



Connecting New Zealand Lawyers

### **Guidance for Property Lawyers under COVID-19 level 4**

ADLS has set up a COVID-19 webpage on its website offering a forum for addressing practitioners' queries while operating under COVID-19 level 4 circumstances. It is not legal advice, but instead, it is a recommended approach for practitioners to take. As this the situation is moving quickly, we recommend checking our webpage for updates. We will post the date and time of each update to reflect its currency. Answers to preliminary questions raised to date follow. [Click here](#) to view the webpage.

#### **Query: what happens with conveyancing settlements in the situation?**

Answer: As we are in lockdown, neither party will be able to physically move into a new property. The view of our ADLS Property Law Committee is that, if the purchaser is seeking to take possession, settlement and possession should be deferred until level 4 ends. One suggestion is for the parties to agree that the definition of a working day in contracts did not cover a COVID-19 level 4 day with settlement being deferred to, say 3 or 5 working days from the lifting of COVID-19 level 4. Alternatively, the parties could agree to defer to a particular date at some later date, to be revisited if we are still on level 4 at that stage.

There may be situations where parties may want to settle where there is vacant land or a tenanted property (with the intention that the tenancy continues) then if parties wished settlement may still be able to happen, on the basis that searches etc and registration can still happen through online services. There may be issues about whether inspections can be carried out, the A&I form is signed (although note that the RGL has approved an adapted form of ADLS' digital signing for A&I forms – see under separate heading below), mortgage instructions issued and so on, so the preference probably is that settlement be deferred unless the parties agree for it to remain.

We have contacted the Registrar General of Land and we understand that LINZ will remain operational for online services and phone contact but will close its offices so there will be no public counter services. LINZ will be publishing advice on this shortly.

*Tuesday, 24 March 2020 at 9.10am*

#### **Caveats – notices of intention to lapse under level 4 COVID-19 circumstances**

We have enquired of the Registrar General of Land into what is to happen with posting notices of intention to lapse caveats while we are unable to check mailboxes at level 4.

LINZ has responded that, where it has an email contact address for the firm, it will arrange to send caveat notices by email. LINZ is also considering the possibility of following up by phone as well.

LINZ advises that it will be issuing comms on this and other matters shortly.

*Monday, 23 March 2020 at 5pm*

**Query: is there any guidance on how to complete AML in a remote contact situation?**

Answer: You will be pleased to know that we have already made enquiries of the Department of Internal Affairs (DIA) and information specifically about adapted CDD for AML purposes is already posted on our website under our ADLS dedicated COVID-19 page. [Click here](#) for the DIA's response and [here](#) for the amended protocol.

*Thursday, 19 March 2020*

**Query: are transactional services that lawyers provide “essential services” during the lock down period?**

Answer: Day-to-day legal transactions are not essential services. However, urgent injunctions, or applications for caveats not to lapse might qualify as essential services, as also perhaps deathbed wills or powers of attorney. We can only draw on inferences from sources such as the Chief Justice's announcement for direction at this stage. Based on this announcement, we believe that only some legal services are essential services such as habeas corpus, protection orders etc. The Prime Minister has encouraged New Zealanders to continue offering their services from home wherever they can. In the case of wills for example, these could be drafted, sent to a client by email and approved by email, even if they can't be signed with independent witnesses. Also, with many of our tools already being digital, much work can be progressed. Admittedly, advancing property matters for a great part depends on whether LINZ is operational or not. The Registrar General of Land has advised that LINZ will remain operational for online services and phone contact but will close its offices so there will be no public counter services. LINZ will be publishing advice on this shortly.

*Tuesday, 24 March 2020 at 9.10am*

**Query: what can we do about having Authority and Instruction (A&I) forms signed?**

Answer: The Registrar General of Land (RGL) has approved the use of ADLS digital signing and accompanying protocol for remote signing and witnessing of client A&I forms required for electronic registration. [Click here](#) for information about A&I digital signing. Part of your existing WebForms package, digital signing is a secure tool that can be used for WebForms templates or your own documents.

In the current circumstances, the RGL is also allowing a combination of ADLS' A&I digital signing service and audio-visual (the latter in accordance with LINZ' e-dealing guidelines, as updated) for lawyer-client witnessing. We emphasise that it is only **the lawyer acting** who can complete digital signing remotely **for their own client** using a combination of audio-visual and our digital signing. [Click here](#) for the user guide and tools, bearing in mind that ADLS is in the process of amending its guidelines to reflect this recent change.

**On behalf of the ADLS Property Law Committee**



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