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Website: <http://linz.govt.nz>

Contact phone: 0064 4 460 0110

Contact address: PO Box 5501, Wellington 6145

Authority and Identity Requirements for E-Dealing Standard 2018

This Standard is made under section 236 of the Land Transfer Act 2017 by the Registrar-General of Land.

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Authority and Identity Requirements for E-Dealing Standard 2018

1 Title

This is the Authority and Identity Requirements for E-Dealing Standard 2018.

2 Commencement

This Standard comes into force on 12 November 2018.

3 Purpose

To set 'safe harbour' requirements which, if met, will satisfy a practitioner's obligations under regulation 7 as to:

- (a) client authority and legal capacity
- (b) verifying client identity.

4 Interpretation

In this standard, the definitions in the Act and Regulations apply, and unless the context otherwise requires,—

Act means the Land Transfer Act 2017

Caveator means a client lodging a Caveat or Notice of Claim

Certify means to certify electronic instruments in accordance with the Act and Regulations

Client means the person presenting to the Practitioner as the interested party who is authorising the transaction

Delegate means an independent, trusted person whom a Practitioner can reasonably rely on to carry out the identity verification checks

LINZ means Land Information New Zealand

Practitioner means a lawyer or conveyancing practitioner who certifies

Regulations means the Land Transfer Regulations 2018

RGL means Registrar-General of Land appointed in terms of section 231 of the Act

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.

Practitioner's Obligations

Certification of Standard Matters

5 Client Authority and Legal Capacity

- (1) Before certifying an electronic instrument as to the matters set out in regulation 7(3)(a) a practitioner must:
 - (a) obtain the client's written authority

- (b) take reasonable steps to ensure the client has legal capacity.
- (2) A practitioner may dispense with the requirement for written client authority, and instead record a file note, when certifying a caveat or notice of claim for a client who has provided verbal instructions.

6 Client Identity

Before certifying an electronic instrument as to the matters set out in regulation 7(3)(b) a practitioner must:

- (a) take reasonable steps to verify the client's identity; and
- (b) where applicable, seek further evidence and make further inquiries as provided in clauses 8 and 9.

7 Reasonable steps

- (1) For the purposes of clause 6(a), 'reasonable steps' includes:
 - (a) having the client present in person with an acceptable form of photo ID and confirming that the client is the person for whom the photo identification has been issued; or
 - (b) having the client's identity independently verified by way of a statutory declaration in the form and manner set out in Schedule 1.
- (2) For the purposes of clause 7(1)(a), an acceptable form of photo ID means:
 - (a) a passport;
 - (b) New Zealand government issued photo identification; or
 - (c) another form of photo identification which the RGL has confirmed is acceptable for use in connection with verifying a client's identity.
- (3) The photo ID relied upon for the purposes of clause 7(1)(a) must be current or have expired within the previous 12 months.
- (4) A practitioner may also rely on a trusted colleague or delegate to verify the client's identity in accordance with clause 7(1)(a).

8 Further evidence

- (1) Where the electronic instrument is a transfer or mortgage, a practitioner acting for the transferor or mortgagor must also obtain:
 - (a) 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
 - (b) if the client has only recently purchased the property, a copy of the agreement for sale and purchase.
- (2) 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 dispense with the requirement for evidence in clause 8(1) and instead record a file note as to these matters.

9 High risk transactions

- (1) In the case of a high risk transaction a practitioner must, in order to manage the risk of fraud or improper dealing, make such further inquiries as may be reasonable in the circumstances to confirm the transaction is bona fide.
- (2) A transaction is high risk if it meets the criteria set out in schedule 2.

10 Retention of Evidence

A Practitioner who certifies an electronic instrument must retain evidence as to client authority and identity for the 10 year retention period prescribed by regulation 7(6).

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; and
 - (ii) 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 current New Zealand government-issued photographic identification, or a current passport, 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
High Risk Transactions

- (1) The following transactions are high risk when one or more of the conditions in clause (2) apply:

Transaction type	Client
Transfer	Transferor
Mortgage	Mortgagor
Application for correction or change of name	Applicant

- (2) The conditions referred to in clause (1) are:
- (a) the client is not previously known to the practitioner or a trusted colleague, and
 - (i) is dealing with unencumbered land; or
 - (ii) is refinancing in a manner that significantly reduces the mortgagors' equity in the property; or
 - (iii) provides contact details that are not connected to the physical address of the property; or
 - (iv) provides unfamiliar or foreign photo identification;
 - (b) the practitioner or a trusted colleague has not personally met the client to receive instructions in relation to the current transaction; and
 - (i) a third party provides instructions on behalf of the client; or
 - (ii) the transaction involves family members and one family member is gaining an interest from another family member; or
 - (iii) the clients are co-owners, one of whom is providing instructions on behalf of themselves and another co-owner.
 - (c) in the circumstances outlined in clause 2(a) or (b), the instrument is authorised on behalf of the client under a power of attorney.

Made at Wellington on 10 October 2018.

Robbie Muir
Registrar-General of Land

Explanatory note

This note is not part of the legislation, but is intended to indicate its general effect.

The Authority and Identity Requirements for E-Dealing Standard 2018 does not add direct costs to transactions under the Act. The standard sets minimum requirements for Practitioners to mitigate against potentially significant impacts of wrongful or fraudulent transactions. These requirements have "de minimis" business impacts.