

TAFE College NZ Ltd

NZ Certificate in Real Estate (Salesperson) (Level 4)

MODULE 1 – UNIT STANDARD 23134 (V6)

Demonstrate knowledge of law relating to land titles, ownership, transfer of land (Level 5, Credits 4)

Learner Guide

COMPUTER UNIT TITLE REGISTER UNDER LAND TRANSFER ACT 1952	
	
Identifier	46161
Land Registration District	North Auckland
Date Issued	25 October 2002
Price Reference	Supplementary Record Sheet
30415	55512
Estate	Stratum in Freehold
Legal Description	Unit Q and Accessory Unit 44 and 5-17 share of Accessory Unit 1 Deposited Plan 321487
Proprietors	
<small>The above estates are subject to the reservations, restrictions, encumbrances, liens and interests noted below and on the relevant unit plan and supplementary record sheet.</small>	

TRAINING AND FURTHER EDUCATION



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Land ownership and land registration in New Zealand

Historically, property ownership was recorded in New Zealand under a deeds system. The Torrens system, which is still the current land transfer system used in New Zealand, replaced the deeds system in 1870.

The **Torrens System** is a system of land title registration. The piece of legislation that governs land registration in New Zealand is the **Land Transfer Act 2017**. This piece of legislation is the basis for the principles of the Torrens System.

New Zealand is divided into land registration districts. The land is then divided into 'parcels' of land and a title is issued for each parcel.

Use of the land registration system is mandatory, as a legal interest in land cannot be created in any other way.

Note: Māori customary land sits outside of the land title system. It has never been brought into the land registration system. This kind of land, in its existing form, cannot be sold.

Land registration is subject to public record. When a land transaction occurs, registration under the Torrens System of Land Registration gives an indefeasible title to the land.

Indefeasibility of title

'Indefeasibility of title' means that the title of the land has been secured by registration.

Indefeasibility of title is proven by simply searching the land register which confirms who owns what.

The Crown guarantees that the person who is named on the register has guaranteed ownership (title) of the land in all but the rarest of circumstances.

Indefeasibility can only be defeated if it can be proven that the proprietors obtained the title of a property through fraud (LINZ, n.d.-b).

Ownership and possession

In relation to property, ownership means having title to the property. Ownership grants a person certain rights over a property. In a fee simple situation this includes the right to sell or lease.

There are certain limits on these rights. For example, in some situations there are restrictions on the rights granted by ownership because there is collective control over how the property is used. For example, the land is subject to Crown ownership of most minerals.

Possession is the right of control over a property and usually includes the right of use. In the real estate transaction process, possession usually occurs when the customer takes ownership at the time of settlement. Note that ownership is not always required for possession, for example a tenant or lessee does not have ownership of the property but does have possession.

Legal interest and equitable interest in land

A legal interest is registered on the Certificate of Title and is a legally enforceable right to possess or use property. This could come about from being an owner or part-owner of the property or having a lease on the property or having the right to use part of a property (e.g., to access another property or to run water drainage under part of the property).

An equitable interest is not formally registered on the Certificate of Title. It is an unregistered ownership interest (right) in the property. This interest is related to fairness or justice, rather than legal ownership. For example, someone who has purchased a property under a fully signed, unconditional agreement for sale and purchase has an equitable interest in that property. Even though the land transfer process is not complete, the purchaser could lodge a caveat on the title (a restriction on how the owner can deal with the land without the purchaser's consent).

A non-possessory interest

A 'non-possessory interest' is when a party has the right to use land belonging to another party or to restrict the use of that land.

The holder of a non-possessory interest does not hold title to the land, but they have certain clear-cut rights to use, or restrict the use of, the land in a specified way.

These types of interests are often registered and so will appear on the Certificate of Title.

Registered rights and restrictions are referred to as 'memorials' on the original certificates of title, but on the computer register versions they are called 'interests'.

Non-possessory interests make take a variety of forms, as will be discussed in more detail later in this guide.

Land Information New Zealand (LINZ)

LINZ is responsible for handling land titles records and records of all land transfers. LINZ also manages Crown land and property, provides geographical information, and carries out a surveying role.

In terms of transaction management, conveyancers lodge legal documents with LINZ to record any changes made to titles, such as transfers of ownership, discharges of mortgage, and new mortgages. LINZ records the transaction in the title record for that land (LINZ, n.d.- d).

Electronic database Landonline

Since 2002, certificates of titles, survey plans, and related documents have been held by LINZ in an electronic database called Landonline.

All earlier paper-based certificates of title were converted into 'computer registers' between 1999 and 2002 (LINZ, n.d.-a).

Note: The electronic version of a Certificate of Title is now officially called a 'computer register' even though people still refer to 'Certificate of Title'.

Information recorded in the land transfer system.

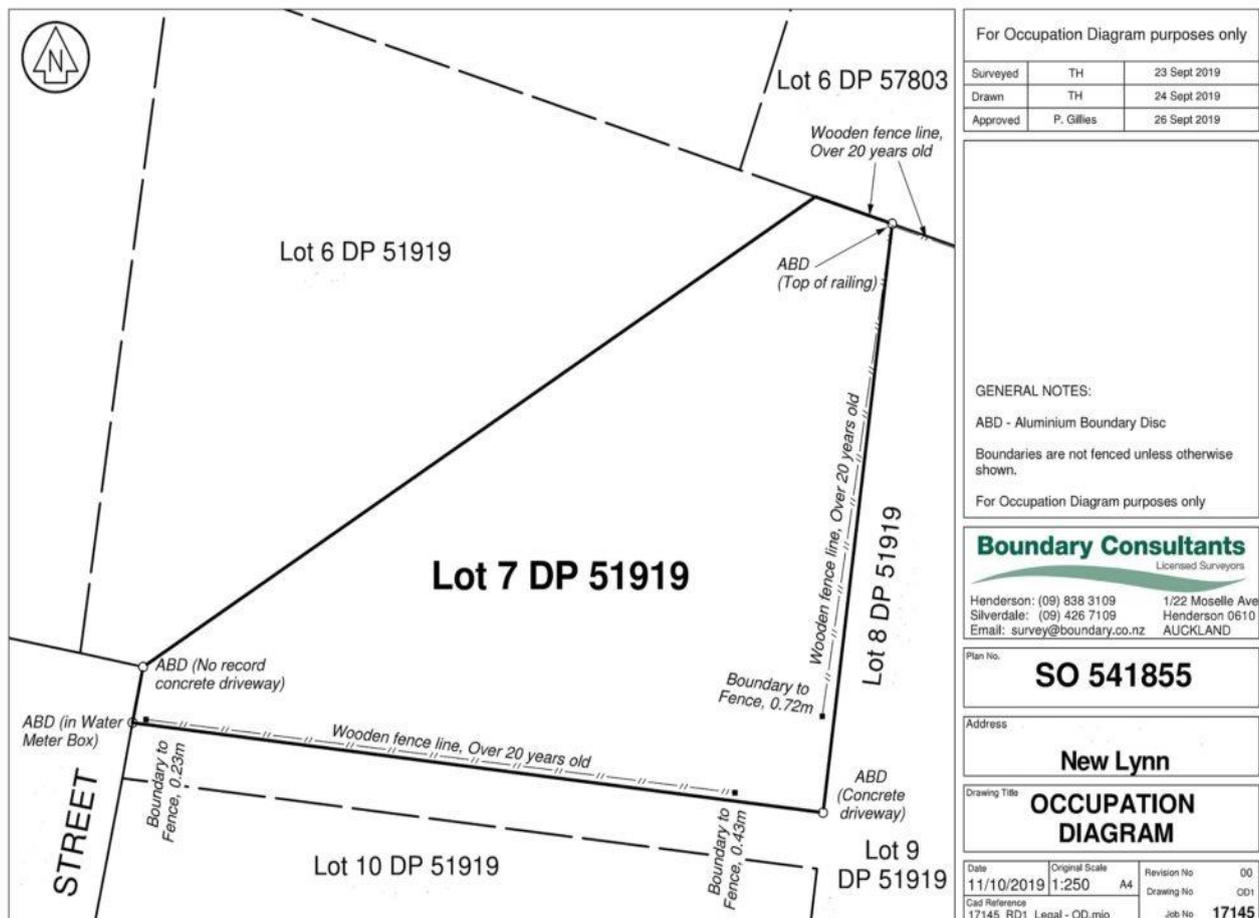
Computer Register (previously called Certificates of Title) can have the following are the types of information recorded in the land transfer system:

Instruments

- These are legal documents related to a dealing with a property such as Easement Certificates, Mortgage documents, Covenants or Lease Agreements.

Cadastral Survey Plans

- This is the information that shows the area, legal boundaries, and dimensions of a property. Other legal information can be shown on these plans, such as legal roads.



Technical survey documents

- These may include field books and notes (detailed field measurements made by surveyors), or survey observations and coordinates of survey marks used.

Historic documents relating to land ownership and transfer, and control and management of land.

- These may include deposited documents in the title system and deeds (documents to prove land ownership), which were replaced by titles in 1871.
- Historic property files relating to Crown property from predecessors to LINZ, i.e., previous government departments such as the Department of Lands and Survey and the Ministry of Works.

Creation of other interests to be registered on the Certificate of Title.

The registration process involves the lodging and examination of instruments and other documents and recording them on the appropriate computer registers of title to land.

An 'instrument' is a document (such as a plan or map) that records the characteristics and extent of an interest in a property.

Caveats, covenants, easements, transfers, mortgages, discharges of mortgage, and leases are among the most common interests registered in New Zealand. There may also be other interests recorded, for example consent notices and fencing agreements.

Title updates can still be submitted manually. However, through Land online, surveyors, lawyers, conveyancers, and other professionals can securely search, lodge and update title- related information and survey data digitally (LINZ, n.d.-c).

Only registered licence holders can use Landonline services.

Landonline creates computer screen formats, which conveyancers fill with the information contained in the instruments. The instruments take effect according to the date and time of registration.

All instruments registered are noted on the title. Each instrument entered on the title includes a reference number. Full details of the instrument are available by searching this reference number.

Interests registered on the Certificate Of Title can create issues for purchasers.

An interest is a restriction over a piece of land, and it can be an issue for potential purchasers.

- It can limit or restrict the owner and any future owners as to how they use the land.
- The owner may not be able to build a structure over an easement.
- The owner may not be able to make certain improvements to the property
- Interests and restriction may affect sale ability or value of the property
- The owner may have to allow access to the property for specified persons or Organisations to the part of the property defined by the easement.
- Covenants may restrict the type of materials to be used on a dwelling, the minimum size of the dwelling, the height of buildings on the land or the way the land can be used.
- Caveats will have to be settled, in other words the debt will need to be paid and the caveat removed prior to settlement.
- The acquisition process for land required for public works is covered by the Public Works Act 1981
- If a Title is limited to Parcels an appropriate survey may need to be conducted on the property to have the limitation removed from the title.

Certificates of Title (Computer Register)

A Computer Register (Certificate of Title) is the official document that proves ownership of the land it describes, as well as the non-possessory interests (rights and restrictions) that apply to the land.

	COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952	 R. W. Muir Registrar-General of Land
Search Copy		
Identifier	NA23A/547	
Land Registration District	North Auckland	
Date issued	23 July 1990	
Prior references		
NA16C/127		
Estate		
Fee Simple		
Area		
796 square metres more or less		
Legal description		
Lot 245 Deposited Plan 65347		
Proprietors		
John Peter Citizen and Amanda Lee Citizen		
Interests		
Subject to a right to drain stormwater and sewage over part marked A on DP65347 in easement certificate C342780 – 23.07.1990 at 10.43am		
Land Covenant in Transfer A763489 – 23.07.1990 at 3.00pm		
66573432.3 Mortgage to Westpac Bank Limited - 20.11.2005 at 9.05am		
Transaction Id	14938159	
Client Reference	mtannerp001	
<i>Search Copy Dated 9/02/2018 1:10 pm, Page 1 of 2</i>		<i>Register Only</i>

Information recorded on a Computer Register (Certificate of Title)

Certificates of title have been created, updated, and recorded on the Landonline computer system since June 2002 and are now referred to as Computer Registers.

The following is the type of information recorded on a Computer Register:

The identifying code ('identifier')

On more recent titles this will be a series of numbers (e.g., 306662). Older titles have two letters at the beginning to identify the Land District the title is in (e.g., WN516/98).

The land registration district

Under the Land Transfer Act 1952, New Zealand is divided into 12 land registration districts. All land records are organised according to those districts. For example, the property with the identifier SA73A/834 SA is in the South Auckland land registration district)

The date the title was issued.

This should not be confused with the age of the dwelling.

The type of estate

The type of estate specifies the type of land tenure. Examples of the type of estate are leasehold, fee simple, stratum in freehold (freehold unit title), stratum in leasehold (leasehold unit title).

The area of the estate

The area of the estate is stated to the nearest square metre. It is stated as 'square metres more or less'.

The legal description of the estate (e.g., the **lot** number, and the **deposited plan (DP)** number)

The legal description refers to the Deposited Plan (DP) number. This number is the reference for the plan recording land subdivisions that have been deposited by the Register General of Lands.

The legal description will vary depending on the type of property. It may include a lot number (e.g., Lot 13 Deposited Plan 51671) or a block or unit number (e.g., Unit 2B Deposited Plan 378103). If the property is a stratum estate, it may refer to an Accessory unit (e.g., Unit 1D and 1/15 share of Accessory Unit 1 Deposited Plan 378209).

The name of the registered proprietor

The registered proprietors are the registered owners of the property. They may be individuals, joint owners (joint tenants or tenants in common), trustees or a company.

Any interests (memorials), meaning rights and restrictions, that are registered against the land by a party with a non-possessory interest.

Examples of interests are a mortgage registered in the interest of a mortgagee such as a bank who has issued the loan, an easement registered in relation to a neighbouring property, or a lease associated with the land registered in the interest of a lessee.

A plan of the land, drawn on it or attached to it.

The title plan is the plan or diagram of the land that was deposited by LINZ when the title was created (LINZ, 2017). The type of plan will depend on the type of property tenure. If the property is a unit title property, the diagram will be a 'unit plan'. If the title is a Composite Computer Register (Cross Lease title) the diagram will be a 'flats plan'.

Types of certificates of title

LINZ identifies four different types of certificates of title for property ownership.

- **Computer freehold registers** (CFRs) for freehold (fee simple) land.
- **Computer interest registers** (CIRs) for leasehold land, or for any land of a lesser interest than freehold.
- **Computer unit title registers** (CUTRs) for stratum freehold or leasehold interests in a unit-title development.
- **Composite computer registers** (CCRs) which are combinations of the other three types; for example, a cross lease title is a combination of freehold and leasehold computer registers (LINZ, n.d.-a).

Note: Information about different types of property ownership (legal tenure) follows later in this guide.

Title search

Every time property is listed, it is essential to obtain the correct legal owner's details, the property's legal description, and to familiarise yourself with all relevant details about the property.

The most reliable source for this information is found on the Certificate of Title.

Careful referral to the Certificate of Title ensures that the details included in an agency agreement and sale and purchase agreement will be accurate, will be signed by the correct parties and will include the correct details for the property to be marketed.

In preparation for marketing, and under the direction and control of your supervising agent/branch manager, you will need to carefully review the Certificate of Title and other relevant documents for the property being listed.

The Title is required by Licensees, so they get the correct information for the Agency Agreement and so they are aware of any interests that may affect the value of the Property:

- The type of Title
- The Unique Identifier
- The type of estate
- The legal description
- Land size
- Registered owners' names

After an offer has been made, the buyer's solicitor will usually perform a title search. It is important to establish:

- Whether the seller has a saleable interest in the property.
- The kind of rights or restrictions that are associated with the use of, or the restriction of use of, the land.
- Whether any person or organisation has a right over the property until a debt is paid (for example, a bank that has issued a mortgage may record a registered security on the Certificate of Title for the loan).

Current register, historic register, and guaranteed search

A copy of a Certificate of Title can be requested from LINZ in any of the following forms:

- **Current register** – this shows the current owner(s), legal description, registered rights, and restrictions. It also includes a plan or diagram of the land.
- **Historic register** – this shows all interests registered since the title was created. It may include a plan or diagram of the land, and/or a scan of any paper certificates of title issued.
- **Guaranteed search** – this shows the same information as the current register as well as any interests lodged with LINZ but that have not been registered against the title yet (LINZ, 2016).

Note:

The Certificate of Title that you refer to in relation to your real estate agency work must contain all the information that is currently registered.

If you refer to out-of-date information, this is called a 'stale' search. Relying on a stale search could cause a licensee to breach of their obligations under sections 5.1, 6.2, 6.3 and 6.4 of the Code of Conduct.

Obtaining a copy of the Certificate of Title

A copy of the Certificate of Title can be requested from the LINZ website at www.linz.govt.nz. Many real estate agencies subscribe to resellers such as Property Smarts or Property Guru and find their titles there.

The title received is a 'computer register' copy.

A 'computer register' is an image of the register on Land online.

Types of legal tenure

There are different types of legal tenure (property ownership). The most common types in New Zealand are:

- Fee simple (also referred to as freehold)
- Leasehold
- Composite (cross lease)
- Stratum estate (unit title)
- Company share.

Tenure is about the conditions under which you own the land or buildings and your rights to occupy them

Each Title signifies the bundle of rights that are associated with a particular type of Title.

Freehold - (usually fee simple) Freehold Stratum (Unit Title) Cross lease	Māori freehold
Leasehold - Stratum (Unit Title) Cross Lease Company Share Leasehold	Māori leasehold
Crown	Maori

Fee simple

The highest form of land ownership in New Zealand is a **fee simple** estate. It is sometimes also referred to as **freehold**. As freehold can also be taken to mean mortgage free, a real estate license should strive to be clear and say, 'fee simple'.

Under fee simple ownership, the owner owns 'the whole of the land'. This means the land itself and the buildings and any other improvements on the site.

Fee simple is as close as possible to '**absolute ownership** of land'. Fee simple ownership is '**permanently enduring**' (it does not have an end date).

The land holder may use and dispose of the land as they wish, if the activity is allowed by land and property law, and local or regional territorial authority rules and regulations. They can dispose of the land by gift, will or sale.

When preparing to market fee simple land, it is important to search the title, to establish whether there are any covenants, easements, or restrictions on the title.

Breaches of land and property law, regulations, and local or regional territorial authority rules by owners can cause problems for present and future owners, as well as for the licensee marketing the property. An example is a breach of a covenant where an improvement has been made that does not meet the covenant requirements.

A Freehold Certificate of Title

An example of the first page of a Certificate of Title is shown below with some features labelled. More detail on the information on titles is in the section 'Reading a Certificate of Title' at the end of this guide.



RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy



The heading describes the computer register this title is recorded on. This certificate is on the 'Computer Freehold'. It is a search copy. See date at the bottom of the page – 21/02/20.

Identifier **371667**

Land Registration District **North Auckland**

Date Issued 14 December 2007

The unique code identifies this particular Certificate of Title. The land registration district is one of the 12 districts under the Land Transfer Act.

This is a reference to previous records for this estate. This reference can be used to trace ownership for many years.

Prior References
239706

Estate Fee Simple

Area 559 square metres more or less

Legal Description Lot 33 Deposited Plan 391069

Registered Owners
Robyn Margaret Newman-Hall and Grant Murdoch Hall

Interests

Subject to Section 8 Mining Act 1971

Subject to Section 5 Coal Mines Act 1979

7658231.1 Consent Notice pursuant to Section 221 Resource Management Act 1976

Fencing Covenant in Transfer 8463333.2 - 21.5.2010 at 11:56 am

Land Covenant in Transfer 8463333.2 - 21.5.2010 at 11:56 am

11363537.1 Mortgage to Westpac New Zealand Limited - 19.3.2019 at 3:57 pm

The estate (property) is fee simple. The approximate area of the land, rounded to the nearest square metre. The legal description varies depending on the property type. The lot number, accessory unit, block, or unit number reference. It includes the subdivision reference, which is the Deposited Plan (DP) number. The 'Proprietors' are the legal owners of the property. This entry provides information about the type of ownership.

'Interests' are rights and restrictions registered against this parcel of land. For example, they may include a mortgage, easements, covenants, consent notices, or lease details. They will also provide references for associated documents which contain further information on the interest. Example can include Subject to Section 8 Mining Act 1971
 Subject to Section 5 of the Coal Mines Act 1979
 Fencing Covenant in Transfer 84633332-21.5.2010 at 11.56am
 Land Covenant in Transfer 94633332-21.5.2010 at 11.56am
 11363537.1 Mortgage to Westpac Bank Limited – 19.3.2019 at 3.57 pm

This shows you how many pages are in the document. The second page is usually a plan of the land (e.g., a 'flats plan' or unit plan")

Transaction Id 59823340

Search Copy Dated 21/02/20 2:54 pm, Page 1 of 1

Client Reference acuebillan001

Register Only

Stratum estate (unit title) (a type of tenancy in common)

Stratum estate (unit title) ownership is a type of tenancy in common where tenants hold separate title for their share. It has come in under fee simple for the next highest bundle of rights.

The unit title form of ownership is commonly used for **multi- unit properties**. It will have a **Supplementary Record Sheet**, mentioned on the Title that was created by the Registrar under section 47 in relation to that unit plan and body corporate.

The Supplementary record sheet contains all instruments that are registered and that affect the whole or any part of the base land and the common property (independently of the units) to which the unit plan relates; and (ii) all other matters that, in accordance with this Act, the regulations.

These might be residential units (such as apartments or townhouses), or smaller sized industrial or commercial units (such as workshops, offices, and carparks).

Unit title developments operate under a legal entity known as a **body corporate**. A body corporate is a collective made up of all unit owners at the property. The body corporate is responsible for the management, administration, and financial concerns of the unit title development. Body corporates must meet the requirements of the Unit Titles Act 2010.

Under unit title ownership, the following applies:

- Each unit owner owns a principal unit (for example, a residential apartment).
- Each unit owner may also own an accessory unit (a carpark at a residential apartment block).
- Each owner has a share in the common property which includes the freehold land.
- Unit title developments often also include common property (for example, lifts and driveways) which are shared by all the unit owners.

Under section 54 of the Unit Titles Act 2010, the body corporate of a unit title owns the common property and holds it in trust for the unit owners.

It is the body corporate's responsibility to insure all buildings and any other improvements on the land. Individual owners fund the cost of this insurance by paying compulsory levies.

Important points relating to unit titles.

Unit titles are often complex transactions, and it is important that customers understand all the obligations and restrictions relating to the property.

Under the direction and control of your supervising branch manager/agent, before engaging in the sale or lease of a unit title property, all relevant documents must be obtained and reviewed.

With every Certificate of Title for a unit title property there is a which confirms the principal unit (the main building structure) and any accessory units. It is important to check that the footprint of the unit reflects the footprint of the plan.

It is important to obtain a copy of the rules of the body corporate along with a pre-contract disclosure statement. These documents will allow you to identify any issues that you need to disclose to prospective buyers or lessees.

The seller must provide the pre-contract disclosure statement to any potential buyer before making their offer. It confirms important information about the development and its body corporate including if the unit title development has been subject to any weathertightness claims, insurance details, body corporate levies, and maintenance plans for the upcoming year.

A Stratum in Freehold Title.

This certificate is on the 'Computer Unit Title Register' This property is a stratum estate and it is fee simple (Stratum in Freehold).



COMPUTER UNIT TITLE REGISTER UNDER LAND TRANSFER ACT 1952



The proprietors listed own Unit A which is the principal unit, and Accessory Unit.

Search Copy

R. W. Muir Registrar-General of Land

Identifier NZ34B/1366 Land Registration District North Auckland Date issued 19 January 1976.

Contains all instruments that affect any part of the land and common property.

Prior references NZ298/233

The proprietors listed own Unit A which is the Principle Unit and Accessory Unit 1

Supplementary Record Sheet NZ34B/1373—

Estate Legal description Stratum in Freehold Unit A and Accessory Unit 1 Deposited Plan 78309

This property shows co-ownership The 3 registered owners are the three trustees of the Smith Family Trust: John Smith, Sarah Smith, and Harold Jones. The trustees hold the land for the benefit of the beneficiaries. The trust is not registered as the owner because it is not a 'legal person' in its own right.

Proprietors John William Smith, Sarah Lee Smith and Harold Craig Jones

The above estates are subject to the reservations, restrictions, encumbrances, liens, and interests noted below and on the relevant unit plan and supplementary record sheet.

Subject to Section 241(2) Resource Management Act 1991 (affects DP 78309) D601538.2 Mortgage to ASB Bank Limited – 12.5.2003 at 9.00 am.

This is a security registered against this title. It is a mortgage against the property to ASB Bank Limited. If the property is sold, this mortgage will have to be repaid by the current owners, and the mortgage discharged on the settlement day.

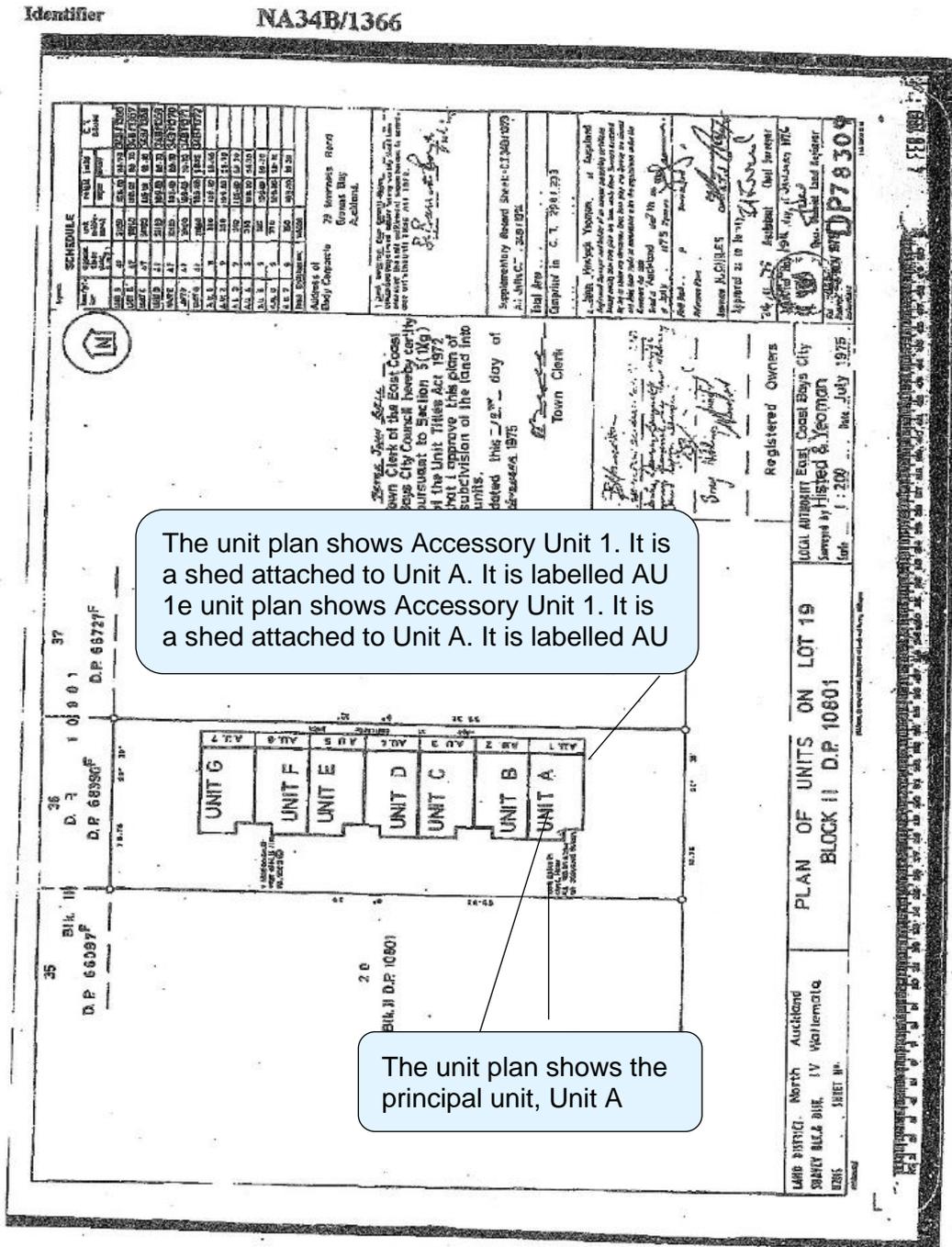
This Consent Notice is registered on the title. It is a form of covenant that specifies features, restrictions and conditions that have been placed on that subdivision land. The landowners and subsequent landowners must comply with it. Sometimes this type of interest is worded 'Consent Notice pursuant to Section 221 Resource Management Act 1991....'

This shows you how many pages are in the document. The second page is usually a plan of the land (e.g., a 'flats plan' or unit plan")

Transaction Id 14938167 Client Reference pjameso001

Search Copy Dated 9/02/2018 1:10 pm, Page 1 of 2. Register only

This 'unit plan' shows where each unit is located on the property. It shows the 'footprint' of each of the seven units; the land each building covers and where it is situated on the land. Each unit has a separate Certificate of Title document



The unit plan shows Accessory Unit 1. It is a shed attached to Unit A. It is labelled AU 1e unit plan shows Accessory Unit 1. It is a shed attached to Unit A. It is labelled AU

The unit plan shows the principal unit, Unit A

Transaction Id 14938167
2.

Search Copy Dated 9/02/2018 1:10 pm, Page 1 of

Client Reference pjameso001

Register Only.

A Cross-Lease Certificate of Title

Composite (cross lease) (a type of tenancy in common)

Composite (cross lease) ownership is another type of tenancy in common where tenants hold separate title for their share of the land and their building.

Composite (cross lease) properties usually consist of:

- an estate in fee simple, in which the owner has an undivided proportionate share of the total land area; and
- a long-term lease from the other owners (usually 999 years) for a defined area of the fee simple estate (the main building and other structures).

Cross leases were commonly set up in the 1960s until the end of the 1980s. Cross leases had advantages for developers in relation to lower costs for shared drainage, common spaces, etc. and less rigorous authority requirements than for subdivisions.

Properties held under cross- leases are most commonly flats or townhouses. Each property is legally termed a 'flat'. The bundle of rights for cross lease is just below unit titles.

With every Certificate of Title for a cross lease, there is a '**flats plan**' which records the footprint of all buildings and other permanent structures on the land. The flats plan shows the 'exclusive use area', and any 'common areas'. A **lease document** will also be recorded as an instrument on the Certificate of Title.

Under the direction and control of your supervising branch manager/agent, cross-lease documents will need to be obtained and carefully read before marketing the property. It is important to confirm any issues that must be disclosed to prospective buyers. For example, there may be a situation where a conservatory on the land is not part of the 'footprint' on the flats plan. If the flats plan is incorrect, a survey will be required to create a new flats plan, or the offending structure will need to be removed.

Cross lease titles will often contain several covenants which each 'flat' owner must legally comply with. For example, cross leases often have strict restrictions on building work and alterations.

Potential buyers will need to be informed of any improvements or alterations already made to a property to identify whether the property fully complies with the lease at the time it is sold (to comply with rules 5.1, 9.7 and 10.7). Potential buyers need to know that they might not be able to extend or improve the property if the lease shows an existing footprint that they are unable to alter.

There may be other obligations under a cross lease; for example, a responsibility to maintain the common areas such as a driveway or parking areas, and restrictions such as a ban on pets at the property.

Note: Cross lease titles can sometimes be converted to fee simple titles, but the process can take a long time and can be expensive. The process involves the same steps as a subdivision application and can only occur if all the other owners in the cross lease agree.

This certificate is on the 'Composite Computer Register' The tenure of this property is cross lease. It is a combination of fee simple and leasehold estates.



**COMPOSITE COMPUTER REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy

R. W. Muir
Registrar-General
of Land

Identifier NA46D/24
Land Registration District North Auckland
Date issued 28 November 1979.

Prior references
NA982/41

These proprietors own an undivided third share in the 1265m² of land.

Estate Fee Simple – 1/3 share
Area 1265 square metres more or less
Legal description Part Lot 168 Deposited Plan 5

The owners also hold a 999-year lease for the defined area for Flat 1 (shown on the 'flats plan' with the title). More detail is in the Lease Document L 757485.1. They will typically be granted exclusive use of their dwelling and a defined area of the land

Proprietors
Veejay Patel

Estate Leasehold **Instrument** L 757485.1
Term 999 years as from 31.10.1979
Legal description Flat 1 Deposited Plan 89512
Proprietors Veejay Patel **Interests**

There is a Fencing Agreement affecting the property. This means there is an agreement between adjoining neighbours regarding fencing. For example, it may limit the height of the fence, or specify that no fence is to be built.

Fencing Agreement in Transfer 482620 (Affects Fee Simple)
K35553 Building Line Restriction (Affects Fee Simple)

757485.1 Lease of Flat 1 DP 89512 Term 999 years as from 31.10 1979

There are Land Covenants, affecting the property, restricting how the land can be used. The reference for the associated document for this property (Flat 1) is 757485.1

There is a Building Line Restriction affecting the property. This restricts where any buildings can be placed on the land and the height of the buildings in relation to the boundary.

Composite CT NA46D/24 issued – 28.11.1979 (Affects Fee Simple)
Land Covenant in Lease 757485.1 – 28.11.1979 (Affects Fee Simple)
757485.2 Lease of Flat 2 Composite CT NA46D/25 issued – 28.11.1979 (Affects Fee Simple)
Land Covenant in Lease 757485.2 – 28.11.1979 (Affects Fee Simple)
757485.3 Lease of Flat 3 Composite CT NA46D/26 issued – 28.11.1979 (Affects Fee Simple)
Land Covenant in Lease 757485.3 – 28.11.1979 (Affects Fee Simple)
D612319.1 Mortgage to Bank of New Zealand Limited – 12.6.2001 at 1.54 pm

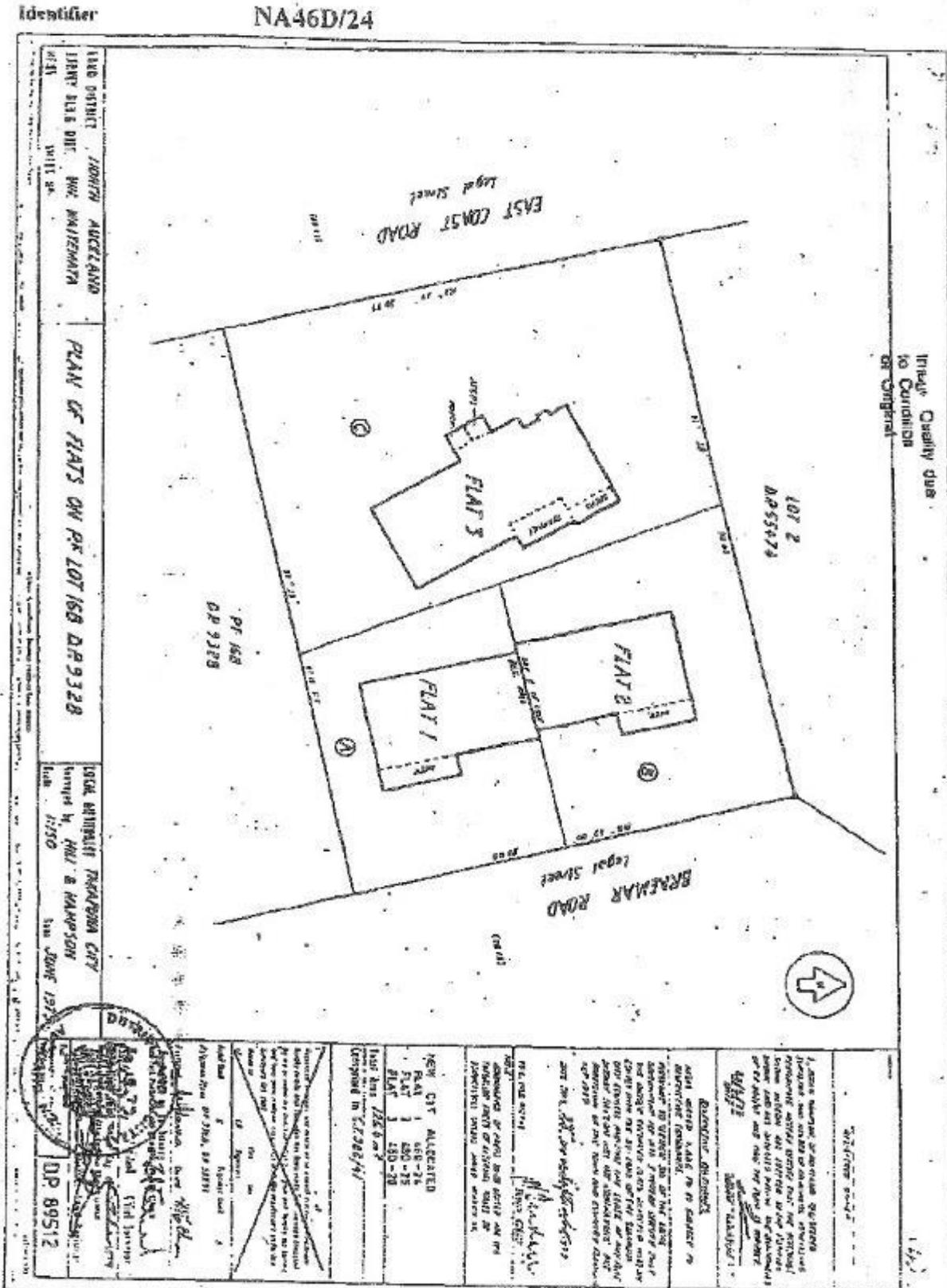
Transaction Id 15361384

Search Copy Dated 8/02/2018 1:10 pm, Page 1 of 2

Client Reference tsmithers001

Register Only

This 'flats plan' shows where each 'flat' is located on the property. It shows the 'footprint' of the buildings on the land; the land each building covers and where it is situated on the land. Each 'flat' has a separate Certificate of Title document.



Transaction Id 15361384
 Client Reference tsmithers001

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 Register Only

Company share.

This type of title may also be described as a 'company title' or 'company share scheme'.

A **company share title** means that a **company owns** a whole block of apartments (or flats). In some instances, company share ownership is for leasehold land.

Company share title has significant differences from other types of title common in New Zealand.

The owning company owns all of the land and all buildings on the land, but it does not trade as a company. It exists solely for the purpose of owning the property.

The shareholders in the company gain occupancy rights by obtaining equity (**owning shares**) in the company. They do not usually own the title of the unit they are occupying.

The rules attached to a company share property are specified in a schedule within the **company's constitution**. The **Company's Constitution** sets out the parties' obligations and rights.

Companies in New Zealand are incorporated under the Companies Act 1993. A company is a legal entity in its own right, and can hold property in its own name and will therefore be named as proprietor (owner) on the Certificate of Title.

When working in a transaction involving company ownership, licensees should check the number of directors on the companies register on the New Zealand Companies Office website.

The register of companies can be found at: <https://companies-register.companiesoffice.govt.nz/>

Note: There are some exceptions to the above points. For example, some retirement complexes might offer a 'licence to occupy' but do not allow occupants to own company shares.

Under the direction and control of your supervising branch manager/agent, you must make sure you fully understand all company share documents before marketing a company share property.

	COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952	
Guaranteed Search Copy issued under Section 172A of the Land Transfer Act 1952		
Identifier	30792	
Land Registration District	Wellington	
Date Issued	31 May 2002	
Prior References		
WN38D/649		
Estate	Fee Simple	
Area	557 square metres more or less	
Legal Description	Lot 2340 Deposited Plan 70898	
Proprietors		
Bruce Wallis Petersen, Jill Marce Peterson and Perpetual Trust Limited		
Interests		
Fencing Covenant in Deed 712100.2 with the Hutt County Council - 29.8.1985		
Land Covenant in Transfer B139322.17 - 16.1.1991 at 2.43 pm		
Subject to a right (in gross) to drain sewage over part marked T on DP 70898 in favour of The Porirua City Council created by Transfer B139322.18 - 16.1.1991 at 2.43 pm		
The easement created by Transfer B139322.18 is subject to Section 309(1)(a) Local Government Act 1974		

Sole traders

A sole trader is a person in business who is trading on their own. They are responsible for their business debts, including Tax and ACC levies, and they keep control of the business and its profits.

When signing up an agency agreement or sale and purchase agreement, the processes described in the previous section titled 'Individuals' applies to sole trader.

Māori land

Māori land is defined in section 129 of Te Ture Whenua Māori Act 1993. There are four different categories of Māori land.

- **Māori customary land** – this is land that Māori hold in accordance with tikanga Māori. It has not been transferred into freehold title by the Māori Land Court or ceded to the Crown.
- **Māori freehold land** – this is land that is owned freehold by Māori, with the ownership having been determined by the Māori Land Court. Of the 26.4 million hectares of land in New Zealand, about 1.3 million is Māori freehold land.
- **General land owned by Māori** (other than freehold) – this is land owned by at least five people, with the majority of owners being Māori.
- **Crown land reserved for Māori** – this is land that the Crown has set aside for the use and benefit of Māori.

The law regards Māori land as a 'taonga' (treasure) to be handed down from one generation to the next. **Māori customary land cannot be sold**. Most Māori customary land has never been converted to fee simple title or brought into the land registration system. Any transfer of Māori land requires the **consent of the Māori Land Court** and before it can be sold, the Māori Land Court would first need to convert it to Māori freehold land or general land.

Most Māori land is registered with two or more proprietors as tenants in common. A party who owns an undivided interest in Māori freehold land can separately dispose of (alienate) their interest but only to certain people, usually blood relatives. This might be done by gifting, leasing, or mortgaging the land. The Property Relationships Act 1976 does not apply to Māori land.

There are three important pieces of search information that are needed to begin a search of Māori land:

- The name of the owner
- The name of the block
- The Māori Land Court District in which the land is located.

If you are searching for a title to Māori freehold land you should check records both through LINZ and through the Māori Land Court. Definitive information is best obtained from the Māori Land Court as this holds most Māori land records.

If the land description has a Māori block name as part of the description, the best resource to use is the Māori Land Information Base (MLIB) on Te Puni Kokiri's website.

Land Information New Zealand (LINZ) is also a useful resource, especially if the land description does not include a Māori block name.

However, LINZ records may not be complete. This is because orders made by the Māori Land Court did not have to be registered with LINZ before the Te Ture Whenua Māori Act 1993 was put in place.

If a title to Māori land cannot be found through a title search, it may be that the land does not have a title, or it may not have been surveyed (so the land is not defined), or the status of the land may have recently been changed by the Māori Land Court and the change has not been registered yet.

NOTE: When carrying out real estate business involving Māori land, it is important that licensees receive sufficient direction and control from their supervising branch manager/agent, follow the applicable agency procedures, and meet their disclosure obligations.

Leasehold

Leasehold ownership means the owner **owns the buildings and improvements** on the land in question but not the land itself. The owner **leases the land** from a landowner, who owns the land on a freehold title. This type of land ownership has the least bundle of rights.

Most leasehold land in New Zealand is owned under a 'Glasgow lease'.

A Glasgow lease is usually for a term of 21 years and is 'perpetually renewable'. This means it is renewable on an ongoing basis so long as the provisions of the lease have not been broken.

However, some Glasgow leases are now 'terminating' leases rather than 'perpetual' leases. Land that falls under the Māori Reserved Land Amendment Act 1997 is often held under a terminating lease.

The owner of the leasehold title pays **ground rent** to the landowner. Ground rent is usually decided in relation to the value of the unimproved land. This is often 5% to 7% of the land value at the start of the lease term. When the lease is up for renewal, the ground rent is reviewed.

Due to increases in land prices, a huge rent increase is typical when a lease on the land expires and is up for renewal. Many Glasgow leases have rent reviews more frequently than the 21-year period to try to manage these increases more regularly than every 21 years. For example, the terms of the lease may specify renewal every seven years. However, even in a seven-year period, the increase can be significant.

If the building owner does not renew the lease and does not remove the building from the land, the building then becomes the landowner's property.

When preparing to market leasehold land, it is important to search the title, to determine whether there are any restrictions, covenants, or easements on the freehold title for the land.

It is also important to establish what interests are shown on the leasehold title. Key points to check include the following:

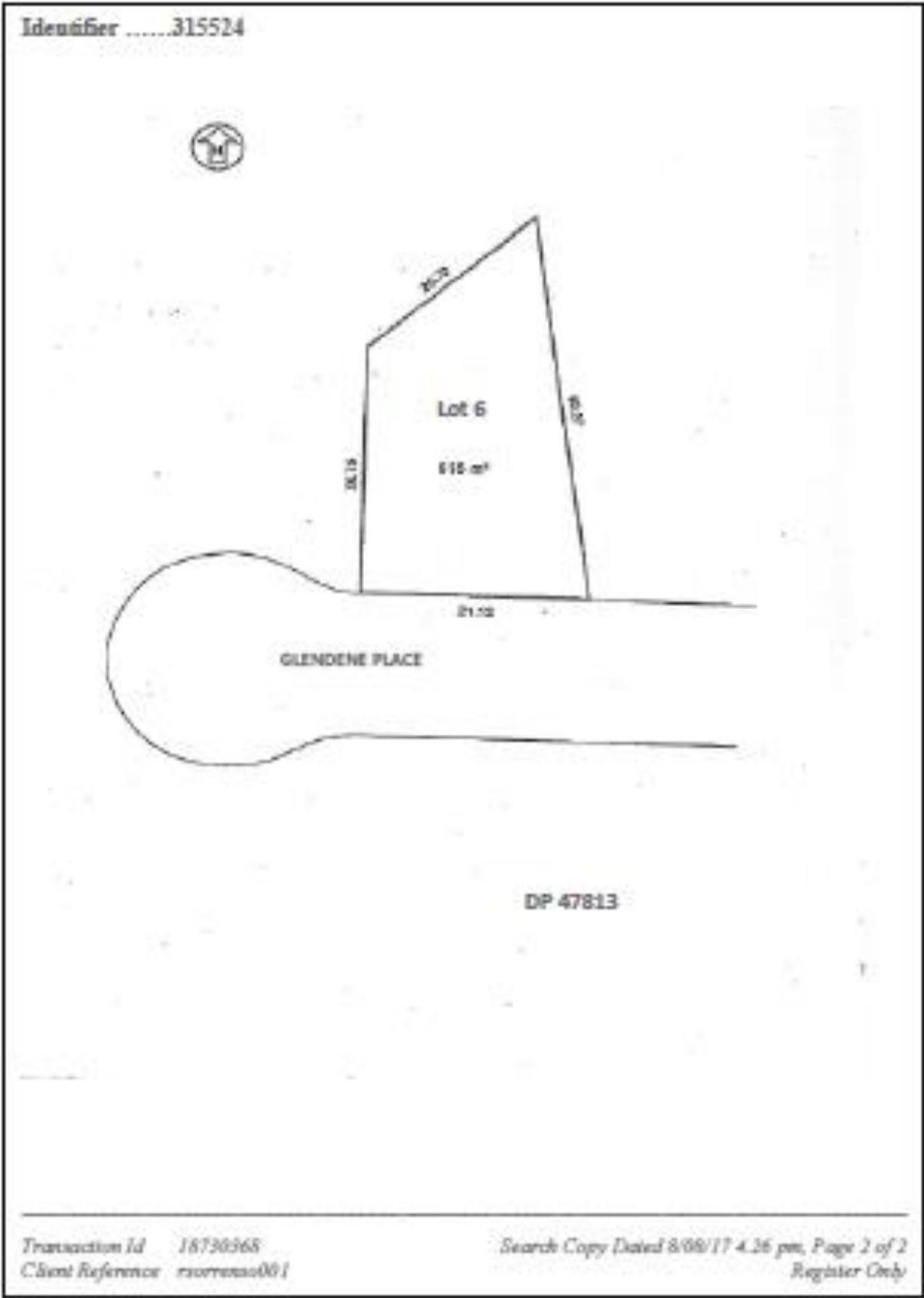
- When does the lease expire?
- What does the renewal clause say?
- How often will rent reviews be carried out?
- What are the procedures that will be followed to decide the new rent amount?

A Leasehold Title

This is an example of a title for a leasehold property with underlying freehold land. This property would have two titles affecting each other. The title below is the leasehold title. There is also a fee simple title to the property showing the underlying fee simple ownership.

This certificate is on the 'Computer Interest Register' The tenure of this property is leasehold.

	<p>COMPUTER INTEREST REGISTER UNDER LAND TRANSFER ACT 1952</p> <p>Search Copy :</p>	 <p>R. W. Muir Registrar-General of Land</p>
Identifier	315524	
Land Registration District	North Auckland	
Date issued	3 September 2009 09:00 am	<p>An Instrument is a document that records the nature and extent of an interest in a property. The document that records details of the lease has the reference I 6159542.1.</p>
Prior Preferences	176427	
Estate	Leasehold	
Instrument	I 6159542.1	
Legal description	Lot 6 Deposited Plan 47813	<p>The lease is for 21 years from 17 March 2009. In this case the leaseholder has a right of renewal when the lease expires if the provisions of the lease have not been broken</p>
Term	21 years from 17. 03.2009 (Renewal clause)	
Proprietors	Steve James Elders and Wendy Liu	<p>The proprietors are joint tenants of the property. (There is no indication of separate shares.)</p>
Interests	Fencing covenant in Lease I 6159542.1 – 3.9.2009 at 9:00am	
	7429262.3 Mortgage to Kiwi-bank Limited 2.6.2013	
		<p>There is a Fencing Covenant affecting the property. This allows the owner of the property to avoid their contribution to erecting a fence between their property and adjoining</p>
<i>Transaction Id</i>	18730368	
<i>Client Reference</i>	rsorrenso001	
		<i>Search Copy Dated 8/08/17 4. 26 pm, Page 1 of 2.</i>
		<i>Register Only.</i>



Titles limited as to parcels or limited as to title.

Limited as to parcels

Sometimes on a Certificate of Title **the area and dimensions** of the land it refers to **are not guaranteed**. In this situation, the site is referred to as being 'limited as to parcels'.

If this issue arises, it is usually in relation to older subdivisions. This is because, historically, a proper survey was never done on the property.

A surveyor can define the exact boundaries and can submit a survey plan that facilitates the removal of a limited as to parcels notation.

When a formal survey is carried out, some land may actually be confirmed as much smaller than is indicated on the Certificate of Title.

A buyer cannot force the seller to have the property surveyed. The current registered owner is not legally required by law to engage a surveyor or remove a limited as to parcels issue.

The note that a site is limited to parcels is usually found at the top of the Certificate of Title. It is important to check, under the direction and control of your supervising agent/branch manager, whether this limitation has been removed.

Some councils will not consider resource consent applications for properties that are limited as to parcels. This refusal is even more likely with commercial and industrial developments because, for ease of access reasons, there is often a need to build on, or close to, the legal boundary of the property.

If a buyer arranged for a survey which showed that there were significant differences in land size to that indicated on the title, the buyer may be able to claim compensation from the seller. If a licensee, on behalf of a seller, represented a title as fee simple without disclosing that it was 'limited as to parcels', the buyer may have a claim for loss due to misrepresentation.

A prospective buyer would need to be fully informed of the situation. The licensee should also recommend they seek independent legal/technical advice before entering into a transaction.

Limited as to title

This means there is a defect in the title itself. Limited as to title situations are rare but can present serious problems if they arise.

A limited as to title notation means that when the land was transferred into the current registration system (under the Land Transfer Act 1952), the registrar was not certain that the proprietor who possessed the property at that time had full ownership rights to the property.

This could happen for reasons such as the original proprietor abandoning the land or dying. For example, in the late 19th century, gold miners bought a number of properties in Cardrona in Central Otago. When the work in the local goldfields dried up, the miners deserted their properties, leaving the ownership rights to the property unclear in later years.

Ownership may be claimed by 'adverse possession'. The right of adverse possession applies to anyone who has used land continuously for at least 20 years without consent from the registered owner.

To have the title recorded in their name, the current property owner must provide adequate evidence that they have occupied the property continuously. If they cannot or do not do this, the property will remain 'limited as to title'.

In a limited as to title situation, the prospective buyer must be fully informed of the situation. Licensees should also recommend that they seek independent legal/technical advice before proceeding to enter into a transaction.

A limited as to title situation can prevent a real estate transaction from being completed.

Co-ownership of land

There are two types of land co-ownership. These are:

- Joint tenancy.
- Tenancy in common.

Joint tenancy

A joint tenancy is when **two or more** people own a property **jointly**.

Their names are recorded on the Certificate of Title without giving separate shares. For example, a Certificate of Title might record the owners as 'John Smith and Julie Jones'.

Under section 61 of the Land Transfer Act 1952, if two people are named in a transfer, they become joint tenants.

- Each tenant has an equal share of their joint interest in the land and has **equal rights** to possess the land.
- Each joint interest must have originated from the same source (for example, from a gift, will, or purchase).
- A joint tenant can **only dispose of his or her interest** in the property **while alive**. They cannot leave their interest to a third party by specifying this in their will.

If one joint tenant dies, the remaining tenant/s automatically own the entire estate. This is called '**the right of survivorship**'.

Trust (a type of joint tenancy)

A commonly used type of joint tenancy is the **trust**.

Trusts are set up to manage and protect assets by transferring individually owned property into the ownership of a trust.

Family trusts are often established to safeguard assets against risk. For example, a trust offers protection from the property-related consequences of a relationship breakdown or business failure. Trusts can also reduce tax liability.

Unlike a limited liability company, a trust does **not** qualify as a '**legal person**' in its own right.

A trust is managed by **trustees**, who act on behalf of any **beneficiaries**. In a trust, the trustees hold land for the benefit of the beneficiaries.

The **trustee** holds a **legal interest**, and the **beneficiary** holds an **equitable interest** in the trust property. The trustee's legal interest means they have all of the rights and powers that arise from that legal interest, such as the rights to deal with that trust property and to invest trust property, but this is subject to the interest of the beneficiary (an equitable interest) and the terms of the trust deed.

Trustees are required to act unanimously, therefore it is imperative to get all trustees' signatures on contractual documents.

Tenancy in common

The other form of co-ownership is **tenancy in common**.

A tenancy in common means that each person has a **defined share** in the **rights of ownership**, but there is no physical division of the actual land.

Tenants' shares may be in equal proportions (for example, each tenant in common having a one-half or one-third share, for example).

Alternatively, tenants' shares can be split disproportionately (for example, one tenant in common may have a one-quarter share while a second tenant in common has a three-quarter share).

A tenancy in common provides **no right of survivorship**. Each tenant can choose to dispose of his or her interest in whatever way they choose whether they sell (transfer) it, gift it, or make a provision in their will.

Domestic partners often purchase property as tenants in common rather than as joint tenants. Tenancy in common co-ownership gives parties more flexibility and reduces the risk of certain problems. For example, it allows co-owners to make sure that their proportion of the property is willed to another party who is not a tenant in common.

It is also possible for a tenant in common to have separate title for their share: for example, through a cross lease or unit title.

A Certificate of Title showing tenants in common

In this section various Certificates of Title are presented, with notes showing some of the information that can be read from the document.

This certificate is on the 'Computer Freehold Register'. The tenure of this property is fee simple



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy

R. W. Muir
Registrar-General
of Land

Identifier NA124A/45 Land
Registration District North Auckland
Date issued 21 March 2001.

Prior references

NA112D/202

The tenure of this land is fee simple.

Estate Fee Simple
Area 825 square metres more or less **Leg**
Legal description Lot 2 Deposited Plan 205138

The legal description of this property is 'Lot 2 Deposited Plan 205138'.

Proprietors

Barry Shane Smith as to a ½ share, Larry Sam Jones as to a ½ share

The proprietors are 'tenants in common'. Barry Smith holds a 1/2 share in the property. Larry Jones holds a 1/2 share in the property.

Interests

Appurtenant hereto is a right of way and gas, water, electricity & telecommunications rights specified in Easement Certificate D479443.5

The words 'appurtenant hereto' indicates that this lot is the dominant tenement for this easement. This means it this lot has the right to convey gas, water, electricity, and telecommunications over the easement shown on the subdivision or Cadastral plan. Further details can be found in the Easement Certificate D479443.5.

The easements specified in Easement Certificate D479443.5 are subject to Section 243 (a) Resource Management Act 1991

Appurtenant hereto is a maintenance right created by Transfer D657296.2 – produced 18.2.2001 at 2.04pm and entered 21.3.2001 at 9:00 am

Land Covenant in Transfer B350589.2 – 21.3.2001 at 11.16 am.

This indicates there is a restriction relating to the use of the land and this is detailed in the stated document

D685478.3 Mortgage to (now) Westpac New Zealand Limited – 1.5.2001 at 2.48 pm

Registered rights and restrictions

Registered rights and restrictions (non-possessory interests) are referred to as 'memorials' on the original certificates of title. On the computer register versions they are called 'interests'.

Mortgage

Most property is bought through finance from a lender, for example, a mortgage from a bank.

A loan such as a mortgage from a bank is registered as a security on the Certificate of Title. Registering the loan on the Certificate of Title protects the lender's interest in the property, so that when it is sold, the owner must repay the loan to the lender.

As part of the transaction process, when the loan is repaid, the lender authorises 'removal' or 'discharge' of the mortgage from the property's Certificate of Title to give the new buyer a 'clean' title.

Encumbrances

If real property has an encumbrance, this means that a party has a right to or interest in that property, or a legal liability for that property. An encumbrance reduces the value of a property, but it does not prevent the title from being transferred to another party. The owner of the land has full ownership rights, but encumbrances still apply.

'Diminishment of value' can relate to a negative effect on the **actual land value** (price), the reduction in the '**enjoyment**' of the land, and a restrictive effect on the possible '**use**' of the land.

Examples of encumbrances include the following:

- Easements
- Covenants (including protective and restrictive covenants, fencing covenants, consent notices)
- Encroachments (including Building Line restrictions and marginal strips).

Encumbrances 'run with the land' until satisfied. This means that an encumbrance is tied to the land, not to the owner, and will continue to exist and impact the new owner after title transfer. An encumbrance will not prevent a real estate transaction completing.

You can usually find a statement of any encumbrances on a property in the '**interests**' section of the Certificate of Title.

Under the direction and control of your supervising agent/branch manager, you must make sure you are aware of the existence of any encumbrances and understand their implications **before** beginning any marketing.

- You are responsible for making sure that potential buyers are aware of any encumbrances.
- You must also recommend that they seek legal advice before they make a written offer and sign a sale and purchase agreement.

Easements

An easement is a type of encumbrance that gives another party the right to carry out some type of activity over a party's land for a particular purpose.

Schedule 4 of the Land Transfer Regulations 2002 classifies easements into the following types:

- A right to convey and/or drain water.
- A right to drain sewage.
- A right to convey electricity or telecommunications and computer media.
- A right to convey gas.
- A right of way.

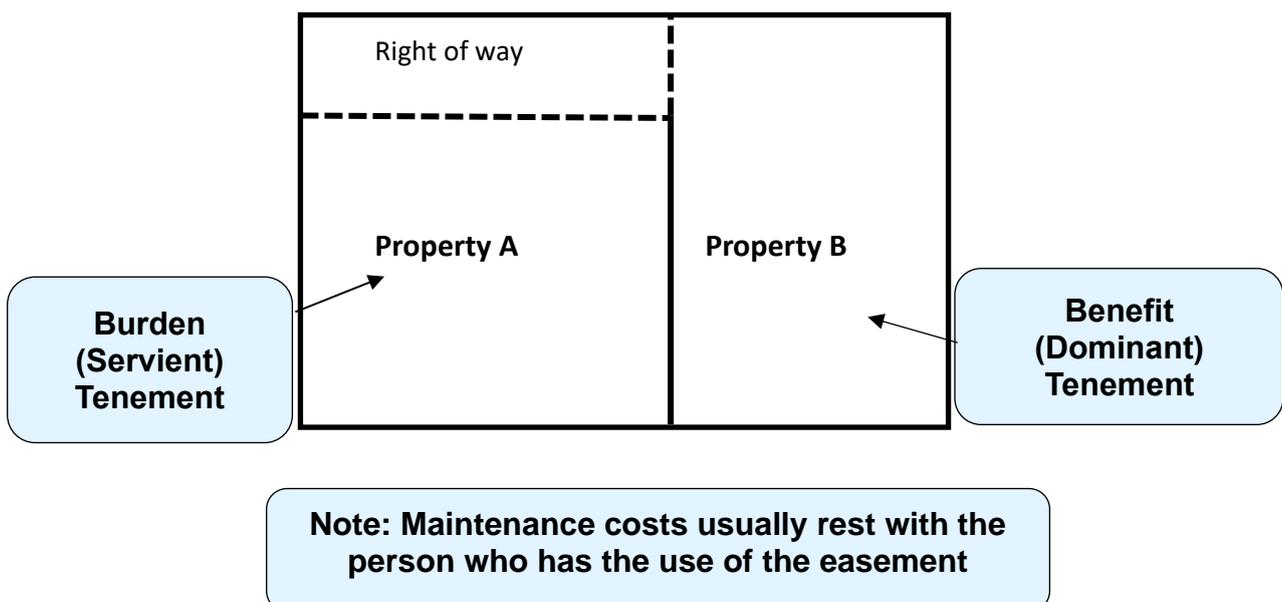
Note: We often use the term 'right of way' to mean a driveway which provides access to a rear lot. However, in many cases, this access is not legally a right of way over someone else's land. It may be a narrow access strip owned by the owner of the rear lot. In comparison, a 'right of way' which is an easement grants the right to cross land owned by another person.

In general, an **easement** will involve **servient** and **dominant** tenements. Quality Planning (n.d.) defines these tenements in the following way:

- A servient tenement is the lot that owns the land over which the easement passes. When you are looking at a Certificate of Title, the servient tenement may be recorded with the statement "Subject to ...". Alternatively, it may state "Easement as to ..." or something similar.
- A dominant tenement is the lot that has the right to pass over or access the land over which the easement passes. When you are looking at a Certificate of Title, the easement on the title (the dominant tenement) will be identified as "Appurtenant hereto ..."

Note: An 'easement in gross' is to do with public utilities such as water supply, power, and drainage. This has a servient tenement but no dominant tenement.

Property A has created a right of way easement in favour of Property B.



Make sure you understand the Title, consult with your supervising agent or branch manager,

- Check on the Certificate of Title for any easement issues before confirming an appraisal, and before beginning any marketing. If there are easement issues, make sure you understand the conditions of the easement(s).
- Properties often have one or more easements recorded on the Certificate of Title so that public services can be provided, Examples include, telecommunications, water, drainage, sewage, electricity, and gas.
- It is important to identify the location of all easements on a property. Some easements create restrictions for building because the relevant authority needs access to public services to carry out maintenance and repairs. This may restrict future redevelopment of the property.
- It is important to know that not all easements are shown on the Certificate of Title.
 - Rights of way may not always be recorded on the Certificate of Title. If this applies, it is necessary to consult survey plans.
 - There are also other types of easements, such as old drainage easements, that may not be listed on the Certificate of Title. These may be shown on district plan maps.
 - Some easements are general, in which case they are not registered on individual certificates of title: for example, an easement that protects a neighbour's property from being undermined.
- Make sure that all potential buyers are aware that an easement exists.
- While the buyer's solicitor will usually perform a title search later in the transaction process, you must recommend that potential buyers seek legal advice before they make a written offer and sign a sale and purchase agreement.

An Example of an Easement Certificate

EC D479443.5 Easement

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EASEMENT CERTIFICATE

(**IMPORTANT:** Registration of this certificate does not of itself create any of the easements specified herein).

I/ We William George SMITH

being the registered proprietor(s) of the land described in the Schedule hereto hereby certify that the easements specified in that Schedule, the servient tenements in relation to which are shown on a plan of survey deposited in the Land Registry Office at

on the day of 49 2 0 0 0 under No. DP 205138

are the easements which it is intended shall be created by the operation of section 90A of the Land Transfer Act 1952.

SCHEDULE DEPOSITED PLAN NO. 205188

Nature of Easement (e.g., Right of Way, etc.)	Servient Tenement		Dominant Tenement Lot No.(s) or other Legal Description	Title Reference
	Lot No(s) or other Legal Description	Colour, or Other Means of Identification, of Part Subject to Easement		
Right of Way Gas, Water, Electricity & Telecommunications	Lot 1 DP 205188	"A"	Lot 3 DP 205188	122A/215
Right of Way Electricity, Gas, Water & Telecommunications	Lot 3 DP 205188	"B"	Lot 1 DP 205188	122A/214
			Lot 2 DP 205188	122D/202

State whether any rights or powers set out here are in addition to or in substitution for those set out in the Seventh Schedule to the Land Transfer Act 1952.

1. Rights and powers:

The rights and powers set out in the Seventh Schedule of the Land Transfer Act 1952 TOGETHER WITH:

- (a) With respect to the ELECTRICITY and TELEPHONE easements the full free and uninterrupted and unrestricted right, liberty and privilege for the grantee and the grantee's tenants (in common with the grantor, the grantor's tenants and any other person lawfully entitled so to do) from time to time and at all time to take, convey and lead electricity both as a source of supply and for the conduct of telephonic and any other form of communication through or under the land over which the easement is granted or created and including without limiting the foregoing the following additional rights:
- (i) To use any existing wires, cables, or other means of conducting such services already laid on the stipulated course or laid in placement or in substitution for any or all thereof; and
 - (ii) Where no such wires, cables, or other means of conducting such services exist to lay, place, or maintain or to have laid, placed and maintained such wires, cables, or other means of conducting such services of such suitable specifications and in such position as the parties decide, along or under the land over which the easement is granted.
- (b) With respect to the GAS easement the full, free, uninterrupted and unrestricted right, liberty and privilege for the grantee and the grantee's tenants (in common with the grantor, the grantor's tenants and any other person lawfully entitled so to do) from time to time and at all time to take, convey and lead gas for heating and cooking in a free and unimpeded flow (except when the flow is halted for any reasonable period necessary for essential repairs) and in any quantity, consistent with the rights of other persons having the same or similar rights, from the source of supply or point of entry, as the case may be, and following the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in Clause 5 of the Seventh Schedule to the Land Transfer Act 1952.
- (c)

2. Terms, conditions, covenants, or restrictions in respect of any of the above easements:

In exercise of the rights granted hereby the grantee shall at all times ensure that any disturbance or damage done or caused is promptly and forthwith repaired at the grantee's cost in all respects.

Dated this _____ day of _____ 19 2 0 0 0 Signed by the
above named.

William George SMITH

in the presence of *Witness Occupation Address*
Sandra Leigh Jones Solicitor Auckland

Correct for the purposes of the Land Transfer Act 1952
(Solicitor for) the registered proprietor

Approved by Registrar-General
of Land under No. 1998/6031

EASEMENT CERTIFICATE

Land Transfer Act 1952

This reproduction is certified to be a
true copy of *Easement Certificate D 479443.5*
for the purposes of section 215B
Land Transfer Act 1952 - 1.5.2013 at 4 pm

Quality
For RGL



Law Firm Acting
STANTON & CHELLEW BARRISTERS & SOLICITORS PO BOX 969 DX CP 16023 AUCKLAND 1 PH: (09) 373-2447 FAX: (09) 377-2083

Auckland District Law Society
REF: 4000

12/2/2013

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(except for "Law Firm Acting")

Encroachments

An encroachment is a type of encumbrance and can occur in the following situations:

- When a structure built on a subject parcel of land occupies space on a neighbouring property.
- When a structure built on a neighbouring property occupies space on the subject parcel of land.

Examples of encroachments are as follows:

- A situation where a fence has been built beyond the legal boundary of one property on the land of the property next door.

Note: An encroachment issue like this would be dealt with under the Fencing Act 1978.

- A situation where a building or other structure has been built as part of one property but extends past the legal boundary.

Note: An encroachment issue like this, falls under the provisions of sections 321 to 325 of the Property Law Act 2007.

These provisions give the Court powers to:

- grant an easement for the affected area.
- order the removal of all or part of the relevant structure.
- require the realignment of a boundary.

Encroachments can be serious and complicated issues to deal with.

- Under the direction and control of your supervising agent/branch manager you must take 'reasonable steps' to confirm the nature and location of the boundaries of a property.

Note: that in the case *Rae v REAA & Burch (2013) NZREADT 3* the tribunal said it is expected that the agent looks for boundary pegs. If not found, they should confer with the seller's solicitor about the issue. The agent should advise a prospective buyer of the need to obtain a surveyor's report if there is doubt about a boundary location. This is most important where the agency is making positive representations about a boundary.

- If an encroachment issue exists, make sure that all potential buyers are aware of this.
- You must recommend that potential buyers seek legal advice before they make a written offer and sign a sale and purchase agreement.
- If necessary, the seller may need to be advised to withdraw the property from sale, until the issue is fixed.

Note: The Property Law Act 2007 calls encroachments 'wrongly placed structures'. The Fencing Act still refers to encroachment.

An encroachment can mean that both properties affected are unmarketable until the issue is fixed. This is because the encroaching property does not have title to all land on which structures have been built, and the property encroached on does not have use of all of its land.

If a sale and purchase agreement were signed before the encroachment issue came to light, and the encroachment prevented the owner of the affected property from giving vacant possession to a buyer, there could be grounds for cancellation of the contract under the Contract and Commercial Law Act 2017. If the contract could not be cancelled, the buyer would be entitled to claim damages for the owner's failure to provide vacant possession or to claim compensation for the defect in title.

This is a serious matter that must be referred to a solicitor or other technical adviser.

Building line restrictions

If a building line restriction is breached, this is a type of encroachment.

Where building line restrictions apply, they do not allow buildings to be situated within a certain distance of the centreline of the road or the road boundary.

Building line restrictions exist due to the need for authorities to protect the areas immediately adjacent to a road (which is less than 20 metres wide) in case the road ever needs to be widened.

The Public Works Act 1981 is the piece of legislation that imposes building line restrictions.

Building line restrictions can only be removed under section 327A of the Local Government Act 1974 or must be complied with. Applications for removal are made to the relevant authority.

Building line restrictions are sometimes recorded on the Certificate of Title. The following information would be stated: 'subject to building line restriction' (or BLR) plus the document number.

However, building line restrictions are not always included in the Certificate of Title, but are on the District Plan.

If building line restrictions apply to a property you are marketing, you must check, under the direction and control of your supervising agent/branch manager, that there has not been an encroachment over the building line.

Potential buyers need to be aware that a building line restriction is in place.

Building line restrictions could affect the possibility of making 'improvements' to the property and can restrict future building potential.

Marginal strips

If a marginal strip reservation is breached, this is a type of encroachment.

The Quality Planning website (n.d.) provides the following information on marginal strips.

Marginal strips are covered in Part 4A of the Conservation Act 1987 (which supersedes section 58 the Land Act 1948).

In simple terms, a marginal strip is the first 20 metres of Crown land adjacent to foreshore, a lake, a river, or stream greater than 3 metres wide.

When Crown land adjacent to foreshore, a lake, a river, or stream greater than 3 metres wide is sold or leased, this strip of land, no less than 20 metres wide, is considered to be reserved. These strips were often referred to as the 'Queen's Chain'.

The owner of an ex-Crown property which is located adjacent to a waterway does not own the first 20 metres of that property.

Part 4A of the Conservation Act 1987 covers the process for applying to the Department of Conservation for management rights over marginal strips.

All strips previously created under section 58 of the Land Act became marginal strips under the Conservation Act.

Note: Strips that were created under the Land Act do not 'move' with any change of shape or alteration of the land caused by water, but those created under the Conservation Act do.

- Where a marginal strip is reserved, it must be recorded on the Certificate of Title of the subject land.
- This means that generally an interest (referred to as 'memorials' on the original certificates of title) will show on the title confirming the first 20 metres of the land (where it abuts a waterway) to be reserved from sale.
- Under the direction and control of your supervising agent/branch manager, it is important to note if a marginal strip is shown on a Certificate of Title.
- You need to inform prospective buyers of this, so that they can seek any necessary legal/technical advice before they enter into a transaction (before they make a written offer and sign a sale and purchase agreement).

For more information, visit <http://qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting#marginal>

Protective and restrictive covenants

A protective or restrictive covenant is another kind of encumbrance.

Property owners are required by covenants to do something or not do something in specified ways in relation to the use of land.

Current and all subsequent owners will also be bound by covenants, which are registered on the Certificate of Title.

Covenants may be imposed by the council. For example, in relation to protection of native bush, wetlands, and other conservation issues. Information on why a council covenant was imposed should be available on the relevant council property file.

Covenants can arise when parties make private agreements. For example, they might agree to a covenant placing restrictions on pets and animals allowed to live at location.

Developers often use private covenants to specify how owners of subdivisions develop and maintain the land. Many covenants are intended to maintain the value of the subdivision for all current and future residents.

It is common for identical covenants to be applied as a 'blanket provision' to each property within a subdivision. Developers can also register individual covenants on each parcel of land before it is sold.

Covenants may set criteria for the following, for example:

- Requirement for the developer to approve building plans.
- Which building materials may or may not be used
- Permitted type and style of buildings.
- Size of building (floor area/number of storeys/heights to preserve views)
- Minimum construction value
- Permitted exterior colour schemes.
- Distance from roads or neighbouring properties
- Protection of historic buildings and features
- Restrictions on the use of buildings, including use of the property for an occupied home and the use of minor residential units.
- Time period for construction.
- Restriction on height of vegetation

A protective or restrictive covenant is registered on the Certificate of Title.

The term 'land covenant' refers to restrictions on the use of land by registration of the covenant against the titles to the affected land. The covenant is related to the ownership of the land. The land covenant must be registered against the land benefitting from the land covenant (dominant land) as well as the land subject to the land covenant (servient land). The land covenant document describes the land that the covenant affects and specifies the restrictions on the use of land.

Under the direction and control of your supervising agent/branch manager, it is important to note any covenants shown on a Certificate of Title.

Restrictions imposed by covenants could mean that the owner may not be able to make certain improvements to the property, that the saleability and/or value of the property may be affected.

Prospective buyers will need to be informed of any covenants, so that they can seek any necessary legal/technical advice before they enter into a transaction (before they make a written offer and sign a sale and purchase agreement).

Fencing covenants

A fencing covenant is defined by the Fencing Act 1978.

Fencing Act 1978

2 Interpretation

fencing covenant means a covenant, agreement, or proviso—

- (a) that one party to the covenant, agreement, or proviso may not be required by the other party, being the occupier of adjoining land, to contribute towards the cost of work on a fence between the land occupied by the first party and that adjoining land: and
- (b) that does not enure for the benefit of any subsequent buyer for value of the land occupied by the first party.

To consider the possible effect of a fencing covenant, it is important to first understand some of the effects of the Fencing Act 1978.

Under the Fencing Act 1978, the occupiers of adjoining properties must share the cost of work on boundary fences equally, unless:

- There is a fencing covenant, contract or agreement that has a different requirement.
- The parties agree that the cost of the work will not be shared equally.
- One of the property occupiers damages or destroys a fence and is liable for repairing or rebuilding it.

The Fencing Act 1978 defines an occupier as the owner of a property, or someone else who has occupied the property under a tenancy of at least 10 years.

A fencing covenant may effectively allow a party to avoid contributing to a fence between their property and adjacent land in the way that the Fencing Act 1978 requires.

- Fencing covenants last for a maximum of 12 years, and if the benefited property is sold before the 12 years, the fencing covenant will expire early.
- Fencing covenants are often registered by sub dividers or developers to avoid having to contribute to fencing costs.
- Fencing covenants are recorded on the Certificate of Title but expire when the first buyer sells the adjacent land or after twelve years. However, the covenant may stay on the Certificate of Title.
- Under the direction and control of your supervising agent/branch manager, it is important to note if a fencing covenant is shown on a Certificate of Title.
- Prospective buyers need to be informed, so that they can seek any necessary legal/technical advice before they enter into a transaction (before they make a written offer and sign a sale and purchase agreement).

Fencing agreements

Fencing agreements are different to fencing covenants, they are defined by the Fencing Act 1978 to mean:

Fencing Act 1978

2 Interpretation

fencing agreement means a covenant, agreement, or proviso, not being a fencing covenant, that relates in any way whatever to work on a fence between adjoining lands; and includes an agreement not to erect a fence.

A fencing agreement is made between adjoining neighbours. For example, neighbours may agree to restrict the height of a fence between their two properties to preserve visual appeal, or to not erect a fence at all.

Fencing agreements do not have to be registered on the Certificate of Title.

However, if a fencing agreement is registered, future owners of the affected properties must uphold the agreement.

Under the direction and control of your supervising agent/branch manager, it is important to note if a fencing agreement is registered on a Certificate of Title.

Prospective buyers need to be informed of this, so that they can seek any necessary legal/technical advice before they enter into a transaction (before they make a written offer and sign a sale and purchase agreement).

Consent notices

Under section 221 of the Resource Management Act 1991, a consent notice is a form of **covenant** registered by a local authority (council) that places restrictions on activities and buildings allowed on land that is to be **subdivided**.

Any non-compliance will be enforced by the authority.

The current landowner and subsequent landowners must comply with the conditions of consent notices at all times after the survey plan has been deposited (unless the conditions are varied or cancelled).

Section 221(3) of the RMA allows consent notice conditions to be varied or cancelled if both the landowner and the authority agree.

Examples of consent notice conditions include the following:

- The number and location of dwellings and/or accessory buildings on a parcel of land.
- Conditions relating to decks or foundations.
- Restrictions on building on specific areas of the land.
- Restrictions related to protection of heritage.
- Conditions that provide protection of trees

A consent notice might be registered for a parcel of subdivision land where there is, for example:

- Land that is prone to slips or flooding.
- A need to mitigate storm water mitigation and/or manage wastewater.
- An ongoing requirement to provide stock proof fencing.
- A need to put in water tanks when the location and design of a future dwelling is not yet known.
- A consent notice is registered on a Certificate of Title.

Consult your supervising agent/branch manager, to discuss or obtain any consent notices listed on a title and confirm that the property complies with them. You must also make sure you understand the impact of the consent notice on any proposed development of the land. Prospective buyers need to be informed of this.

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COMO 5248684.1 CONSENT UNDER 222
 CPY-01/01.PCS-001.05/06/02.13:28



DocID: 510392919

Our Ref M2060

TAURANGA DISTRICT COUNCIL

**CONSENT NOTICE PURSUANT TO SECTION 221
 RESOURCE MANAGEMENT ACT 1991**

TDC SUB NO : 4586

IN THE MATTER OF PLAN DPS 89823

AND

IN THE MATTER OF Subdivision Consent pursuant
 To Sections 105 & 108 of
 the Resource Management
 Act 1991

Pursuant to Section 252(1)(a) of the Local Government Act 1974, I, **TERENCE WYNYARD**, Acting Group Manager of Environmental Services of the Tauranga District Council, hereby certify that, by way of resolution passed under delegated authority on 3 March 2001, the following condition was imposed on the subdivision consent for Lot 1 DP50742.

That a consent notice be registered on the Certificates of Title for Lots 1 & 2 requiring that:

The land shall not be subdivided nor more than a single household unit constructed, erected or placed on such land.

That a consent notice be registered on the Certificates of Title for Lot 2 requiring that:

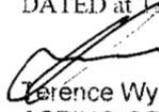
(a) *"The property owner for the time being of Lot 2 shall maintain a fire system that satisfies the requirements of the New Zealand Fire Service. The fire fighting system shall meet the following criteria:*

Providing the quantity and flow of water as required by the NZ Fire Service Code of Practice for Fire Fighting Water Supplies; and

Be constructed with fittings that are compatible with the equipment operated by the NZ Fire Service; and

Provide unimpeded all weather access to the fire fighting system."

DATED at Tauranga this 8th day of February 2002


 Terence Wynyard
ACTING GROUP MANAGER OF ENVIRONMENTAL SERVICES

Caveats

A caveat on a Certificate of Title means that the party who has lodged the caveat, 'the caveator', has protection for a **claim of unregistered interest** in the property.

Most caveats are lodged to stop 'registration of dealings'. In most situations, **the Registrar** at LINZ **cannot register a new owner's name** on the Certificate of Title until a court orders the removal of the caveat or the caveator cancels the caveat or accepts the new registration.

Under the Land Transfer Act 2017, only a person with a caveat able interest can lodge a caveat over that land.

Some examples of when a caveat might be lodged include the following:

- A buyer who has an agreement to purchase land, but with a distant settlement date, might lodge a caveat to stop the owner from dealing with the land before the sale is completed.
- A lender who has granted a loan that is not registered on the title may protect their interests: for example, in the case of a family loan. The lender can lodge a caveat to ensure that there is notice on the Certificate of Title of the agreement to mortgage.
- A beneficiary who is entitled to an interest in land under a trust or estate might lodge a caveat.

If you are preparing to market a property which is subject to a caveat, under the direction and control of your supervising agent/branch manager, the client must be consulted immediately.

Marketing should not be carried out without confirmation from the client's solicitor that the **caveat will be lifted** before settlement date (that **clear title** can be provided).

A buyer's solicitor will require that the seller has the caveat(s) removed. If the caveat relates to a debt, the seller will have to settle the debt prior to settlement.

A Licensee needs to be aware of registered interests on the Title of a property they are selling because the rights and restrictions associated can impact future owners on what they can do to the property.

Issues for a potential customer could be:

- Limits or restricts the owner and any future owners as to how they use the land.
- The owner may not be able to build a structure over the easement.
- The owner may not be able to make certain improvements to the property
- The restriction may affect sale ability or value of the property
- The owner may have to allow access to the property for specified persons or Organisations to the part of the property defined by the easement.
- May restrict the type of materials to be used on a dwelling, the minimum size of the dwelling, the height of buildings on the land or the way the land can be used.
- A transfer or mortgage will not be registered if there is a caveat on the title
- If the owner is selling the property, they will have to settle the debt prior to settlement if the caveat is to be removed
- The acquisition process for land required for public works is covered by the Public Works Act 1981
- An appropriate survey may need to be conducted on the property to have the limitation removed from the title

Lease agreements and tenancy agreements

Agreement to lease and completion of a deed of lease

A lease is an agreement where the lessor grants the lessee use and control of land/buildings for set (or specified) period of time, subject to terms and conditions in exchange for a fee.

Under a lease, the lessee leases commercial or industrial premises from the lessor (the owner of the land/building). Commercial leases are most commonly for a number of years, though short-term leases are also set up in some circumstances.

An **Agreement to Lease** (Heads of Agreement) is an agreement to enter into a lease in the future.

The standard agreement from ADLS that is commonly used is the **Agreement to Lease – 5th Edition 2012 (4)**.

It will cover:

- issues that are to be completed before the lessee takes occupation.
- the terms of the Deed of Lease that will apply to the lease.

A **Deed of Lease**, records the actual grant of the right to lease the premises, by the lessor to the lessee.

A few of the terms and conditions that are included in a deed of lease are as follows:

- The right to exclusive possession of the leased area by the lessee.
- How and by whom costs for matters such as maintenance, rates, and other items associated with the property will be paid.
- Any rights of renewal.

The Deed of Lease is usually prepared by the lessor's solicitor.

Registration of leases

The lessor remains the owner and holds the title to the property. The lessee occupies the property. A lease of longer than three years' duration can be registered on the Certificate of Title.

This option gives additional certainty to the lessee that their rights to occupy the property are registered as an interest if it is sold during the lease period.

However, a lease does not have to be registered. In practice, the majority of leases are not registered on certificates of title as lessees choose to rely on protections included in the deed of lease itself.

Lease agreement - the process from offer to settlement

- Lessee makes an offer to lease.
- Licensee draws up the Agreement to Lease (Heads of Agreement).
- Licensee must meet the requirements of rules 9.7, 12.1, 12.2, 12.3.
- The lessee signs the Agreement to Lease (Heads of Agreement) and, subject to any negotiations, the lessor signs it too.
- If the offer or conditions are not agreeable to either party, the licensee can negotiate between them with the aim of reaching a mutual agreement; for example, price, conditions such as lessor guarantees, fit out of the property etc.
- Once any conditions in the signed agreement are met, the Agreement to Lease becomes a legally binding unconditional contract OR the contract is cancelled if any conditions contained in the contract are not satisfied.
- The lessor's solicitor prepares the Deed of Lease and forwards it to the lessee's solicitor to check, the lessee then signs it.
- Once signed by the lessee, documents are returned to the lessor's solicitor for signing by the lessor.
- Signing of the Deed of Lease is completed following confirmation of any conditions recorded in the Agreement to Lease, but before commencement of the lease and payment of rent by the lessee.
- 'As soon as practicable', each party will have a completed original copy of the Deed of Lease.
- Deposit collected as advance rent.

Licensees and parties involved in the transaction must understand the type of lease in place, and the terms of that lease.

If you are marketing a property/space which has a lease in place, under the direction and control of your supervising agent/branch manager, you need to acquire the lease document(s) and become familiar with the contents.

Assignment of lease

An assignment of lease occurs when a lessee transfers their rights over a property being leased to another party.

For example, when a lessee wants to sell his or her business to another person that is run from that premises, or wants to vacate the premises, they will want to assign the lease to a new lessee. If the new lessee fails to fulfil their obligations to the landlord, the original lessee would be liable until the expiry of the lease period or until another assignment of lease is negotiated.

Assignment of lease requires the landlord's approval unless the lease states otherwise. The Property Law Act 2007 states that a landlord cannot unreasonably withhold consent or delay this consent.

The assignment of lease is a legal document that covers the agreement by the **existing lessee** to assign the lease to an **incoming lessee**. Under this agreement, the new lessee will also agree to purchase the existing lessee's assets (if any).

The ADLS Agreement to Assign Lease – 5th Edition 2012 (3) is the current standard agreement used.

Leases

Leases are a way granting someone the right to use a property and can be for short or long periods of time. Fixed term leases no longer have to be for a certain term.

The landlord and tenant can now agree that the lease can be terminated on the occurrence of a certain event, as opposed to a certain term. However a lease that terminates on the occurrence of a certain event can only last for a maximum of ten years, and cannot be registered on the Title under the Land Transfer Act 1956 (and Section 212 of the PLA)

Examples include:

- **Residential lease** is typically an agreement whereby the landlord or owner of the property grants exclusive possession of the real property to the tenant. The term would often be for 1 year.
- **Cross lease** property is where there is a 999 year lease which is recorded on Cross Lease (Composite) Titles. Also the Title will have a Lease document number that relates to the properties that own the whole parcel of land.
- **Leasehold** land in New Zealand is held under a Glasgow lease. A Glasgow lease is typically for 21 years and as long as the provisions of the lease was met the lease was perpetually renewable. Times have changed and some Glasgow leases now have a termination date.
- **Commercial real estate** lease is a long-term rental agreement between the landlord of the commercial space and a business. There are many types of commercial leases and spaces. Commercial leases are usually for more than 3 years and usually have a right of renewal.
- **Short-term lease** usually commences no later than 20 working days after the date of the contract to lease, and the lease is for a term of 1 year or less, a periodic tenancy or a statutory tenancy (a lease that is terminable at will under section 210.)

Tenancy agreement

A tenancy agreement is a contract between an owner of a residential property (landlord) and a person or entity who rents the property (tenant).

The landlord remains the owner and holds the title to the property. The tenant has tenancy rights. The tenancy agreement lays out the rights and obligations of both the landlord and tenant. This includes the tenant's right to exclusive possession of the property. Tenancy agreements can be fixed term or periodic.

Tenancy agreements must comply with the Residential Tenancies Act 1986.

When a property for sale is tenanted, it is important that licensees, clients, and customers understand the type of tenancy agreement in place, the terms of that tenancy agreement, and its effect if the new owner wants vacant possession.

If you are marketing a property which has a tenancy agreement(s) in place, under the direction and control of your supervising agent/branch manager, you need to get copies of the tenancy agreement document(s) and make sure you understand the contents.

Licence

A licence is a legal contract where the landowner (licensor) grants the person to whom the licence is issued (the licensee) rights over the property which could be legally prevented or result in legal action if the license were not in existence. They are usually for a short-term and for a particular purpose.

A 'licence to occupy' grants the right to occupy land rather than outright ownership. For example, some retirement complexes offer a 'licence to occupy'. This means the retiree has the right to occupy one of the units in the village in exchange for a fee, and subject to the terms and conditions set out in the licence.

In a commercial situation, a pop-up shop in a shopping centre, such as for seasonal trading in the run up to Christmas, will usually have a 'licence to occupy'. This allows the occupier to use shop premises or a section of the mall on a short-term basis.

Land Transfer

Titles can be transferred in different ways:

- By sale and purchase.
- By will.
- By gift.
- By trust.
- By transmission (operation of law).
- By Assignment of Lease

It is also important to note the following circumstances:

- Acquisition by the Crown.
- Resumption of land for settlement of Treaty claims.

Sale and purchase

Sale and purchase are the most common method of transfer. Under Section 24 of the Property Law Act 2007, to be enforceable, all agreements for the disposition of land must be in writing and signed by the parties to the agreement. Sale methods include private treaty, tender, and auction.

Types of agreement documents

A sale and purchase agreement are a legally binding contract between the parties that sign it. The Real Estate Institute of New Zealand (REINZ) and the Auckland District Law Society (ADLS) are joint owners of the agreements. Most agents obtain their agreements from REINZ.

The following standard agreements are commonly used:

- Agreement for Sale and Purchase of Real Estate
- Particulars and Conditions of Sale of Real Estate by Auction
- Particulars and Conditions of Sale of Real Estate by Tender
- Agreement for Sale and Purchase of a Business.

These agreements are frequently updated, and you need to ensure you are using the latest edition.

The sale and purchase agreement

The sale and purchase agreement confirms all the agreed terms and conditions, including the following basic clauses:

- Full names of the vendor/s. These must be the legal proprietors of the property, as shown on the title.
- Full names of the buyer/s that will appear on the title (unless 'or nominee' is indicated).
- The address of the property, legal description, and type of title (for example, freehold or leasehold).
- The price.
- The deposit the buyer agrees to pay. This is often 10% of the purchase price payable on acceptance of the offer. However, the buyer can negotiate how much and when the deposit is paid. For example, they may wish to pay 5% of the purchase price once the (conditional) agreement becomes unconditional.
- Any conditions the buyer wants to be fulfilled before the contract is declared unconditional. These may include conditions to be satisfied. Examples of conditions could be a LIM report, a building report, obtaining finance or selling a house.
- The settlement date – the date when the buyer pays the rest of the amount agreed for the property, usually through their solicitor. This is usually also the possession date when the buyer takes possession of the property.
- Standard General Terms of Sale, which include clauses about default by the buyer or seller. For example, compensation costs for default on terms, delay in settlement.
- Chattels included in the sale (for example, fixed floor coverings, whiteware etc).

When dealing with the sale and purchase of property it is important to understand the difference between real property and personal property.

Real property is immovable property. Real property or 'realty' refers to land and what is attached to it. Examples of real property are land, buildings, or other structures (known as improvements) such as decks, fences and swimming pools included in the property.

In the real estate context, personal property generally refers to moveable items which are not permanently attached to or part of the real property. Some personal property may be included as chattels in the sale of property. Examples of such personal property items would be curtains, carpet, light fittings, a stove, or a waste disposal unit.

The sale and purchase process in a private treaty sale

A private treaty sale is simply an agreement for the sale of a property, which is not an auction or a tender. The sale is negotiated between the parties and may or may not involve the services of an agent.

When a potential buyer wants to make a written offer, the licensee draws up the sale and purchase agreement and asks the potential buyer to sign and initial it.

Before the buyer signs, the licensee needs to meet requirements of rules 9.7, 12.1, 12.2, 12.3.

If it is a residential property sale a *New Zealand Residential Property Sale and Purchase Agreements Guide* must be given to the buyer and signed acknowledgement of receipt must be obtained (required by section 133 of the Real Estate Agents Act). This must be done before the buyer signs their offer.

The buyer should be given a copy of their written offer at this stage. (Real Estate Agents Act 2008, Section 132)

The offer is presented to the seller who can consider the offer. The seller makes the decision whether to accept, decline, or counteroffer.

Before the vendor signs the sale and purchase agreement, if it is a residential property sale a *New Zealand Residential Property Sale and Purchase Agreements Guide* must be given to the seller and signed acknowledgement of receipt must be obtained. (Real Estate Agents Act 2008, Section 133)

Parties may make counter offers and/or obtain further legal/technical advice during the process of negotiation.

If the offer or conditions are not agreeable to either seller or buyer, the licensee can negotiate between them on price and/or conditions with the aim of reaching a mutual agreement. An offer or a counteroffer can be withdrawn at any time before it is accepted, and the acceptance is conveyed to the offeror (the person making the offer).

The price and conditions in the transaction may be altered a number of times during the negotiation process. The seller and buyer must initial any amendments to confirm they agree with the changes.

If both the seller and buyer fully agree, and both have signed and initialled all changes to the sale and purchase agreement, and the acceptance has been conveyed, they have a binding contract, and the originals can be dated.

In accordance with best practice, the following should occur:

- A signed and dated original document is sent to both the seller's solicitor and the buyer's solicitor.
- A copy of the signed document is given to the seller as soon as practicable (required by section 132 of the Real Estate Agents Act).
- A copy of the signed document is given to the buyer as soon as practicable (required by section 132 of the Real Estate Agents Act).
- A copy of the signed document is given to the agency (office) as required by rule 11.5.
- A copy of the signed document is kept for the licensee's files. The licensee will need to follow up to make sure the seller and the buyer are fulfilling their conditions and warranties in good faith and as required, so it is useful to have this record.
- The purchaser's solicitor will obtain a search of the title and any relevant documents recorded against the title to check for any concerns. They have 10 working days from agreement date to do this.

When all conditions in the signed agreement are met (for example, LIM report, builder's report, finance etc), the sale and purchase agreement become unconditional.

If any conditions contained in the contract are not satisfied the contract may be cancelled.

If not paid earlier, when the agreement goes unconditional, the buyer will need to pay the agreed deposit.

The deposit must be held in a trust account by the real estate agency. The agent will usually take their commission from this deposit (as authorised). Holding of money by the agent must be in accordance with section 123 of the Real Estate Agents Act.

A few days before settlement is due to occur the purchaser is entitled to carry out one pre- settlement inspection provided for under the standard general terms of sale. The licensee may be asked to facilitate this inspection. The fiduciary duty to the seller continues until the transaction has completed, even if settlement is after the agency agreement has expired.

Process for sale and purchase by private treaty after contract signed.

The buyer's solicitor will have obtained a search of the title and any relevant documents recorded against the title prior to settlement to check for any concerns.

- The seller's and buyer's solicitors prepare information for the land transfer on Land online.
- The seller's solicitor prepares a settlement statement. (The settlement statement shows the relevant outgoing and incoming on the property to settlement/possession date such as rates, rent paid or received, licence costs and deposit paid.)
- The seller's solicitor sends the settlement statement to the buyer's solicitor.
- If the seller has a mortgage, the seller's solicitor will arrange for it to be discharged. If the buyer is borrowing money from a financial institution, loan and mortgage documents need to be completed by the buyer.

Process for sale and purchase by private treaty on settlement day

Settlement will occur on the date set out in the sale and purchase agreement. This is the date when the buyer pays the balance of the purchase price, usually through their solicitor. It is usually also the possession date (releasing of keys) when the buyer takes possession of the property and can move in. Late settlements (those that occur after 4pm on settlement date) attract penalty interest.

On settlement day

- the seller's solicitor receives the balance of the purchase price from the buyer's solicitor.
- the seller's solicitor repays any mortgage owing.
- the seller's solicitor lodges the transfer with LINZ.
- LINZ authorises and registers the changes in rights to the property.
- LINZ updates the title with the transfer of title ownership and any changes to Interests.

Then the seller's solicitor sends the Transfer document and Discharge of Mortgage to the buyer's solicitor.

NOTE:

The Sale & Purchase Agreement covers the sale of the property including all the listed chattels and identifies when ownership and risks transfer.

This includes the property, anything attached to the property like the house, the fences or a swimming pool and **chattels such as** carpets, curtains, dishwashers, light fittings, sheds etc.

Transfer of ownership and risk

If a property burns down and the fire destroys the chattels, the Sale and Purchase Agreement provides remedies for both the vendor(s) and the purchaser(s).

The Contract and Commercial Law Act 2017 outlines when risk transfers from the seller to the buyer if goods are privately purchased goods. In most cases where a seller and buyer negotiate the sale of additional chattels after the sale and purchase agreement is signed, then Section 120-123 will apply because it is unlikely that the parties will have made any formal arrangement regarding the transfer of ownership.

Therefore, additional chattels are at the risk of the purchaser from the time they enter into the contract with the vendor, even though they may not yet have paid for them or had the use of them.

Unless the parties formally state a date on which ownership of the chattels is to be transferred, it is deemed that ownership transfers at the time the contract is made.

Summary of sale and purchase process for private treaty sale after contract signed.

Once an Agreement for Sale and Purchase of Real Estate is signed by the seller and the buyer, the real estate agent sends signed copies to the solicitors for the seller (vendor) and buyer's (purchaser's) solicitors. Then the land transfer process takes the following steps:

The title of the property is searched.

The buyer's solicitor will obtain a search of the title and any relevant documents recorded against the title.

**Conditions set out in the Sale and Purchase agreement are satisfied.**

The seller and buyer's solicitors make sure all conditions of the agreement have been satisfied. For example, the buyer may need to obtain finance, a LIM report, or a pre-purchase inspection report as a condition of the contract.

**The contract is confirmed as unconditional.**

The buyer's solicitor confirms to the seller's solicitor that the contract

**The settlement statement and land transfer documents are prepared, and mortgage arrangements made.**

The seller's and buyer's solicitors prepare information for the land transfer on Landonline. The seller's solicitor prepares a settlement statement. The settlement statement shows the relevant incomings and outgoings on the property to settlement/possession date such as rates, rent paid or received, licence costs and deposit paid. The settlement statement is sent to the buyer's solicitor.

If the seller has a mortgage, the seller's solicitor will make arrangements for it to be discharged. If the buyer is borrowing money from a financial institution, loan and mortgage documents need to be completed by the buyer.

**Financial transactions and title updates are completed on Settlement Day.**

On settlement day the seller's solicitor receives the balance of the purchase price from the buyer's solicitor and repay any mortgage owing. The seller's solicitor lodges the transfer with LINZ. LINZ authorises and registers the changes in rights to the property. The title is updated with the transfer of title ownership and any changes to Interests such as mortgages. The seller's solicitor sends the Transfer document and Discharge of mortgage to the buyer's solicitor.

Will

Ownership of land can be transferred by will when someone dies, as long as the will is valid, and the form of ownership allows for such transfer (refer back to details on co-ownership).

When a person dies, if that person was the sole owner of the land, the land can be passed onto any other person or group of people through a valid will. The executor appointed in their will administers the will, including dealing with any property.

Process to transfer a property by will is:

- The Executor applies to the High Court for it to approve the will as valid and approve their power to deal with the deceased's estate as the executor (called getting 'probate' for the will).
- The High Court approves the will as valid and approves the Executor's power to deal with the estate.
- The appropriate transfer documents are drawn up by a solicitor. These include an Authority and Instruction form and Statutory Declaration.
- The transfer documents are signed by the Executor.
- The completed and signed Authority and Instruction form and Statutory Declaration, along with, along with a certified copy of probate (court approval of the will), are submitted to LINZ.
- LINZ actions the transfer.
- The Executor distributes the property as instructed in the will.

Gift

A gift is the transfer of property from one person to another, with no payment or other consideration taking place in exchange. As no payment or other consideration is being made a Sale & Purchase Agreement is not required.

It is intended that the donee (the person who receives the gift) will keep the property and not return it to the donor (the person who gives it).

A Deed of Gift is a legal document that formalises a gift. Under amendments made to the Estate and Gift Duties Act 1968, since 1 October 2011 new gifting has not required a Deed of Gift, although it is recommended. However, Deeds of Forgiveness of Debt (also known as Deeds of Gift) are still necessary to complete pre-existing gifting programmes.

While gift duty has been abolished, evidence of a gift still needs to be completed. The appropriate transfer documents are drawn up by a solicitor.

These documents will be submitted to LINZ to enable the property to be updated.

NOTE: Since 1 October 2011, gift duty has been abolished and there is no limit to how much a party can gift in one year.

Trust

A trust is a legally binding arrangement that involves one party (the settlor) transferring legal ownership of assets to other parties (trustees) to be held in trust. This is done to benefit chosen parties (beneficiaries) identified by the settlor.

A legal document called a 'trust deed' provides directions for transferring the legal ownership of the trust assets to the trustees.

This trust deed formally establishes the trust. It appoints trustees, identifies beneficiaries, and creates rules that govern the management and administration of the trust. It may also specify if appointed trustees can sign legal documents on behalf of the other trustees.

A solicitor prepares the trust deed and arranges for the trust to become operational.

Once the trust is formed, the property is 'sold' to the trust and the trustees will usually sign an acknowledgment of debt to the settlor.

Later the settlor's gift ('forgive') the debt owed to them by the trustees.

The trustee or trustees manage that property for the benefit of the beneficiaries of the trust. Property may be transferred during the owner's lifetime or through the provisions in a will.

If the settlor is transferring property to a trust for no consideration (where no money changing hands), then an agreement for sale or purchase is not required.

Signatories for contractual documents

Trusts are not **separate** legal entities. The trustees are always registered as the legal owners of trust assets.

For example, on a Certificate of Title for a property, the names of the trustees are always recorded as owner(s).

It is the trustees who have legal rights to a property and sign all contractual documents in relation to a trust's dealings.

If you are dealing with trustees who are buying or selling property on behalf of a trust, it is important that all trustees sign any legally binding documents, including agency agreement forms (listings), sale and purchase agreements, and/or lease agreements.

If this is not possible, written confirmation is required to show that the other trustee(s) are willing to proceed with the transaction and have agreed for their fellow trustee(s) to sign the relevant documentation on their behalf.

The process for transferring a property into trust ownership is:

- A legal document called a "Trust Deed" will be established. It will include the trustees and beneficiaries and state any rules for the administration of the Trust.
- Transfer of title is obtained. (The bank approves to transfer the title if there is a mortgage.)
- Loan document and mortgage are obtained. (If needed, a new loan document and mortgage is obtained.)
- The property is sold to the trust, usually without exchanging money.
- The acknowledgement of debt is usually signed by the trustees to the settlor.
- All parties complete the Authority and Instruction form to record the transfer.
- Any debt owed by the trustees is forgiven by the settlor by gift.

Transmission (operation of law)

The process for transferring a property by transmission (operation of law)

Under the Land Transfer Act 1952, transmission means 'the acquirement of title to an estate or interest by operation of law'.

A transmission can only be registered under section 122 Land Transfer Act 1952 when there has been a devolution of a legal estate or interest by operation of law.

Note: devolution means when property automatically transfers legally from one party to another, without either the current or past owner needing to do anything.

LINZ identifies the following as some of the common grounds for applying to register a transmission:

- By the survivor of a joint tenancy, on the basis that the deceased tenant's interest devolved on the surviving tenant.
- By the executor, the estate or interest in land of a deceased person having devolved on the executor.
- By the official assignee, the estate or interest in land of a bankrupt person having vested in the official assignee.

According to LINZ, a transmission instrument must be registered before the applicant can transfer the title.

Transmission instruments that are prepared electronically must be supported by the following information:

- An authority and instruction form.
- A signed statutory declaration.
- The death certificate, probate, or certificate of incorporation (as appropriate) (LINZ, n.d.-f).

For example:

In the case of transmission when there is a joint tenancy, if there were two joint tenants (such as a husband and wife), and one dies, the survivor is now entitled to become the sole owner. The completed authority and instruction form, and statutory declaration is signed by the survivor(s) and submitted to LINZ along with a certified copy of the entry in the registry of deaths.

In the case of transmission to the official assignee, the completed authority and instruction form, and statutory declaration is signed by the official assignee and submitted to LINZ.

The process to transfer a property by transmission is.

- The solicitor or conveyancer obtains documents that give evidence of the 'qualifying event'. (A 'qualifying event' is the event that has caused the transmission of land to be made.)
- The solicitor or conveyancer prepares the Authority and Instruction form and Statutory Declaration.
- The completed Authority and Instruction form, and Statutory Declaration are signed as required (e.g., by the survivor(s)) and submitted to LINZ, along with any other required documents (e.g., a certified copy of the entry in the registry of deaths)
- LINZ actions the transmission and updates the Title.

Assignment of Lease

If a tenant wants to sell its business or no longer wants to trade from the current premises, then the tenant cannot terminate the lease unless the lease term is at an end. Therefore, the tenant may need to assign the lease to a purchaser of the business or a new tenant.

Assignment requires landlord's consent. Where a lease requires the tenant to obtain the landlord's consent, the Property Law Act 2007 says that the landlord cannot 'unreasonably' withhold or delay that consent. This obligation cannot be amended in the lease document and the only way a landlord can avoid giving consent to a 'reasonable' request is for the lease to expressly prohibit any right of assignment.

An Assignment of Lease Agreement is used and needs to be signed by the **original tenant** and the **new tenant**

Once all parties sign the Assignment of Lease, it becomes a legally binding contract

Ongoing liability

After assignment of the lease the old tenant and any guarantors remain liable under the existing terms of the lease until the lease terminates, is varied or renewed beyond the original lease renewal rights.

Acquisition by the Crown

The Public Works Act 1981 provides the Crown with the statutory authority to acquire land for public works; for example, such as the building of new roads, schools, parks etc.

The Crown can only acquire land in accordance with the Public Works Act. This might be by negotiation or compulsorily. Under the Public Works Act the Crown may acquire the whole or just a specified part of the land. Land acquired under the Public Works Act is called 'designated' land.

Often landowners know about public works projects because their land has been earmarked (designated) for a particular purpose, many years before construction begins. Land Information New Zealand and New Zealand Transport Agency both provide up to date information and plans for these projects. A Land Information Memorandum (LIM) report may also list any proposed or existing transport network projects in the local area.

The Minister for Land Information acts on behalf of the Crown. Under section 60(1) of the Public Works Act affected landowners are entitled to full compensation for acquired land. Compensation is available to the owners of the land, as well as parties who have an interest in the land (such as a tenant) if that interest is acquired under the Act. Compensation to owners will usually consist of the value of the land which is determined by considering what the land would be expected to sell for on the open market.

Where the Crown requires land for a public work:

The following steps are required to reach agreement. Public Works Act 1981:

- A LINZ accredited supplier is engaged to carry out the negotiations with the landowner who is responsible for administering the Public Works Act on behalf of the Crown.
- The accredited supplier negotiates the acquisition of land for public works on their behalf.
- The accredited supplier must report to LINZ on negotiation outcomes and seek any decisions made under the Public Works Act Acquiring agency
 - They are responsible for the public work and fund any compensation payable to you.
- The accredited supplier on behalf of the acquiring agency, will arrange for an independent valuation of your land from a registered valuer.
- A copy of the independent current market valuation of your land will be given to you to consider.
- The acquiring agency will pay for the costs associated with this valuation.
- These two valuations will form the basis for negotiation and agreement on the sale and purchase of your land to the Crown.
- Where negotiations in good faith fail, and voluntary agreement cannot be reached on the purchase of land for a public work, the Public Works Act provides for compulsory acquisition by the Crown.

If the vendor is willing to sell their land to the Crown, after receiving valuation advice and negotiation the accredited supplier will prepare a Sale and Purchase Agreement that includes any relevant terms and conditions.

If the Crown and the landowner cannot agree on the amount of compensation to be paid, the Public Works Act allows the landowner to request that compensation is decided by the Land Valuation Tribunal. Subject to certain restrictions, land acquired under the Public Works Act that is no longer required for public work must be offered back to the person from whom it was acquired or to their successor, at current market value (Public Works Act 1981, s40).

NOTE: The landowner has the right to have their objection heard by the Environment Court. However, that right to object relates only to the taking of the land, not to the amount of compensation payable.

If land that has been classified as a 'requiring authority' is able to use special provisions in the Resource Management Act to seek the agreement.

Resumption of land for settlement of Treaty claims.

Section 27A of the State-Owned Enterprises Act 1986 states that a memorial must be put in place on all titles to Crown land being transferred to a state-owned enterprise under this Act. These memorials give notice that the property may be used to settle claims under the Treaty of Waitangi through resumption by the Crown.

Under section 27B, if the Crown and claimant groups cannot first agree on a settlement, the Waitangi Tribunal can require the Crown to 'resume' (take back) a property if this is necessary to settle a Treaty claim.

A memorial remains in place even if the title is sold to third parties. The memorial is only removed if affected Māori groups agree to this, or when claims affecting the property have been settled.

If resumption by the Crown occurs, compensation is paid in the same way as if a property is acquired under the Public Works Act 1981.

This includes compensation for:

- Damage to any remaining property as a result of the acquisition.
- Disturbances resulting from the acquisition process.
- Depreciation in the value of the retained land.

Similar memorials apply to land that the Crown transfers to tertiary educational institutions and to former Crown railway land.

It is important that you thoroughly investigate any proposals involving a property with a 27A memorandum on its title, under the direction and control of your supervising agent/branch manager.

Communication with the relevant authority's subdivision officer/legal adviser will be required. The appraised value for the property needs to reflect the impact of any section 27A notices. You must discuss all available information about proposals involving a property with a 27A memorandum on its title with potential buyers. If a potential buyer intends to purchase and/or develop land with a section 27A memorandum, you must recommend that they seek legal advice before they make a written offer and sign a sale and purchase agreement.

Resources

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