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6826789:1

Lessons from the Kiwi experience of E-conveyancing

Presented to the Property Lawyers Section of the
Law Council of Australia

By Catherine Trengrove, Senior Solicitor

September 2012

6826789:2

Topics to cover today:

- Certifications
- Undertakings
- Precedents
- Training
- Solicitors Certificates

6826789:3

Certifications: In the Old Days

Certified correct for the purposes of the Land
Transfer Act 1952

6826789:4

Certifications: Now – s164A LTA 1952

Transferor Certifications

Default

- I certify that I have the authority to act for the Transferor and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Mortgagee Certifications

Default

- I certify that I have the authority to act for the Mortgagee and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

6826789:5

1. Certifications to Land Registrar

- Liability of lawyer
 - Expanded specific personal certifications
 - Reliance on client identity and witness, firm processes, training, storage, insurance policy etc
 - Loss of individual license with LINZ
- Liability of firm
 - Loss of firm license with LINZ
 - Firm processes, training, storage, insurance policy etc

6826789:6

2. Undertakings

- Prescribed format
- Complex/commercial/banking transactions: describing the Trigger event
- Enforcement
- Case Law – “immediately release” = 4 hours

6826789:7

Example vendor undertakings

- In anticipation of settlement, we undertake that:
 - We have signed and certified XX instrument (as mortgagee/transferor's solicitors)
 - Upon our receipt of evidence of payment of the settlement monies, we will immediately release XX instrument
 - We will not amend nor attempt to withdraw XX instrument following the issue of this undertaking letter, signing nor release of XX instrument
 - If any requisitions are raised on XX instrument, we will use our reasonable endeavours to amend, re-sign and re-release XX instrument to allow timely re-submission of the dealing

6826789:8

3. Precedents

- Initial optional phase
- Property sale and purchaser agreements
- Corporate agreements (CPs to settlement, settlement room documents)
- Banking transactions (CPs to drawdown, trigger event/form of payment, undertakings)

6826789:9

4. Training

- Initial training – widespread across all teams and at all levels
- Internal processes – risk management, Registrar's audit
- Ongoing training – allocate resources

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5. Solicitors' Certificates

- Carefully review wording
- No equitable mortgage on signing authorisation to solicitors
- Upon registration, parties deemed to have signed instruments – LTA 1952
- Second mortgage – consent issue

6826789:11

Summary

- This is not a simple process change
- Wide effects across all practice areas
- Training, precedents, audit

Dedicate resources to implementing it NOW!

6826789:12

Contact:



Catherine Trengrove
Senior Solicitor
Senior Business Development Counsel
T +64 9 353 9786
M +64 21 245 3008

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6826789:13