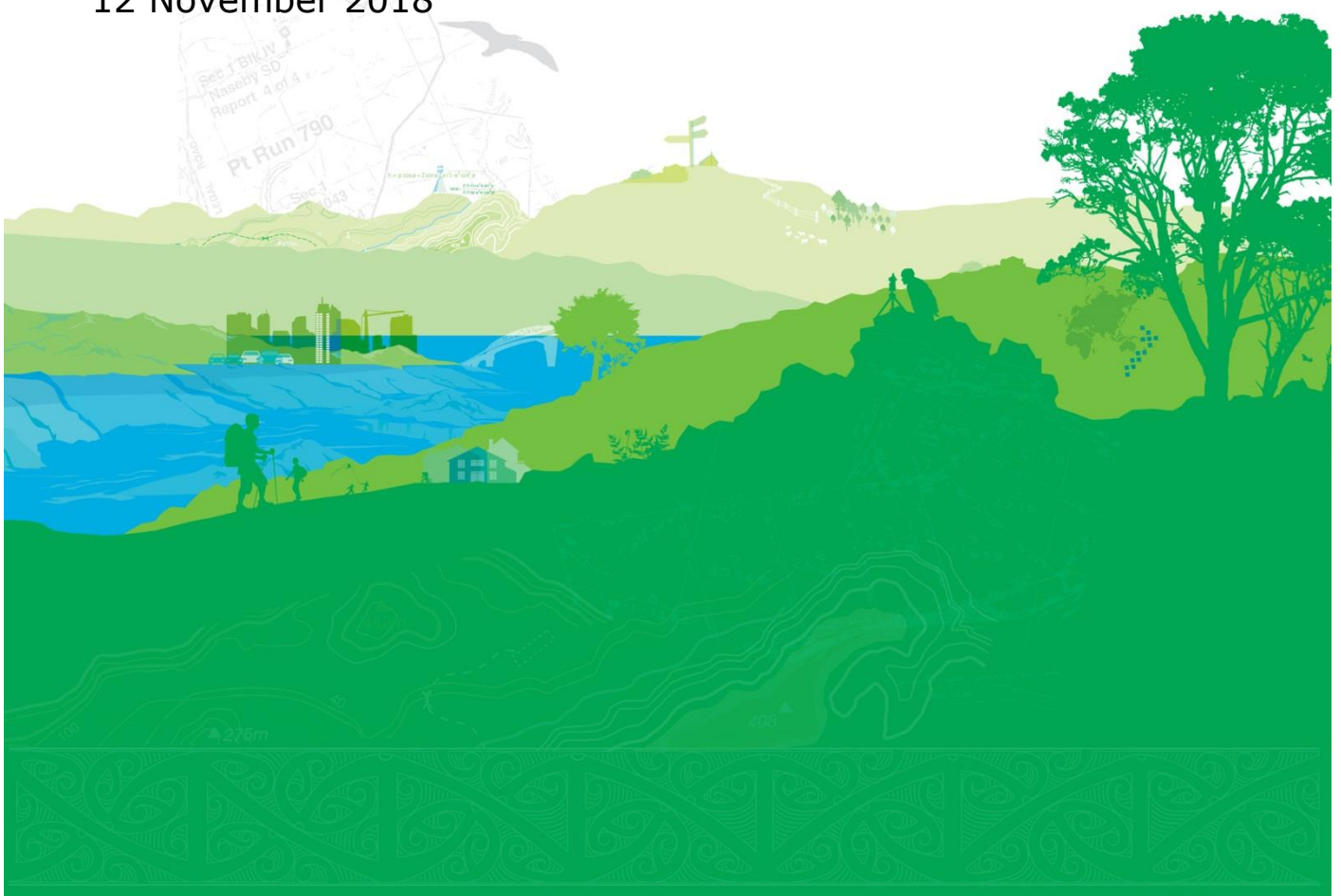
Authority and Identity Requirements for E-Dealing

Guideline 2018

LINZG20775

Office of the Registrar-General of Land

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Foreword

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 certifications after taking all reasonable and appropriate steps to ensure they are correct. These are requirements of Lawyers' and Conveyancing Practitioners' Conduct and Client Care Rules.

Purpose of this guideline

This guideline is to assist Practitioners understand their obligations when making e-dealing certifications regarding authority and identity¹.

It focuses on Practitioners' obligations to:

- ensure they have proper authority from their client;
- take reasonable steps to ensure their client has legal capacity;
- verify the identity of their client; and
- retain the evidence they have relied on to support those certifications.

This guideline should be read in conjunction with the New Zealand Law Society's Property Law Section Property Transactions and E-Dealing Practice Guidelines.

For guidance about compliance with the standard certification that relates to compliance with statutory matters and evidence², see LINZS20012 Certification of Electronic Instruments (Statutory Requirements and Retention of Evidence) Standard 2018 and relevant regulations.

For guidance in relation to postal lodgement of paper instruments, see LINZG20776 Identity Requirements for Paper Instruments Guideline 2018.

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

¹ Regulation 7(3)(a), (b) and (d) of the Regulations and pursuant to section 27 of the Act.

² Regulation 7(3)(c) of the Regulations and pursuant to section 27 of the Act.

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
- New Zealand Law Society's Property Law Section Property Transactions and E-Dealing Practice Guidelines
- Anti-Money Laundering and Countering Financing of Terrorism Amended Identity Verification Code of Practice 2013

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 2018 have the meaning given to them in that Act, unless otherwise stated.

Terms and Definitions

Term	Definition
A&I Form	the Authority and Instruction Form; this authorises the practitioner to act on behalf of the client. The approved forms can be found in the PLS Guidelines.
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 this document.
Act	Land Transfer Act 2017.
AML Act	Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
Applicable additional matters	see Special Certifications.

Term	Definition
Authority and Identity Certifications or; Authority Certifications or; Identity Certifications	means the Standard Certifications relating to client authority, client identity and retention of evidence set out in regulation 7(3)(a), 7(3)(b) and 7(3)(d) of the Regulations.
Authority and Identity Code of Practice or AML Code	Anti-Money Laundering and Countering Financing of Terrorism Amended Identity Verification Code of Practice 2013 (published by Internal Affairs).
Certifier	see Practitioner.
Client	means the party on whose behalf the Practitioner is certifying.
Current Photo ID	means a Photo ID that is current at the time the identity is verified.
Delegate	as defined in section 4.6 of this guideline.
E-Dealing Certifications	means the Standard Certifications and Special Certifications.
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.
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 this guideline.
ID	Identity Document.

Term	Definition
Institutional Chargeholder	<p>means:</p> <ul style="list-style-type: none"> (a) an institution, such as a bank, building society, credit union, financier, lawyers nominee company, Private Corporate, Public Corporate or other organisation which regularly lends money or provides credit in the course of its business activities, (but does not include private individuals or contributors under a contributory mortgage advance); or (b) an institution (excluding a private individual or private individuals) which makes a practice of entering into mortgages as trustee, nominee or as a custodian or custodian bank or global custodian for institutions of the type referred to in paragraph (a) of the explanation of the term Institutional chargeholder notwithstanding the institution does not itself engage in lending money or providing credit; or (c) a territorial authority, the Legal Services Agency, a government department or government or Crown agency or other similar organisation which registers encumbrances or charges against land in the normal course of its activities.³
Landowner	means the owner of a legal or an equitable estate or interest in land.
LINZ	Land Information New Zealand.
PLS Guidelines	The New Zealand Law Society’s Property Law Section Property Transactions and E-Dealing Practice Guidelines.
Photo ID	See Acceptable Photo ID.
Practitioner	means a lawyer or conveyancing practitioner as defined in s6 of the Lawyers and Conveyancers Act 2006, who certifies; the Certifier.
Private Corporate	means any corporate entity which is not a Public Corporate, and includes companies which are not listed on the main board of the New Zealand stock exchange (NZSX), limited partnerships, charitable trusts, incorporated societies, building societies and Maori incorporations ⁴ .

³ Refer PLS Guidelines.

⁴ Refer PLS Guidelines.

Term	Definition
Public Corporate	<p>means:</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 1989⁵.
Registrar-General of Land (RGL)	appointed in terms of section 231 of the Act.
Regulations	Land Transfer Regulations 2018.
Safe Harbour	means the actions that constitute reasonable steps by Practitioners which satisfy the Standard Requirements.
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 Act.

⁵ Refer PLS Guidelines.

Term	Definition
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 Act:</p> <ul style="list-style-type: none">(a) the Certifier has authority to act for the party and the party has legal capacity to give the authority; and(b) the Certifier has taken reasonable steps to confirm the identity of the party; and(c) if statutory requirements have been specified by the Registrar for instruments of a particular type, the instrument complies with those requirements; and(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.
Standard Requirements	<p>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 this guideline.</p>
Trusted Colleague	<p>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.</p>

1 Introduction

1.1 Obtaining authority from the client

In the e-dealing environment, authority refers to the written instructions⁶ from the client to the Practitioner to act on their behalf in relation to the certification and registration of a particular transaction.

In most cases an A&I form⁷, or a letter of instruction from an institutional chargeholder, is obtained from the client to evidence that authority.

1.1.1 Ensuring the client has legal capacity

A Practitioner must take reasonable steps to ensure the client providing authority has legal capacity to do so.

1.2 Verifying the identity of the client

In the e-dealing environment, identity verification refers to the reasonable steps Practitioners must take to confirm the identity of the person giving authority to register the instrument, to ensure the person:

- a) is who they say they are; and
- b) is the same person as the registered owner (when dealing with an existing registered estate or interest).

The process for identity verification is set out in detail in section 4. In addition, Table 1 of this guideline sets out 2 options for satisfying the Standard Requirements (described in section 4 below) for verifying identity – the “Safe Harbour” and “Equally Effective Means”.

A Practitioner who adopts the safe harbour approach⁸ in relation to one or more Standard Requirements, will be deemed to have fulfilled their obligation to take reasonable steps in relation to that requirement.

If Practitioners adopt the equally effective means they must (in addition to the standard requirements set out in section 4):

- create a file note of their decision to opt out of Safe Harbour, along with an explanation and supporting evidence about how the chosen means are effective; and
- retain it with the A&I form as evidence in support of the certification under section 30(1) of the Act.

⁶ See section 3.1 for exceptions for caveats/notices of claim.

⁷ See also the definition of *A&I form* in the PLS Guidelines.

⁸ See LINZS20018 Authority and Identity Requirements for E-Dealing Standard 2018 for “safe harbour” guidance.

The question of whether a Practitioner adopting an “Equally Effective Means” approach in relation to one or more Standard Requirements has fulfilled their obligations is determinable on a case by case basis.

2 Certifying Practitioner’s obligation

2.1 All transactions – required actions for Authority and Identity Certifications

Before making the Authority and Identity Certifications for Electronic instruments, Practitioners must satisfy the Standard Requirements for:

- a) obtaining authority,
- b) verifying identity,
- c) mitigating the risk for high risk transactions (assessment and, when necessary, additional actions), and
- d) the retention of evidence.

Note: Practitioners also need to comply with Special Certification requirements arising from regulation 7(4) of the Regulations (e.g. mortgagee consent certifications), where applicable to any given electronic instrument, but that is not the focus of this guideline.

2.2 High risk transactions – additional action

A high risk transaction is one where the risk of improper dealing or landowner identity fraud is high.

Before making the Authority and Identity Certifications for Electronic instruments, Practitioners must make an overall judgement as to whether it is a high risk transaction, taking into account *anything about the transaction or the client*.

If a transaction is high risk, Practitioners must take additional actions to mitigate that risk prior to giving the certification - see section 4.2.2 below for guidance on identifying and mitigating high risk transactions.

3 Standard requirements for authority certifications

3.1 Obtain authority

Practitioners must obtain written authority from the client to register land title transactions.

Best practice is for Practitioners to obtain a properly completed A&I form⁹ from the client. This satisfies the requirement for obtaining proper authority.

Practitioners must:

- a) obtain authority from the client personally or by their properly appointed representative; and
- b) ensure it provides specific authority to register the transaction as an electronic instrument; and
- c) ensure the client has legal capacity to give that authority; and
- d) retain the authority and any other relevant documentation as evidence in support of the certification under section 30(1) of the Act.

Other acceptable forms of authority include:

- e) a letter of instruction¹⁰ from an institutional chargeholder for a discharge or new mortgage, or
- f) confirmation by email, letter, file note (e.g. recording oral instructions) or other documentation that the Practitioner is authorised to act for the caveator/claimant¹¹.

3.1.1 Ensuring client has legal capacity

In assessing legal capacity¹² a Practitioner needs to be aware of relevant legal requirements:

- a) For a private individual; the client must not be a minor, an undischarged bankrupt, someone who does not have mental capacity or is under duress;
- b) For private or public corporates; the client is not subject to any statutory management orders, in receivership or liquidation or similar, and has passed any necessary resolutions as required of its empowering constitution, rules or statute to authorise the transaction.

⁹ See the guidance on *Completion of A&I forms* in the PLS Guidelines.

¹⁰ See the guidance on *Mortgages* and *Discharges* in the PLS Guidelines.

¹¹ See LINZG20773 *Caveats and Other Stops* on Registration Guideline 2018.

¹² See the guidance on *Capacity* in the PLS Guidelines.

3.1.2 Delegated authority¹³ – Power of Attorney, property manager, etc.

When making certifications on behalf of the client for a transaction authorised under a Power of Attorney or Court Order appointing a Property Manager, Practitioners should exercise special care to confirm:

- a) the Power of Attorney and Court Order they are sighting is an original;
- b) the Power of Attorney is genuine and was properly executed by the donor;
- c) the transaction is within the scope of what may be authorised under the Power of Attorney or Court Order;
- d) the authority is still valid i.e. is current and not suspended or revoked;
- e) the identity of the attorney or property manager;
- f) where an enduring Power of Attorney is only applicable on the Donor's incapacity, a copy of the medical certificate in accordance with section 99D of the Protection of Personal and Property Rights Act 1988 is obtained¹⁴.

Due to the nature of Powers of Attorney and the risk of their misuse, this is considered a high risk area. Refer to section 4.2 for further guidance.

3.1.3 Public corporate

A Practitioner or trusted colleague who initiates contact with a Public Corporate can reasonably rely on the authenticity of the documentation provided without the need for further verification of signatories' identities or authority to sign¹⁵.

If the Practitioner or trusted colleague did not initiate contact leading to the relevant transaction and instruments for certification, the Practitioner or trusted colleague must independently contact the relevant Public Corporate to verify the authenticity of the documentation.

Public Corporates can be expected to properly manage their delegations to officers / authorised signatories to authorise transactions on their behalf, in accordance with any governing statutory requirements. For that reason, the authorised signatories' identity does not need to be verified by way of acceptable photo ID.

¹³ See the guidance on *Execution of A&I forms by attorney* in the PLS Guidelines.

¹⁴ See also section 5 of the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008 for prescribed information for the certificate.

¹⁵ Except where the authority is signed under a Power of Attorney in which case the authority should be accompanied by a certificate of non-revocation in the usual manner.

3.1.4 Institutional chargeholders

If the interested party giving authority is an institutional chargeholder (for example, in transactions such as new mortgages or discharges), the provisions set out in the PLS Guidelines, regarding letters of instruction apply.

3.1.5 Private corporate

If the interested party giving authority is a Private Corporate, the Practitioner or trusted colleague must verify the authorised signatories' identities as well as their authority to sign for the corporate entity in accordance with the Companies Act 1993 or other relevant governing statute and the corporate entity's constitution. This applies even where two or more directors have signed on behalf of a company.

4 Standard requirements for identity certifications

The legal obligation to verify identity is an essential safeguard against identity and property fraud in conveyancing transactions.

Practitioners must ensure clients are properly identified to manage the risk of improper dealing or identity fraud.

For some of the standard requirements set out below, Practitioners can satisfy the requirement in one of two ways: the *Safe Harbour* or *Equally Effective Means*.

If Practitioners adopt the equally effective means they must (in addition to the standard requirements set out in section 4):

- create a file note of their decision to opt out of Safe Harbour, along with an explanation and supporting evidence about how the chosen means are effective; and
- retain it with the A&I form as evidence in support of the certification under section 30(1) of the Act.

Further detail is in Table 1. In addition, a decision tree showing decision points for Practitioners and options for fulfilling their obligations is in Appendix 3.

4.1 Verify identity

4.1.1 Examine identity documents

A Practitioner, trusted colleague or delegate must examine the following documents to verify the identity of the person giving authority:

- a) an original passport, or New Zealand government-issued photo ID, that is current or expired within the previous 12 months (unless acting for an Institutional Chargeholder or Public Corporate¹⁶) (Safe Harbour); and
- b) ensure any documentation in a foreign language is independently translated and is legible; and
- c) if the electronic instrument is a transfer or mortgage, a Practitioner acting for the transferor or mortgagor must also obtain:
 - i) evidence in the form of a rates demand, bank statement, utility account, insurance policy or other official document connecting the client to the property; or
 - ii) if the client has only recently purchased the property, a copy of the agreement for sale and purchase subject to the exception in section 4.1.1.1; and

¹⁶ See sections 3.1.4 and 3.1.6 of guideline

- d) retain copies of the documents above for 10 years from the date of lodgment of the electronic instrument as evidence in support of the certification under section 30(1) of the Act.

See [Table 1](#) for more detail on the safe harbour and equally effective means methods of satisfying the standard requirements for verifying identity.

4.1.1.1 Dispensing with the requirement to obtain connecting documents

A Practitioner who can confirm the client's connection to the property based on their own personal knowledge or that of a trusted colleague may choose to:

- a) dispense with the requirement for evidence in clause 4.1.1(c); and
- b) treat a transaction as not falling under the category of high risk for the purposes of section 4.2.2; and

instead record a file note as to these matters and retain it as evidence in support of the certification under s30(1) of the Act.

An element of judgment is required in the application of this guideline. For example, it may be reasonable to claim personal knowledge on the basis that the client has been a longstanding client of the firm, even though most of the interaction has been with other Practitioners in the firm.

It would however be unreasonable to claim personal knowledge if the client is a stranger, is a referral (e.g. from another Practitioner or real estate agent), was previously unknown to the firm or has only recently become a client.

Practitioners must assess any decisions made by the trusted colleague or the delegate as the Practitioner is ultimately responsible for the adequacy of the checks made or the decision to make no further checks. If the Practitioner is not satisfied, the Practitioner should not certify the transaction without undertaking further enquiry.

4.1.1.2 Re-use of earlier identity verification in limited circumstances

As described in section 4.1.1, best practice is for Practitioners, trusted colleagues and delegates to rely on current acceptable photo ID the client is able to produce at the time of obtaining authority, witnessing the execution of the A&I form and verifying identity.

Where a Practitioner, trusted colleague or delegate has personally identified an existing client within the last 5 years, they may rely on those earlier identity verification procedures and related evidence. Identity verification may have been completed for an earlier e-dealing or for the purposes of AML Act requirements.

In all cases the Practitioner must:

- a) ensure the ID held on file is acceptable photo ID as set out in Table 1, and

- b) check the expiry date on the acceptable photo ID to ensure it is still current or expired within the previous 12 months (if using Safe Harbour).

Where a client is unable to provide an acceptable form of photo ID and the provisions in this section do not apply, their identity may be verified by way of statutory declaration as set out in section 4.1.2 below.

4.1.2 Verification in absence of Acceptable Photo ID

Where a client does not have an acceptable Photo ID, their identity may be verified by an independent witness aged 18 years or over.

The witness must:

- a) know the client personally and vouch for their identity,
- b) give a statutory declaration in the form set out in the Appendix 1 verifying the interested party's identity,
- c) provide an acceptable photo ID, as verification of their own identity, to the person taking the declaration, and
- d) sign a photograph of the interested party, verifying it is a true likeness of the client or interest-holder.

The Practitioner must retain the statutory declaration with the documents described in (c) and (d) for 10 years as evidence in support of the certification under section 30(1) of the Act.

Refer also to section 4.2 *Mitigate risk for high risk transactions* below.

4.2 Mitigate risk for high risk transactions

Prior to making an authority and identity certification for a high risk transaction, Practitioners must ensure additional actions are taken to mitigate the increased risk of improper dealing or landowner identity fraud.

Practitioners are best placed to decide on the additional actions to manage the risk and ensure the transaction is bona fide given their ability to assess the circumstances of the transaction and the client.

4.2.1 Identifying high risk transactions

Transfers and Mortgages form a large proportion of electronic instruments that are lodged, and as these:

- change legal ownership or create a legal interest in the land which cannot be set aside (other than in the limited circumstances in section 51(3) of the Act); and
- are one of the key factors enabling money to be borrowed;

they present an increased risk (both in terms of likelihood and impact) of improper dealing or landowner identity fraud.

An application to correct or change a name and transactions involving powers of attorney are also considered high risk due to the potential for misuse.

For these reasons the following transactions are high risk when one or more of the conditions below apply:

Transaction type	Client
Transfer	Transferor
Mortgage	Mortgagor
Application to correct or change a name	Applicant

The conditions referred to above are:

- the client is not previously known to the Practitioner or a trusted colleague, and
 - is dealing with unencumbered land; or
 - is refinancing in a manner that significantly reduces the mortgagors' equity in the property; or
 - provides contact details that are not connected to the physical address of the land subject to the relevant transaction; or
 - the client provides unfamiliar or foreign ID;
- the Practitioner or a trusted colleague has not personally met the client to receive instructions in relation to the current transaction; and
 - a third party provides instructions on behalf of the client; or
 - the transaction involves family members and, on the face of the documents, one family member is gaining an interest from another family member; or
 - the clients are co-owners, one of whom is providing instructions on behalf of themselves and another co-owner.
- in the circumstances outlined in the above conditions, the instrument is authorised on behalf of the client under a power of attorney.

4.2.2 Additional actions to verify identity for high risk transactions

If a transaction is considered high risk, additional steps must be taken and documented to independently verify the identity of the client and ensure the bona fides of the transaction. These should be reasonable and relative to the level of risk involved.

In addition to the documents required in section 4.1.1, a Practitioner must:

- a) take additional steps to independently verify the identity of the client (examples of additional steps are described below), and
- b) record a file note documenting the additional steps taken, and
- a) retain the file note for 10 years from the date of lodgment of the electronic instrument as evidence in support of the certification under section 30(1) of the Act.

Examples of further action to mitigate high risk transactions:

Example: Power of Attorney

If authority is given by a person acting under a Power of Attorney where the Practitioner did not personally act for the donor when granting the Power of Attorney, the Practitioner should initiate contact with the donor via independently obtained contact details in order to confirm the instructions and ensure the Power of Attorney is still in force. Contact details provided by the person authorising the transaction or anyone connected with or recommended by them, are not independently obtained.

Example: Connecting the client to the property

A Practitioner or a trusted colleague may ask the client to bring in a document which has their name and the address for the property, such as a rates demand from the territorial authority, or similar documents from a bank or utility/insurance provider – see Table 1 (*2A Obtain documents connecting the client to the property*) for more examples. It is **not acceptable** for the Practitioner to rely on a printout of the rates statement from the Local Authority; this can be obtained by anyone and does not connect the client to the property.

Example: Checking the historical view of the Record of Title to identify potential inconsistencies

When acting for a transferor, if the historic information on the Record of Title shows the transfer to the party was registered 60 years ago, and the client looks 25 years old, there is an age discrepancy which indicates identity cannot be verified.

Simply checking a client's name matches the Record of Title does not prove you are dealing with the landowner – many people share a common name (such as Joe Brown) but only one of them is the landowner.

If upon further inquiry doubts remain as to the client's identity or the validity of the authority provided, then the Practitioner cannot certify identity for the purposes of sections 27 of the Act.

4.3 Examine documents connecting the client to the property

To satisfy the requirements in sections 4.1.1(c) above (to obtain documents connecting the client to the physical address of the property when acting for a transferor or mortgagor), and if required as an appropriate action to mitigate a high risk transaction, a Practitioner, trusted colleague or delegate must examine documents connecting the client to the physical address of the property. This is necessary to establish the client is the landowner.

Where there are several landowners transferring or mortgaging a property, documents connecting the client to the property need only be provided by at least one of the landowners. The photo ID for all landowners must be examined as required by section 4.1.1(a) and (b).

Table 1 sets out both the safe harbour and equally effective means to satisfy this standard requirement.

Some forms of evidence connecting clients to the property are now emailed or online statements. As long as this evidence is received by the registered landowner and refers to the subject property this is sufficient.

It is not acceptable for the Practitioner to rely on publicly accessible information obtained from a Local Authority.

4.4 Reconcile name discrepancies – photo ID, A&I form, registered owner

If the client's name as it is recorded on their acceptable photo ID does not match the name on the Record of Title, the Practitioner must obtain additional documentation such as:

- a) a certified copy of a NZ government-issued certificate (or a suitable overseas equivalent) evidencing a name change (e.g. marriage certificate or name change certificate); and/or
- b) a statutory declaration;

evidencing the client named on the Record of Title and acceptable photo ID is one and the same person.

Likewise for high risk transactions, if the documents connecting the client to the property are in a name that differs from the landowner's name on the Record of Title, the Practitioner must obtain additional supporting documentation to reconcile the names.

For further guidance, see LINZG20780 Applications to Correct or Change Names in the Register Guideline 2018.

Any additional supporting documentation must be retained with the A&I form as evidence in support of the certification under section 30(1) of the Act.

4.5 General witnessing criteria

When witnessing the execution of an A&I form, the Practitioner, trusted colleague, or delegate must:

- be aged 18 years or over; and
- be independent of the client and transaction i.e. the witness cannot;
 - be related to the client,
 - be the client's partner or spouse,
 - be part of the client's extended family group,
 - live at the same address as the client, or
 - be someone involved with or benefiting from the transaction¹⁷.

No matter who carries out the identity verification checks and witnesses the A&I, the Practitioner remains ultimately responsible for the adequacy of the checks performed.

4.6 Delegating identity verification

A Practitioner may rely on a trusted colleague or delegate to verify the client's identity in accordance with clause 4.1 of this guideline¹⁸.

A delegate is an independent, trusted person whom a Practitioner can reasonably rely on to carry out the identity verification checks on their behalf.

When nominating a suitable person to undertake these functions, Practitioners must be confident that the delegate will properly perform these checks with an appropriate level of robustness and impartiality. The ultimate responsibility for ensuring the identity of the client has been properly verified remains with the certifying Practitioner, even where it has been so delegated.

A suitable delegate, for example, might be someone who is known to and trusted by the Practitioner or their firm, or someone who holds a particular role or professional position within the community (such as another Practitioner, chartered accountant or Justice of the Peace).

By contrast, relying on a friend or relative selected by the client to verify identity and witness an A&I form would not be a reasonable way for the Practitioner to confirm the client's identity. This may not be an effective independent check or safeguard against forgery or identity fraud.

Therefore it is essential that Practitioners apply sound judgment in these matters and retain good file notes to record their decisions.

When relying on a delegate to obtain authority and verify identity the Practitioner must ensure the delegate fully understands the steps they must follow.

¹⁷ With the exception of Practitioners who provide services to the mortgagor.

¹⁸ See also the related Commentary in guidance for *Client identity* in the PLS Guidelines.

The Practitioner must:

- a) be satisfied the delegate is an independent, trusted person who the Practitioner can reasonably rely on to verify identity on their behalf; and
- b) ensure any documentation in a foreign language is independently translated and is legible; and
- c) when using a delegate using equally effective means, create a file note explaining how the delegate is an independent, trusted person on whom they can reasonably rely; and
- d) retain it with the A&I form as evidence in support of the certification under section 30(1) of the Act.

Table 1 sets out both the safe harbour and equally effective means to satisfy this standard requirement.

4.7 Use audio-visual technology in limited circumstances

Audio-visual technology may be used to obtain authority and verify identity if 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; and
- c) is able to simultaneously see and hear the client and clearly see what documents are being signed for the duration of the identity verification session.

Verifying identity via audio-visual technology must not be undertaken if the Practitioner:

- d) has doubts as to the identity or capacity of the client; or
- e) has concerns that the client may be acting under duress or at the direction of another person; or
- f) is not able to simultaneously see and hear the client and clearly see what documents are being signed for the duration of the identity verification session.

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 and to confirm that each of the conditions in 4.7 (a) to (c) above were met.

5 Standard requirement for retention of evidence

A Practitioner who certifies an electronic instrument must, as part of their obligation under section 30 of the Act, retain the documentary evidence referred to above to support their Authority and Identity Certifications for 10 years from the date of lodgment in accordance with section 30(1) of the Act and regulation 7(6) of the Regulations.

5.1 Table 1 – Safe Harbour and Equally Effective Means

This table sets out the Safe Harbour and Equally Effective Means of satisfying some of the standard requirements for:

- verifying identity;
- obtaining documents connecting the client to the property; and
- delegating identity verification.

It should be read in conjunction with the standard requirements set out in section 4 above.

5.1.1 Safe Harbour

The Safe Harbour is considered best practice and when followed, constitutes reasonable steps for identity verification purposes under the Act, Regulations (7(3)(a) and 7(3)(b)) and the Authority and Identity Requirements for E-Dealing Standard 2018.

5.1.2 Equally Effective Means

In some circumstances it may not be possible for Practitioners to use the Safe Harbour. Based on the circumstances of the transaction and the client, Practitioners may use other means to verify identity (referred to as equally effective means).

Practitioners must exercise caution and apply good judgment if they are unable to follow the Safe Harbour and need to adopt the Equally Effective Means. The onus is on the Practitioner to show that reasonable steps have been taken for the purposes of the Act.

When Practitioners are assessing whether the actions are equally as effective, they should use the Safe Harbour method as a starting point.

If Practitioners adopt the equally effective means they must (in addition to the standard requirements set out in section 4):

- create a file note of their decision to opt out of Safe Harbour, along with an explanation and supporting evidence about how the chosen means are effective; and
- retain it with the A&I form as evidence in support of the certification under section 30(1) of the Act.

Standard Requirement	Safe Harbour	Equally Effective Means
1. Verify identity		
<p>A. Examine acceptable photo ID</p>	<p>A Practitioner, trusted colleague or delegate can rely on one of the following forms of photo ID (which is current or expired within the previous 12 months):</p> <ul style="list-style-type: none"> • New Zealand Passport; or • New Zealand driver licence; or • New Zealand Firearms licence; or • An overseas Passport issued for the purpose of international travel, or • A SuperGold card with the holder’s photograph. <p>The following forms of photo ID (which is current or expired within the previous 12 months) set out in the AML Code are also acceptable:</p> <ul style="list-style-type: none"> • New Zealand certificate of identity, refugee and emergency travel documents issued under the Passports Act 1992; or • Certificates of identity issued under section 25 of the Immigration Act 2009. 	<p>A Practitioner, trusted colleague or delegate may be able to rely on other forms of photo ID (which is current or expired within the previous 12 months) to verify the identity of the client.</p> <p>As examples, Practitioners could consider one of the other forms of photo ID set out in the AML Code, i.e.</p> <ul style="list-style-type: none"> • other types of overseas documents, and • national identity cards issued for the purpose of international travel. <p>Other forms of NZ government-issued photo ID may be acceptable if:</p> <ul style="list-style-type: none"> • they are issued by a NZ central government agency for the express purpose of identifying the holder to police, immigration, or other government authorities, and • the issuing process for that photo ID requires a high-level standard of proof of the person’s identity, equivalent to that of a passport, and • the issuing agency requires renewal at regular intervals. <p>Practitioners should exercise care and good judgment if the client does not have an acceptable form of photo ID as described in the Safe Harbour.</p> <p>Reliance on other forms of photo IDs will make the transaction High Risk – refer to section 4.2.2 for further guidance.</p> <p>Where a client does not have an acceptable form of government-issued photo ID, their identity may be verified by a witness – refer to section 4.1.2 for further guidance.</p>
<p>B. Use electronic photo ID verification in limited circumstances</p>	<p>A Practitioner <u>cannot</u> use electronic photo ID verification in Safe Harbour – see section 6.2 below for further guidance.</p>	<p>In principle, a Practitioner could use electronic photo ID verification – see section 6.2 below for further guidance.</p>

2. Obtain documents, subject to s4.3.1, connecting the client to the property (to satisfy the requirements set out in ss4.1.1(c) and 4.2.2

<p>A. Examine documents connecting the client to the property</p>	<p>A Practitioner, trusted colleague or delegate can rely on the following documents to connect the client to the property:</p> <ul style="list-style-type: none"> • a rates demand identifying the rating property; and/or • bank statement; and/or • utility account; and/or • insurance policy identifying the address of the property; and/or • if the client has only recently purchased the property, a copy of the agreement for sale and purchase or other base document, mortgage/loan documentation and/or a tenancy agreement, <p>which was sent by post or digitally to the client (rather than obtained from a publically accessible database or record) which connects them by their name and address to the property; or</p> <p><u>For clients not residing at the property</u>, for example overseas clients and property developers, the rates demand or insurance policy is sufficient as long as it refers to the subject property.</p> <p><u>For Trusts</u>, where the rates demand is in the name of the Trust, a copy of the deed of appointment of Trustees linking the property to the Trustees should accompany a rates demand, utility account, etc.</p> <p><u>For recent subdivisions</u>, where ownership has changed, a copy of the agreement for sale and purchase or other base document will suffice.</p>	<p>Practitioners must exercise caution and sound judgment if they are to rely on other documents outside of the Safe Harbour. If doing so, they should create a file note of their decision to opt out of Safe Harbour, along with an explanation and supporting evidence about how the chosen means are effective; and retain it with the A&I form as evidence in support of the certification under section 30(1) of the Act.</p>
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3. Delegating identity verification

<p>A. Suitable delegates for clients within New Zealand</p>	<p>A Practitioner can rely on the following delegates to verify identity on their behalf (if they are at least 18 years of age):</p> <ul style="list-style-type: none"> • Another Practitioner or a Registered Legal Executive; or • A Justice of the Peace; or • A Notary Public; or • A Chartered Accountant. <p>Practitioners may also rely on one of the following trusted referees as defined in the AML Code (if they are at least 18 years of age):</p> <ul style="list-style-type: none"> • Member of the police; or • Member of Parliament; or • New Zealand Honorary Consul; or • Commonwealth representative (as defined in the Oaths and Declarations Act 1957); or • A person who has the legal authority to take statutory declarations or the equivalent in New Zealand. 	<p>Practitioners must apply sound judgment if they are to rely on a delegate outside of the Safe Harbour. Refer to sections 4.5 and 4.6 for further guidance.</p> <p>As examples, a Practitioner could consider one of the other trusted referees defined in the AML Code (if they are at least 18 years of age).</p> <p>In addition to the requirements set out in section 4.6, a Practitioner must independently contact the delegate to confirm their suitability and the steps the delegate took to verify identity are sufficient.</p>
<p>B. Suitable delegates for clients outside of New Zealand</p>	<p>A Practitioner can rely on the following delegates to verify identity on their behalf (if they are at least 18 years of age):</p> <ul style="list-style-type: none"> • An Australian lawyer or barrister; • An Australian Justice of the Peace; or • A Notary Public exercising that office in the country in which the instrument is executed; or • A Commonwealth representative exercising his or her functions in the country in which verification occurs, sealed with the representative's seal of office (if any). 	<p>Practitioners must apply sound judgment if they are to rely on a delegate outside of the Safe Harbour - see section 4.6 above for further guidance.</p> <p>As an example, Practitioners could consider following the AML Code for Certification when overseas (if that person is at least 18 years of age).</p> <p>In addition to the requirements set out in section 4.6, a Practitioner must:</p> <ul style="list-style-type: none"> • independently contact the delegate to confirm their suitability and the steps the delegate took to verify identity are sufficient; and • where possible, obtain evidence to confirm the delegate holds that office in the country in which the instrument is executed.

6 Additional guidance for verifying identity

6.1 Photo ID

6.1.1 Photo ID that is not acceptable

An overseas-issued driver licence is not acceptable. An international driver permit issued to allow the holder to drive legally short-term in other countries is also not acceptable.

A SuperGold Card without the holder's photograph is not acceptable photo ID - such cards are not issued for the purpose of identity verification.

Government employee ID cards, or local government issued cards are not acceptable photo ID - the issuing authority does not intend such cards to be used for identification purposes generally or outside the context in which they are issued.

6.1.2 Expired photo ID

Best practice is that acceptable photo ID be current at the time of verifying identity; acceptable photo ID which has expired in the previous 12 months is also acceptable within the Safe Harbour.

If the person being identified only holds photo ID that expired longer than 12 months before ID verification, the Practitioner should have their identity verified by way of statutory declaration by a witness - refer to section 4.1.2 for further guidance.

AML Code's treatment of expired photo ID

The AML Code does not specifically state that photo ID must be current at the time it is used for AML Act purposes. For Land Transfer purposes, expired photo ID may only be relied on in the situation outlined above.

6.2 Electronic photo ID verification

There are currently no electronic photo ID verification methods for use in Safe Harbour.

A Practitioner could use electronic photo ID verification to verify identity using Equally Effective Means. We will assess the functionality and evidentiary requirements should such a product become available.

If a Practitioner proposes to use a form of electronic photo ID verification, they should assess and record which aspects of the Authority and Identity certifications are being met by the electronic verification process. This will help Practitioners:

- identify those aspects of the certifications that the electronic photo ID verification does not meet; and
- *connect their client to that record* in order to verify that the record is unique to their client, and
- identify any further actions required to fulfil their obligations.

For example, when relying on photo ID this is done by confirming the likeness of the client to the photo ID, and verifying the identity details (i.e. the name, date of birth and signatures are consistent).

In the context of electronic photo ID verification, this means having a reliable secure way to connect their client with the electronic identity profile to ensure it uniquely relates to their client (e.g. a visual representation which can confirm the likeness of the client or other form of authentication).

Any electronic photo ID verification methods must also comply with the requirements of subpart 3 of Part 4 of the Contract and Commercial Law Act 2017.

If Practitioners use electronic photo ID verification they must:

- assess and record which aspects of the Authority and Identity certifications are being met by the electronic photo ID verification process, including a visual check of the visual representation in the electronic record; and
- create a file note of the decision to use Equally Effective Means, along with an explanation and supporting evidence about how the chosen means are effective; and
- retain the supporting evidence and written record with the A&I form as evidence in support of the certification under section 30(1) of the Act.

Schedule 1: Declaration of Identity form

I [full name of witness] of [town/city of residence], [occupation] do solemnly and sincerely declare that:

1. I am aged 18 years or over.
2. I am independent of the client and the transaction. In particular, in relation to [full name of interested party whose identity is being verified]:
 - (a) I am not:
 - (i) related to them;
 - (ii) their partner or spouse;
 - (iii) part of their extended family group; and
 - (b) I do not:
 - (i) live at the same address as them;
 - (ii) and I am not involved with or benefitting from the transaction.
3. I have personally known [full name of interested party whose identity is being verified] for [number of years].
4. The residential address of [full name of interested party whose identity is being verified] is [interested party's full residential address].
5. The photograph annexed to this declaration and marked with the letter "A" is a true likeness of [full name of interested party whose identity is being verified].
6. 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".

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Signature

DECLARED at [town, country]

this [dd] day of [Month] 20[yy]

before me:

Signature

Name

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

Schedule 2: Example file note templates

This example is to be used as a guide only and should not replace standard office procedures for retaining file notes.

TO BE RETAINED WITH THE A&I FORM

Author:

Date:

Safe Harbour / Equally Effective Means for Verifying Identity – see section 2 of Table 1

1. Which method in Table 1 of the Standard am I using: e.g. 2A Client provides acceptable photo ID
2. I am using the Safe Harbour / Equally Effective Means method (select one)
3. Reason(s) for opting out of the Safe Harbour method (if applicable):
4. Explanation and evidence (attached) to support how the chosen means are effective to verify identity using the Equally Effective Means (if applicable):

Safe Harbour / Equally Effective Means for High Risk Transactions – see section 3 of Table 1

1. I am using the Safe Harbour / Equally Effective Means method (select one)
2. Reason(s) for opting out of the Safe Harbour method (if applicable):
3. Explanation and evidence to support how the chosen means are effective to verify identity using the Equally Effective Means (if applicable):
4. Document(s) I have attached to the A&I form connecting the client to the property:
5. Independent checks I made to verify the client's identity:

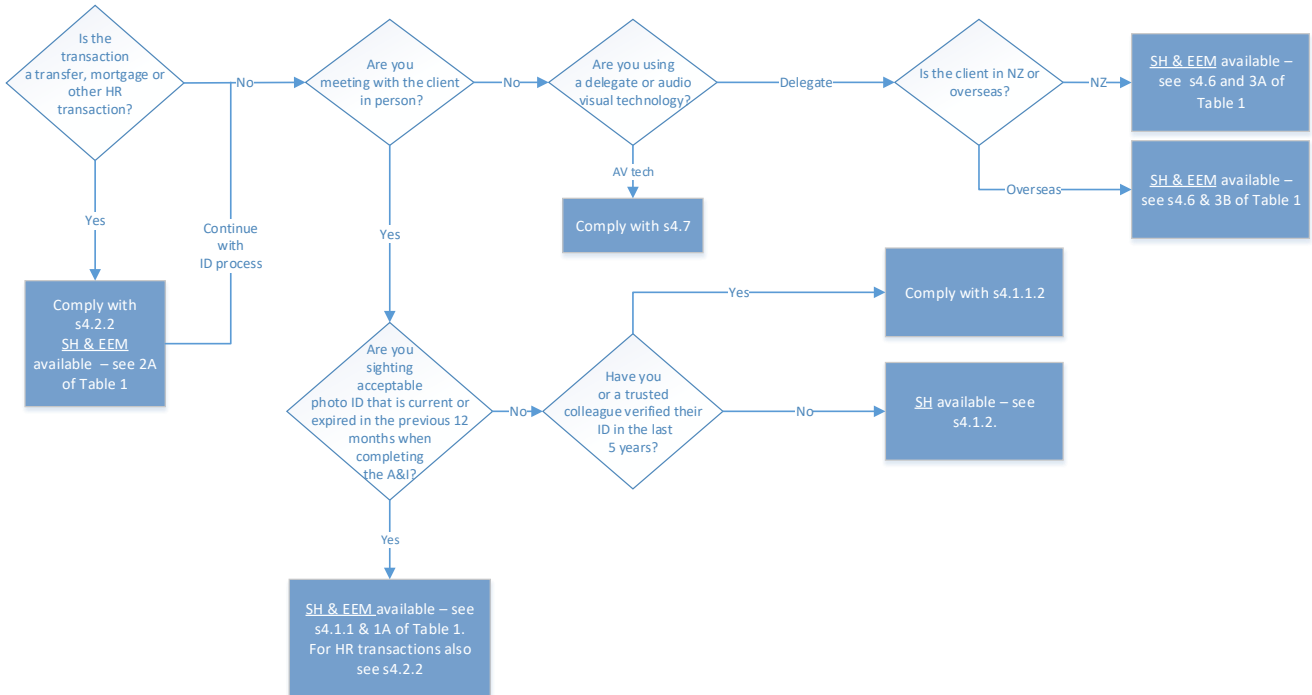
OR

6. No additional action is necessary (see section XXX for guidance). The existing relationship with the client provides me with the necessary assurance as to the client's identity due to:

Delegating identity verification – Equally Effective Means

1. I confirm that I have independently contacted the delegate to confirm the suitability of the delegate (at least 18 years of age, independent of the party and transaction, etc.) and the steps he/she took to verify the identity of the client.
2. Explanation and evidence to support how the chosen means are effective to verify identity using the Equally Effective Means (if applicable):
3. Describe any other circumstances that gives you confidence in the delegate’s ability to verify identity on your behalf:
4. Reason(s) for opting out of the Safe Harbour method:
5. Explanation and evidence to support how the chosen means are effective to verify identity using the Equally Effective Means:

Schedule 3: Identity verification decision tree



Key:
 SH = Safe Harbour
 EEM = Equally Effective Means
 HR = High Risk (see s4.2)
 ◇ Decision
 ■ Action