

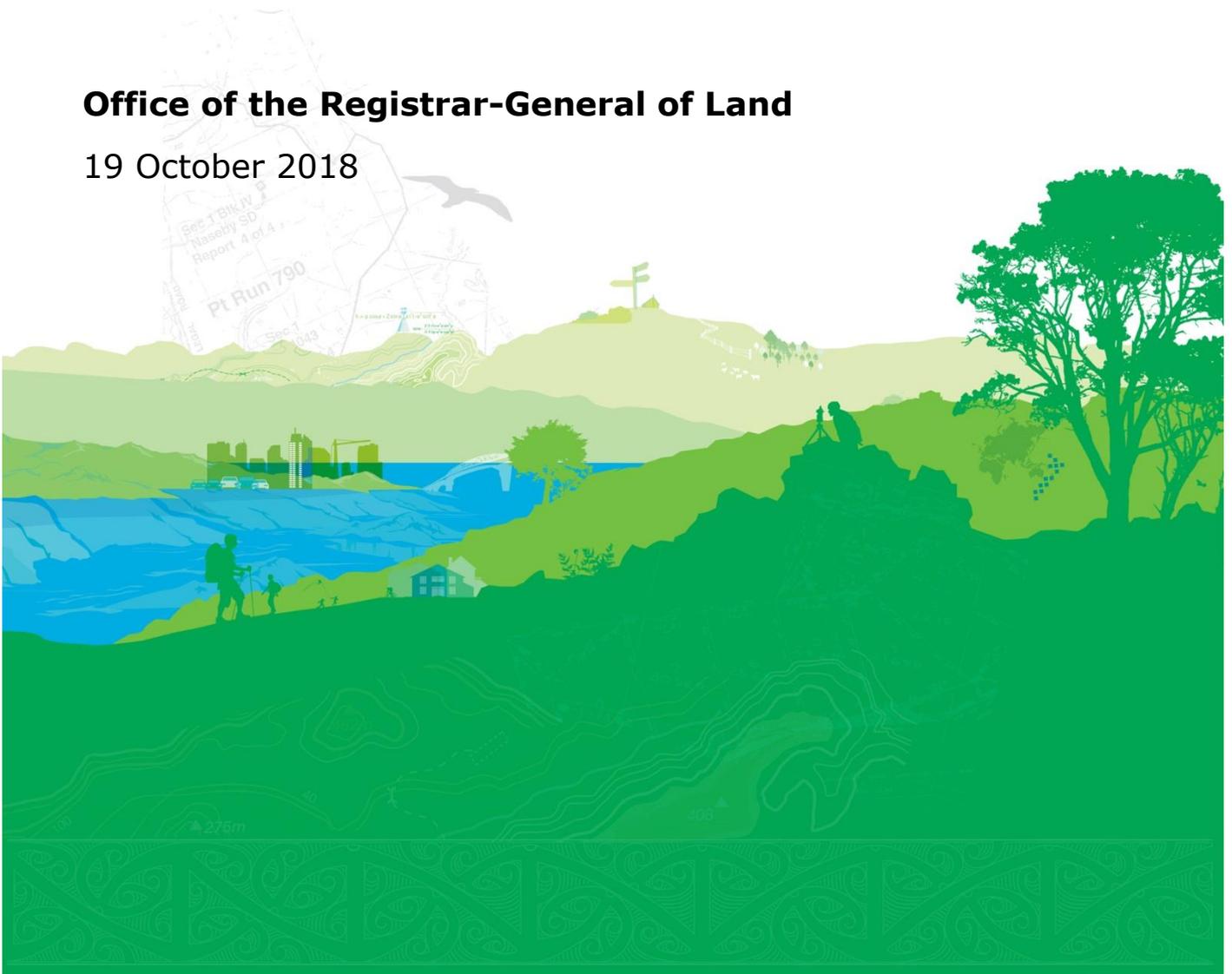
# Transmission following amalgamation of companies

Guideline 2018

LINZG20784

**Office of the Registrar-General of Land**

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## Introduction

A key outcome of the land registration system is that registered land owners or right holders have confidence that their rights are secure, well understood and easily tradable.

The Companies Act 1993 (CA)<sup>1</sup> allows for companies to amalgamate. Following amalgamation, the amalgamated company may wish to deal with estates or interests that are still registered in the name of an amalgamating company. This guideline supplements the statutory provisions by providing guidance as to how the amalgamated company may deal with registered estates or interests in those circumstances.

This guideline supersedes '*LINZG20705 Guideline for transmission following amalgamation of companies*' issued 14 August 2007 by the RGL, LINZ, Wellington.

## Purpose of this guideline

This guideline:

- a) Outlines the two methods by which an amalgamated company may deal with registered estates or interests in land under Part 13 of the CA; and
- b) Outlines the requirements when preparing and then registering a transmission application following amalgamation of companies and how such an amalgamation can be recognised without it having to be formally recorded on the register/record of title.
- c) Does not apply to 'code companies', as they are precluded from amalgamation under Part 13 of the CA.<sup>2</sup>

## References

These Acts are relevant to this guideline:

- Companies Act 1993
- Land Transfer Act 2017
- Land Transfer Regulations 2018

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<sup>1</sup> Part 13 of the CA

<sup>2</sup> Section 219 of the CA. A 'code company' is defined in s 2A of the Takeovers Act 1993.

## Interpretation

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

Terms used in this guideline that are defined in the Act and Regulations have the meaning given to them in that legislation, unless otherwise stated.

## Terms and Definitions

Act	Land Transfer Act 2017
CA	Companies Act 1993
Estate or interest	as defined in section 5 of the LTA
Instrument	as defined in section 5 of the LTA
LINZ	Land Information New Zealand
LTA	Land Transfer Act 2017
LTR	Land Transfer Regulations 2018
r, rr or regulation	indicates a regulation/s, in the Land Transfer Regulations 2018 unless otherwise specified
Record of title	as defined in section 5 of the LTA
Register	the register of land, and as defined in section 5 of the LTA
RGL	the Registrar-General of Land appointed in accordance with section 231 of the LTA and includes delegates
s, ss or section	indicates a subsection/s or section/s, in the Land Transfer Act 2017 unless otherwise specified

# 1 Making an application

## 1.1 Introduction

'Transmission' is the acquisition of an estate or interest by operation of law<sup>3</sup>.

A company may apply for a transmission following an amalgamation. The RGL is not authorised to initiate an update of the registered owner on the register<sup>4</sup> without such an application for transmission from the amalgamated company.<sup>5</sup>

Such applications are one of several types of transmission applications authorised by ss87 and 88 of the Act<sup>6</sup>.

## 1.2 Form and required information

Applications for transmission under s88 must meet the legislative requirements of as to content and form.<sup>7</sup>

These requirements are reflected in the fields on the approved form<sup>8</sup> which must be completed prior to lodgement, and which themselves reflect the regulations which require applicants to provide the specified "core" and "additional information", as well as accompanying documents (see r5, and Schedule 2 of the Regulations).

A copy of the approved paper form is attached at Schedule 1 to illustrate typical requirements.

The *core information* is listed in r5 of the Regulations.

The *additional information* required is:

- The full name of the registered owner of the estate or interest.
- The grounds for the transmission (for example, amalgamation of companies).
- The date on which the applicant became entitled to the estate or interest<sup>9</sup>.

The *accompanying documents* required for lodgement are:

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<sup>3</sup> Section 5 of the LTA.

<sup>4</sup> Section 225A of the CA

<sup>5</sup> Section 87 and 88 of the LTA and Schedule 2 of the LTR

<sup>6</sup> Others include transmission by personal representatives, transmission by survivorship and transmission determining life estate or lease for life

<sup>7</sup> Section 87 and 88 of the Act, Regulation 5 and Schedule 2 (p19)

<sup>8</sup> See Land Transfer Act 2017 Forms Approval 2018 which approve (i) electronic template forms where possible and otherwise electronic image forms – both for electronic lodgement, and (ii) paper forms for manual lodgement (under s227(1)(4)).

<sup>9</sup> In addition, "The trusts or equities affecting the estate or interest (if any)" are specified in the regulations as part of the additional information for transmissions. That information is specified for all *transmissions*, and qualified "(if any)" - it is not applicable to transmissions following amalgamation of a company

- For a paper instrument, evidence that establishes the applicant's entitlement to the estate or interest.

## 1.3 Grounds

Applicants need to establish as a matter of fact and law that there has been an amalgamation of companies resulting in the property of the amalgamating company vesting in the amalgamated company.

This requires an explanation of which company or companies (*the amalgamating companies*) amalgamated, the authority, the date, and confirmation of the name of the amalgamated company in which the specified properties to which the application relate is the owner.

Applications can be made for individual or multiple estates and interests.

A copy of an approved paper form of Transmission Instrument is attached at Schedule 1 to illustrate typical requirements.

## 1.4 Evidence

### 1.4.1 Statutory declaration

Suitable evidence by way of statutory declaration,<sup>10</sup> explaining the following details, may be sufficient to establish the amalgamation:

- which company or companies (*the amalgamating companies*) amalgamated;
- the legal basis of the amalgamation;
- the date of amalgamation;
- confirmation of the name of the amalgamated company in which the specified properties to which the application relate is the owner; and
- referencing a certified true copy of the certificate of amalgamation as an exhibit; and
- referencing a certified true copy of the certificate of incorporation of the amalgamated company as an exhibit (if the amalgamated company is either a new company, or one of the amalgamating ones which has changed its name).

An **example** of a statutory declaration is contained in Schedule 2.

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<sup>10</sup> Properly executed by a director of the amalgamated company or other person authorised to execute a declaration on its behalf

## **1.5 Process**

### **1.5.1 Approval by the RGL**

The draft documents referred to in 1.2. and 1.4 above should be forwarded to the RGL for approval prior to registration.

### **1.5.2 Registration**

The documents referred to in 1.2 and 1.4 and the RGL's approval letter can be lodged with LINZ once executed and certified in accordance with ss26-39 of the Act and rr 7, 11, and 13-14 and Schedule 3.

## 2 Alternate process – effecting transmission through a statement in another instrument

### 2.1 Section 225A of the Companies Act 1993

The Companies Act 1993 enables the RGL to record a transmission following amalgamation, by a statement complying with the provisions of 225A(2) linked with another instrument by either being recited in it or incorporated by a certificate endorsed on it<sup>11</sup>.

Section 225A(2) states:

- 2) *The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company—*
  - a) *executed or purporting to be executed by the amalgamated company; and*
  - b) *relating to any property held immediately before the amalgamation by an amalgamating company; and*
  - c) *stating that that property has become the property of the amalgamated company by virtue of this Part—*

*shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the amalgamated company.*

## 3 Registration without recording vesting due to transmission by amalgamation

### 3.1 Registration not required

An amalgamated company may register an instrument affecting an estate or interest still registered in the name of an amalgamating company but may elect **not** to have the vesting recorded on the Register.

Examples of where this may be considered appropriate are where the estate or interest is transferred by transfer instrument, or extinguished by discharge of mortgage.

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<sup>11</sup> Section 225A(2)(c) of the CA

## 4 Caveats in name of Amalgamating Company

If an amalgamating company has lodged caveats against properties, the vesting of interests of the amalgamating company into the amalgamated company (and any applications to effect this) cannot be noted on the Caveat. This is because a caveat is merely notice of an interest rather than a registered estate or interest. Any withdrawal of such a caveat may, however, be executed by the amalgamated company provided that document has either:

- evidence in the form of a transmission application (which will not be registered) attached to it, or a recital in terms of the CA endorsed on it.<sup>12</sup>

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<sup>12</sup> Section 225A(2)(c) of the CA

This approved format may be used for lodgement as a paper instrument under the Land Transfer Act 2017

## Schedule 1: Transmission Instrument

### Form 8

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#### Application for transmission – amalgamation of companies pursuant to Part 13 of the Companies Act 1993

(Section 87 Land Transfer Act 2017)

Land registration district

BARCODE

Record of Title (unique identifier)

Applicant

*Insert new Company name*

Estate or interest claimed

Application

The Applicant hereby applies to be registered as owner of the estates and interests of *[insert name(s) of amalgamating company/companies]* described in the attached declaration on the grounds set out in the attached declaration.

Dated this

day of

20

I **certify** that I am aware of the circumstances of the dealing set out in this instrument and do not know of any reason, in fact or in law, why the instrument should not be registered or noted.<sup>13</sup>

Certified by [Practitioner for Applicant] or  
[Applicant]

### **Statutory declaration for transmission - amalgamation of companies pursuant to Part 13 of the Companies Act 1993**

I, [*name of declarant*], [*place of abode and occupation*] solemnly declare that:

1. I am a [*director/authorised signatory*] for [*name of amalgamated company*] ("the company") and am authorised to make this declaration and have full knowledge of the matters set out below.
2. On [*insert date*] [*names of amalgamating companies*] were amalgamated pursuant to Part 13 of the Companies Act 1993 ("the Act") to form [*insert name of amalgamated company*]. Annexed hereto and marked "A" is a certified copy of the Certificate of Amalgamation [<sup>\*14</sup>and Certificate of Incorporation] issued under section 224 of the Act by the Registrar of Companies.
3. [*insert name of an amalgamating company*] is registered as proprietor of the land/mortgage(s) described in Schedule 1 below.
4. [<sup>\*15</sup> *insert name of another amalgamating company if appropriate*] is registered as proprietor of the land/mortgage(s) described in Schedule 2 below.
5. By virtue of section 225(c) and (d) of the Act with effect on [*insert date of amalgamation from Certificate of Amalgamation*] [*insert name(s) of amalgamating company/companies*] is/are deemed to be dissolved and [*insert name of amalgamated company*] is deemed to have succeeded to (amongst other things) all of the property (including the land/mortgages described in the Schedules below) of those amalgamating companies.
6. To the best of my knowledge, information and belief no person holds or is entitled to any estate or interest at law or equity affecting the said land/mortgages of which [*insert name(s) of amalgamating company/companies*] was/were registered as proprietor.

#### **Schedule 1**

- (a) an estate in fee simple/leasehold in [*insert description which must include record of title references*]

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<sup>13</sup> See Regulation 14(3) Land Transfer Regulations 2018.

<sup>14</sup> If the amalgamated company is a new company its certificate of incorporation should also be annexed to the declaration. If the amalgamated company is a continuing company that is also changing its name the certificate of incorporation should also be annexed and the declaration modified accordingly.

<sup>15</sup> This clause can be deleted if there is only one amalgamating company. If there are more than two amalgamating companies an additional clause or clauses should be added.

- (b) mortgagee under mortgage(s) [*insert mortgage and record of title reference numbers*]

**Schedule 2**

- (a) an estate in fee simple/leasehold in [*insert description which must include record of title references*]
- (b) mortgagee under mortgage(s) [*insert mortgage and record of title reference numbers*]<sup>\*16</sup>

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

Declared at [*insert location*] this [*insert day*] )  
of [*insert month*] [*insert year*] )  
before me: )

Solicitor of the High Court of New Zealand  
(*or other person authorised to take a statutory declaration*)

**Important notes for persons preparing or signing forms for registration under the Land Transfer Act 2017:**

1. You should seek independent legal advice before signing this transmission instrument.
2. You should not sign this transmission instrument if you do not have the necessary legal capacity, e.g. if you are under 18 years of age, an undischarged bankrupt, or your property is subject to the Protection of Personal and Property Rights Act 1988 or other statutory restrictions.
3. If you are signing on behalf of a corporation you should ensure any necessary resolutions authorising the transmission instrument have been made and the corporation is not under statutory management, in receivership or liquidation.
4. The witness cannot also be a party to the transmission instrument and must be able to confirm the identity of the person signing.
5. When registered this transmission instrument will become part of the public record under the Land Transfer Act 2017.

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<sup>16</sup> The Schedules are indicative only and can be adapted to fit the circumstances

## Schedule 2: Statutory declaration for transmission

### Statutory declaration for transmission

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#### Statutory declaration for transmission - amalgamation of companies pursuant to Part 13 of the Companies Act 1993

I, *[name of declarant]*, *[place of abode and occupation]* solemnly declare that:

1. I am a *[director/authorised signatory]* for *[name of amalgamated company]* ("the company") and am authorised to make this declaration and have full knowledge of the matters set out below.
2. On *[insert date]* *[names of amalgamating companies]* were amalgamated pursuant to Part 13 of the Companies Act 1993 ("the Act") to form *[insert name of amalgamated company]*. Annexed hereto and marked "A" is a certified copy of the Certificate of Amalgamation [*\*and Certificate of Incorporation*] issued under section 224 of the Act by the Registrar of Companies.
3. *[insert name of an amalgamating company]* is registered as proprietor of the land/mortgage(s) described in Schedule 1 below.
4. [*\*\*insert name of another amalgamating company if appropriate*] is registered as proprietor of the land/mortgage(s) described in Schedule 2 below.
5. By virtue of section 225(c) and (d) of the Act with effect on *[insert date of amalgamation from Certificate of Amalgamation]* *[insert name(s) of amalgamating company/companies]* is/are deemed to be dissolved and *[insert name of amalgamated company]* is deemed to have succeeded to (amongst other things) all of the property (including the land/mortgages described in the Schedules below) of those amalgamating companies.
6. To the best of my knowledge, information and belief no person holds or is entitled to any estate or interest at law or equity affecting the said land/mortgages of which *[insert name(s) of amalgamating company/companies]* was/were registered as proprietor.

#### **Schedule 1**

- (c) an estate in fee simple/leasehold in *[insert description which must include record of title references]*
- (d) mortgagee under mortgage(s) *[insert mortgage and record of title reference numbers]*

#### **Schedule 2**

- (c) an estate in fee simple/leasehold in [*insert description which must include record of title references*]
- (d) mortgagee under mortgage(s) [*insert mortgage and record of title reference numbers*]

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

Declared at [*insert location*] this [*insert day*] )  
of [*insert month*] [*insert year*] )  
before me: )

Solicitor of the High Court of New Zealand  
(*or other person authorised to take a statutory declaration*)

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\*\*This clause can be deleted if there is only one amalgamating company. If there are more than two amalgamating companies an additional clause or clauses should be added.

\*\*\*The Schedules are indicative only and can be adapted to fit the circumstances.

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1. You should seek independent legal advice before signing this transmission instrument.
2. You should not sign this transmission instrument if you do not have the necessary legal capacity, e.g. if you are under 18 years of age, an undischarged bankrupt, or your property is subject to the Protection of Personal and Property Rights Act 1988 or other statutory restrictions.
3. If you are signing on behalf of a corporation you should ensure any necessary resolutions authorising the transmission instrument have been made and the corporation is not under statutory management, in receivership or liquidation.
4. The witness cannot also be a party to the transmission instrument and must be able to confirm the identity of the person signing.
5. When registered this transmission instrument will become part of the public record under the Land Transfer Act 2017.