

Proposed changes to the new Land Transfer Act – *How they affect you.*

The Law Commissions Report – *A New Land Transfer Act* contained a draft version of the Bill. It should be noted that:

- a) All of these changes are only proposed at this stage.
- b) The final form of the Act, which will obviously be some time away, will contain some variations.

LINZ have advised that they *'are broadly comfortable with the draft Land Transfer Bill prepared by the [Law] Commission'*. The draft version of the Bill that was included in the Commissions report is therefore likely to stay largely intact.

Here are a few of the ways the new Act will affect you and your clients:

1. Guaranteed searches must be obtained 5 working days prior to settlement and registration must be lodged 10 working days after settlement.
2. There is now an ability to note covenants in gross. A separate instrument form will be created and will replace the current practice of using easement instruments to note covenants whether they are in favour of land or in gross. This ability to create covenants in gross replaces the present and largely unsatisfactory use of encumbrances to effect covenants in gross. Encumbrances for the performance of covenants should not be used once the new Act comes into effect.
3. There are several changes in terminology e.g. the Certificate of Title becomes the Record of Title, Registered Proprietor becomes Registered Owner. This is designed to reflect modern usage and to make the wording consistent with other legislation.
4. When varying cross-leases there is no longer a requirement to obtain the consents of the mortgagees - except for the consent of the mortgagee of the lease which is being varied.
5. Clause 75 of the proposed act now refers to a 'replacement' lease rather than a lease that is being renewed. The term renew was quite often confusing for practitioners as they often believed it referred to a renewal of the term - whereas in fact it referred to a renewal of the lease.
6. When varying mortgages the proposed act now only requires the mortgagor to execute if the priority limit is being increased. Currently the priority limit is deemed to be one of the terms, covenants and conditions of the mortgage therefore under the present Act both the mortgagor and mortgagee are required to execute the variation. This problem has largely been resolved anyway with edealing as instructions from the bank, who is deemed to be an institutional chargeholder, means that an A & I form was not required from that party.
7. When varying a second mortgage there will no longer be a requirement to get the consent of the first mortgagee. The present act requires when varying a mortgage the consent must be obtained from **any other** mortgagee. This was non-sensical as under the present Act if it becomes apparent that the 1st Mortgagee will not consent to the variation of a 2nd Mortgagee you can simply discharge the 2nd Mortgage and register a new one without having to obtain the consent of the 1st Mortgagee. This is also useful when there may be any encumbrance registered on the title ahead of the mortgage. Under the new Act you will no longer have to obtain the consent of the Encumbrancee (an encumbrance falls within the definition of a mortgage).

8. Clause 97 contains the provisions relating to covenants including covenants in gross. These new provisions also set out a new type of instrument that must be used and reflects the fact that covenants are not registered but only notified on the register. Under the new Act covenants must **not** be included in easement instruments. There is also a new form for a variation of covenant although curiously the clause states the same form of covenant instrument must be used to revoke the covenant that is used to create it.
9. The provisions relating the statutory land charges are to be included in the new act (rather than the Statutory Land Charges Registration Act 1908). This section has been included because of the administrative difficulties associated with the registration of charges under the multiple acts that authorise them.
10. Clause 103 states no trusts (except for trusts referred to in caveats and trusts that another enactment authorises to be registered e.g. trusts under the Te Ture Whenua Maori Act 1993) may be shown on the register. This means the new Act is consistent with the present act and it is still not possible to record family trusts on the register.
11. An owner of land may caveat their own title if there is a risk their estate or interest may be lost through fraud. The new Act states the Registrar must be satisfied this is indeed the case however, how this is to be achieved is not clear at this stage. No doubt this type of detail will become clearer closer to the date the new Act comes into effect.
12. Caveats may be withdrawn by an agent and that authority is not required to be in writing. You will also be aware it was possible to withdraw a caveat without authority from the caveator where the instrument created the interest that the caveat was lodged to protect was being registered in the same dealing as the withdrawal of the caveat. The new act is silent on this and simply states the caveat can be withdrawn by the agent.



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