
Real Estate

Continuing Professional Development

Legal ownership and tenure

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Learning objectives

Review and understanding of:

- What the essential documents are
- Where these essential documents are found
- What the essential documents mean
- Record of Title (previously Certificate of Title)
- Legal tenure
- Limited as to parcels
- Limited as to title
- Interests, encumbrances and restrictions
- Caveats
- Notice of claim
- Statutory land charges
- Leases and residential tenancies
- Easements
- Encroachments
- Building line restrictions
- Marginal strips
- Covenants (protective, restrictive, fencing)
- Consent notices under section 221 of the Resource Management Act
- Notices under the Building Act 2004
 - building on hazard prone land
 - construction of buildings on two or more allotments)
- Amalgamation conditions imposed under section 241 of the Resource Management Act 1991
- Māori land
- Memorials relating to the resumption of land

Reviewing record of title extracts

What the essential documents are

The essential documents that licensees must understand are:

- Record of title (previously Certificate of Title; renamed in the Land Transfer Act 2017¹; also known as a computer register, unique identifier or property title)
- Land Information Memorandum (LIM report) – refer to separate topic: Council Compliance



Note

There will be additional information from other sources that licensees must also obtain, understand and communicate. For example, research of district, regional and unitary plans, financial statements for businesses, electrical safety certificates. These are covered in other Continuing Professional Development material.

Where these essential documents are found

Records of title are available from Land Information New Zealand (LINZ), or their agents; for example, CoreLogic, Property IQ and Property Smarts.

LIM reports are sourced from the local authority (district and city councils, unitary authorities) responsible for the location in which the property is situated.

¹ The Land Transfer Act 2017 came into force in November 2018

Understanding what the essential documents mean

Record of title

In New Zealand, most privately owned land (excluding some forms of Māori land) is held under the land title system of the Land Transfer Act 2017 (previously the Land Transfer Act 1952) and is subject to public record.

A record of title (previously referred to as a certificate of title, and also known as a computer register, unique identifier or property title) is the official document that shows ownership of the land it describes, and the rights and restrictions that apply to the land.

Land Information New Zealand (LINZ) is responsible for all land transfers and for keeping title records. Records of title have been recorded electronically since 2002 and all earlier paper-based records of title were converted into computer registers between 1999 and 2002.

The Land Transfer Act 2017 reflects changes to the predominantly digital environment of electronic registration under which conveyancing and land registration now operates. In November 2018 significant changes to 'records of title' were made. This includes changes to historical records of title views on live or part-cancelled titles. Changes include:

- Existing computer registers were updated with a new header:
 - 'Record of title under Land Transfer Act 2017'
- Registered proprietor is updated to:
 - Registered Owner
- Clarification of Registrar-General of Land's powers of correction
- A definition of 'fraud' which effectively aligns it to current case law
- Changes to the compensation rules regarding assessment/valuation of loss
- Limited discretion for the High Court to return a title to a former owner in cases of manifest injustice
- Provision for covenants in gross to be noted on the title in the same way that other land covenants are
- Protections for people who need to have their landownership details withheld on the grounds of safety.

LINZ holds titles electronically in Landonline, and these are available for public search.

A copy of a record of title can be requested in any of the following forms:

- Current register – this shows the current registered owner/s, legal description, registered rights and restrictions; for example, a mortgage. It also includes a plan or diagram of the land.
- Historic register – this shows all interests registered when the title was created, and since. It may include a plan or diagram of the land, and / or a scan of any paper records of title issued.
- 'Guaranteed search' – this shows the same information as the current register as well as any interests lodged with LINZ but not yet registered against the title.



Key Point

A property owner or another source may offer you a copy of a record of title, however, this is only reliable if it includes all the information currently registered. A licensee will not know this unless they obtain their own copy of the record of title. Otherwise, it is what is known as a 'stale' search.

To rely on such a document would potentially put you in breach of your obligations under rules 5.1, 6.2, 6.3 and 6.4 of the Real Estate Agents (Professional Conduct and Client Care) Rules 2012 (the Rules – refer Appendix 1).

Disciplinary Tribunal observations in relation to record of title

In *LB v Real Estate Agents Authority* [2011] NZREADT 39, the Tribunal said that a licensee, on taking instructions for a sale of property, should search its title, or have some competent person search it for the licensee, and be familiar with the information gained from such a search.

"We do not accept that a licensee can simply regard such matters as within the realm of a vendor or purchaser's legal adviser. Licensees should be familiar with and able to explain clearly and simply the effect of the covenants and restrictions which might affect the rights of a purchaser. This is so whether that purchaser is bidding at auction or negotiating a private treaty".

Computer register (record of title)

There are four different types of record of title (legal tenure)²

Note: We will review these different types of property ownership (legal tenure) later in this topic.

- Freehold estates (previously computer freehold registers (CFRs)) for freehold (fee simple) land
- Leasehold estates (previously computer interest registers (CIRs)) for leasehold land, or for any land of a lesser interest than freehold
- Stratum estates under the Unit Titles Act 2010 (previously computer unit title registers (CUTRs)) for stratum in freehold or leasehold interests in a unit-titled development
- Any other estates or interests in land (previously 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

Reference:

<http://www.linz.govt.nz/land/land-records/types-land-records/computer-register-certificate-title-current>

² Refer to section 12 of the LT Act 2017

Elements on Records of title

The table below summarises the key elements found on a record of title (previously certificate of title). A sample title follows on the next two pages.

Heading:	This indicates the register in which the title is held, e.g. Freehold (for fee simple).
Subheading:	This states "Search Copy ³ ", "Historical Search Copy" or "Guaranteed Search Copy" depending on what type of title has been ordered.
Identifier:	This is the title's unique reference, which identifies a specific parcel of land, and is the Computer Register (Title) reference.
Land Registration District:	This shows which of the twelve land registration districts the property is located in (North Auckland, South Auckland, Gisborne, Taranaki, Hawkes Bay, Wellington, Nelson, Marlborough, Westland, Canterbury, Otago, Southland).
Date issued:	This is the date on which the current title was issued.
Prior References:	This gives the Identifier/s of any earlier records of title from which this was developed, e.g. by way of subdivision.
Supplementary Record sheet:	This only applies on stratum estate titles and alerts the reader to issues relating to all the units registered on the property.
Estate:	This describes the type of estate, e.g. Freehold (fee simple). In cases of a cross lease title, there will be two sections showing the different elements of the estate.
Area:	The land area, often expressed with "more or less", meaning that there is allocation for a fraction of a square metre.
Legal description:	The Lot number and Deposited Plan number.
Registered Owners:	The name/s of the current owners. Previously expressed as "Original proprietors" in an Historical Search Copy, with subsequent proprietors listed in the Interests section.
Interests:	The list of any interests, encumbrances and restrictions registered on the title, such as mortgages, easements and caveats. In an Historical Search Copy, this will show all interests, encumbrances and restrictions, including those which have been subsequently extinguished. In a Search Copy, only current information will be shown.
At the bottom of each page is a Transaction identification number, client reference, and the date on which the search copy was issued, including the number of pages of the record of title.	

³ Note: a search copy also includes a plan or diagram of the land at the end.



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



Identifier **NA13B/1042**
Land Registration District **North Auckland**
Date Issued 13 November 1967

Prior References

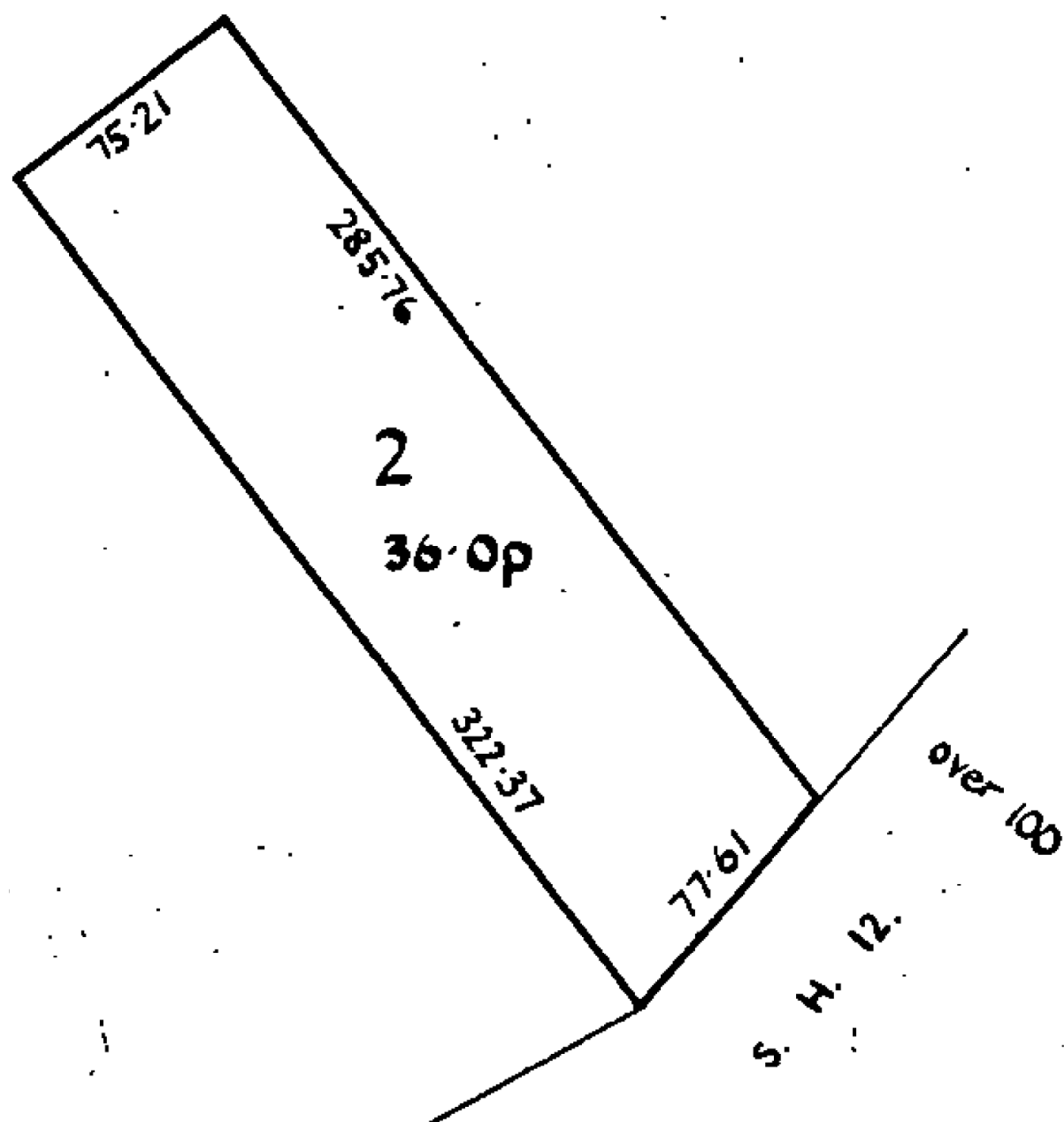
NA12B/1081 NA9D/461

Estate Fee Simple
Area 911 square metres more or less
Legal Description Lot 2 Deposited Plan 58450

Registered Owners
Barbara Anne Coulter

Interests

Appurtenant hereto is a right of way specified in Easement Certificate A249658 - 3.10.1967 at 12.15 pm
The easements specified in Easement Certificate A249658 are subject to Section 37 (1) (a) Counties Amendment Act 1961
D616625.1 Gazette Notice (NZ Gazette 9.11.2000 No 152 p 3942) declaring the adjoining State Highway 12 in Northland commencing at its intersection with the northern end of Waiotemarama Gorge Road at Pakanae and proceeding in a Southerly direction to its intersection with the southern end of Waiotemarama Gorge Road at Waiotemarama to be a limited access road - 27.6.2001 at 9.01 am
D616757.1 Crossing place notice pursuant to Section 91 Transit New Zealand Act 1989 - 27.6.2001 at 9.01 am



Understanding legal tenure

There are a number of different types of legal tenure (property ownership) in New Zealand. It is important for licensees to understand the tenure of a property being offered for sale. Some tenures are more restrictive than others and they affect what sort of information it may be necessary to disclose.

Licensees need to make sure that purchasers understand what it is that they are buying. This includes what they can and cannot do under that tenure, and the potential problem areas to check before entering into a sale and purchase agreement.

Types of legal tenure

The most common types are as follows:

- Freehold (fee simple)
- Leasehold
- Stratum estate (unit title)
- Other estates, including:
 - Cross lease
 - Company share
 - Co-ownership of land (joint tenancy or tenancy in common)

Freehold

A freehold (fee simple) estate is the highest form of land ownership available in New Zealand. It is as close as possible to absolute ownership of the land and is permanently enduring.



Key Point

- Unlimited duration (it is not time-limited, unlike a lease)
- If permitted by land and property law, or local or regional territorial authority or unitary authority, the land holder may carry out work such as subdivide, develop, alter buildings, authorise a lease, or impose positive or restrictive covenants on subsequent owners
- Transfer of title is relatively simple, but may require approval from other parties, such as a mortgagee or any caveator (a person who lodges a caveat)
- Sometimes, covenants require consent from a third party entity

A licensee should always obtain their own copy of a record of title.

Common problems:

- Some owners are unaware of, or intentionally breach, their rights and obligations under land and property law, regulations and local or regional territorial authority or unitary authority rules. Breaches can become problematic for present and future owners. For example, encroachment, breaching a building covenant, unauthorised structures, breaching a resource consent covenant, or informal use of a neighbour's land or access
- Some owners may also be unaware of the extent of additional beneficial land rights available to them, such as additional water rights and rights of way

Leasehold

Most leasehold land in New Zealand is held under a Glasgow lease. The principle of a Glasgow lease is that as long as the provisions of the lease have been met the lease will be perpetually renewable.

Some Glasgow leases are now *terminating* rather than *perpetual* leases, for example, under the Māori Reserved Land Amendment Act 1997.

A typical Glasgow lease is for a term of 21 years. The land is leased to the owner of the improvements (e.g. structures, crops) who pays 'ground rent' to the owner of the land. If the owner of the improvements chooses not to renew the lease, and does not remove the them from the land, the improvements will become the property of the landowner. The underlying title to the land is freehold.

When selling leasehold land, you should search the title to establish:

- whether there are any covenants, easements or restrictions on the freehold title
- what interests feature on the leasehold title. When does the lease expire? Is there a renewal clause?

You should then search the lease. The lease will explain how often rent reviews should be conducted, and the procedures to establish the new rent.

Ground rent is normally based on the value of the unimproved land. In many cases it equates to 5% to 7% of the land value at the beginning of the lease term. When the lease expires, and is then renewed, the ground rent will be reviewed. After a period of 21 years the land value will be likely to have increased enormously, so the ground rent is also likely to increase. To ease the shock of huge rent increases, many modern Glasgow leases have rent reviews more frequently. These could be every seven years, but even then, the increase may be substantial.

The lessor's consent is required before the title can be transferred. Failure to do this will put the client lessee in default of the lease terms. If leasehold land is cross leased, and the term of the parent lease is 21 years, the term of the cross lease may read "21 years less one day".

Stratum estate (unit title)

The stratum (unit) title focuses on ownership of the structures (units), which are usually residential dwellings or smaller commercial units. Under unit titles the common property is owned by the body corporate and is held in trust for the unit owners (section 54 of the Unit Titles Act 2010). The body corporate is responsible for insuring all buildings and other improvements on the land, which is funded (among other things) through levies imposed on the individual owners.

With every unit title there will be a unit plan showing the building structures (known as units) attached to the record of title. These units are categorised as principal units and accessory units.

Before engaging in the sale or lease of a unit title property, the licensee should obtain and review the rules of the body corporate and a pre-contract disclosure statement (in the prescribed [Form 18](#)), as these will enable the identification of issues that must be disclosed to prospective purchasers or lessees.

Cross lease

Cross lease properties usually comprise an underlying estate in fee simple. This gives the joint owners an undivided proportionate share of the total land area, and a long-term lease (usually 999 years), for the specified building and other associated structures. A cross lease provides two layers of rights – rights of ownership and rights of use.

With every cross lease there will be a flats plan showing the footprint of buildings and permanent structures on the land contained in the record of title (e.g. the layout, shape, dimensions of each flat). It is imperative that the external dimensions of each flat are correctly recorded on the title. Any variation between the actual footprint of each flat and what is shown on the title may be an indication that the title is defective. Rectifying a defective title can be expensive and requires the property to be resurveyed by a registered surveyor and a new flats plan registered with LINZ.

There will also be reference to a lease document, recorded as an instrument on the title. It is important to obtain a copy of the lease document and review it before marketing the property. Only in this way can the licensee determine whether there are any issues that might need to be disclosed to prospective purchasers, such as restrictions or obligations imposed by the lease.

For example, cross lease properties often contain restrictions on building and alterations. Potential purchasers should be aware that they might not be able to extend the property if the lease specifies an existing footprint that cannot be altered.

In addition, potential purchasers should be made aware of any improvements or alterations, (including any unauthorised structures) undertaken to a property to ensure that the property is fully compliant with the lease at the time of sale.

Company share title

If you search a title and find that the entire block of apartments (or flats) is owned by a company, you will be dealing with a 'company share title'. This type of title may also be referred to as 'company title' or 'company share scheme'. Some company share ownership can be on leasehold land.

The ownership structure is very different from other types of title that are common in New Zealand. The land and all buildings on the land are owned by a company. The company does not trade – it has been established for the sole purpose of owning the property. The company's only shareholders are the people who occupy the individual dwellings or business units – these people gain their rights of occupancy by having equity in the company. They own shares in the company; they do not have title to their respective dwellings or business units. However, they may be granted a licence to occupy which will be registered on the title. The occupier's rights and obligations will be defined within that document. In the absence of a licence to occupy, the occupier's rights and obligations will be defined within the company's constitution. The company's constitution can be searched on the company register. There are exceptions, such as some retirement complexes where a licence to occupy may be offered without the granting of company shares.

Company share properties are subject to a set of rules of occupancy, which may include fees, levies, prohibition of tenants and restrictions on pets. It is necessary for a licensee to become thoroughly familiar with these documents before marketing such a property.

Co-ownership of land

There are two forms of co-ownership of land. These are as follows:

- Joint tenancy
- Tenancy in common

Joint tenancy

A joint tenancy exists when two or more people jointly own a property. Their names are recorded on the record of title with no mention of separate shares. For example, where a record of title records the proprietors as: Brian William Green and Patricia Mary White.

The effect of section 47 of the Land Transfer Act 2017 is that if two or more people are named in a transfer, they will be deemed to be joint tenants. The main features of joint tenancy are as follows:

- Each tenant has equal rights to possession of the land. Each tenant shares equally their joint interest in the land (there is no defined area of the shares of the land).
- Each joint interest has come from the same source (whether by purchase, will or gift).
- An important feature of joint tenancy is 'the right of survivorship'. If one tenant dies, the surviving tenant/s own the whole estate. A joint tenant can only dispose of his or

her interest during their lifetime. There is no facility for them to leave it to a third party in their will.

- Joint tenancy ownership may have been the intention at time of purchase, but during the ownership period, circumstances may change. If the joint tenants don't take the necessary action to reflect those changes in ownership, this may create problems in terms of the parties' rights and interests at the time of sale.

Trusts (a type of joint tenancy)

One common type of joint tenancy is a trust. Trusts are a means of protecting and managing assets by transferring property from individual ownership into that of the trust. The trust is managed by trustees on behalf of beneficiaries.

Family trusts are often used as a means of protecting assets from risk, such as the failure of a business or breakdown of a personal relationship. They also have effect in limiting tax liability.

Trusts are not legal persons in their own right, unlike limited liability companies. Unless the deed of trust specifies otherwise, it is essential to obtain the signatures of all trustees on agency agreement forms (listings), sale and purchase or lease agreements, and any other legally binding documents. Where one trustee wishes to sign on behalf of the other trustees, the licensee must obtain clear evidence of written authority. For example, authority as stated within the trust deed or a memorandum of resolution.

Tenancy in common

The second form of co-ownership is tenancy in common. While joint tenancy was previously the default co-ownership for domestic partners, it is now more common for domestic partners to purchase property as tenants in common to avoid potential problems. Under the terms of a tenancy in common, there is no right of survivorship. Each tenant is free to dispose of his or her interest as they see fit, whether through sale (transfer), provision of their will, or by gifting.

Under a tenancy in common, each person has a distinct share in the rights of ownership, but the land itself is not physically divided. Each tenant has a defined but undivided share. It may be proportioned equally, such as each tenant in common having a one-half or one-third share, or disproportionately, such as one person having a three-fifths share, and another having two-fifths.

A tenant in common may also hold separate title for his or her share, as is the situation in cross-lease and unit titles.

More information on joint tenancy and tenancy in common can be found at the link below:
<http://www.nwm.co.nz/joint-tenancy-vs-tenancy-in-common/>

Read the following scenario and consider if the licensee has breached the Rules (refer Appendix 1).

Scenario 1

A complaint was made to the Real Estate Authority by a purchaser of a property regarding misleading statements made to the Complainant by Licensee 1.

Note: There were four licensees involved in this complaint, however we will focus on Licensee 1.

The Complainant alleged that Licensee 1 had represented to them that the property could be subdivided and had provided the Complainant with “an estimate of the likely price of the property if it could be subdivided”.

Prior to purchase, Licensee 1 had sent the Complainant a LIM, particulars and conditions of sale [by auction], and the Computer Register (the Title) of the property via email.

The same day, Licensee 1 called the Complainant and said that the title had “a lot of stuff in it like easements and covenants” and recommended that the Complainant have her lawyer check the title; a signed acknowledgement affirming that the Complainant had been advised to seek legal advice before the property went to auction was returned by the Complainant.

After purchasing the property, the Complainant discovered that the property could not be subdivided.

Complaint number: C16325

You can read more about this decision through the ‘Search complaints decisions’ link at rea.govt.nz

Note the following comments from the Committee:

[para 3.4] "the Committee finds that Licensee 1 failed to exercise those competencies [refer rule 5.1 – skill, care, competence and diligence] as she did not search the Title (or have some competent person search it on her behalf) and she failed to demonstrate that she understood the Title"

[para 3.5] "The Real Estate Agents Disciplinary Tribunal (the Tribunal) has repeatedly stated that a licensee, upon taking instructions for a sale of property, should search its title, or have some competent person search it for the licensee, and be familiar with the information gained from such a search. In the view of the Committee, the obligation to have searched and understood the title extends to all licensees selling a property. In *Masefield v REAA and McHugo & Donald* the Tribunal stated that any restrictions on a property or anything else unusual discovered by a licensee should be drawn to the attention of, and explained to, prospective purchasers, together with a recommendation that they seek their own advice."

[para 3.7] "...the searching and understanding of a title has been the subject of several well publicised Tribunal cases and is well recognized in the real estate industry as requiring diligence..."

[para 3.11] "The Act has placed positive obligations on licensees to be open, honest and accountable to ensure that nobody is misled or deceived when a property is being marketed...The Tribunal has reiterated on numerous occasions, one of the purposes of the Act is to protect members of the public when they are making what can often be the biggest purchase of their lives."

Limited as to parcels

When a title is 'limited as to parcels' it means that the area and dimensions of the site it refers to are not guaranteed. This issue generally only arises in older subdivisions where proper surveys were never undertaken. Sites may be confirmed as much smaller than shown on the title once a formal survey is carried out.

The notation of whether the site is limited to parcels is usually found at the top of the title. It is necessary to check the memorials on the title to see whether this limitation has been removed.

A surveyor will be able to determine the exact boundaries and can deposit a survey plan that will enable removal of this notation on the title. However, the current registered owner is not required by law to remove such a limitation. This means, the purchaser cannot force the vendor to have the property surveyed.

It is important to note that some councils will not consider resource consent applications for properties that are 'limited as to parcels'. This is particularly the case with commercial and

industrial developments, where there is often a requirement to build on, or very close to, the legal boundary of the property.

If a purchaser arranged for a survey which showed that there were substantial discrepancies, the purchaser may have a claim for compensation against the vendor. For example, if a licensee, on behalf of a vendor, represented a title as estate in fee simple without disclosing that it was 'limited as to parcels', the purchaser may have a claim for loss as a result of that misrepresentation.

A prospective purchaser would need to be fully informed of the situation and recommended to seek independent legal or technical advice before proceeding to enter into a transaction.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Limited as to title

This is a far more serious problem than 'limited as to parcels' because it is a defect in the title itself. It means that when the land was transferred into the current registration system (under the Land Transfer Act 2017), the registrar was not completely satisfied that the proprietor in possession at that time had full legal ownership rights to the property.

There are a number of possible reasons for this. For example, the original proprietor may have abandoned the land or died, as was the case for a number of properties in Cardrona in Central Otago. These properties were originally purchased by gold miners in the late 19th century but were abandoned when the goldfields became less profitable.

Anyone who has used land for a continuous period of at least 20 years, without the registered proprietor's consent, such as a squatter, or someone with an unregistered lease, may claim ownership by 'adverse possession'. The current proprietor would need to provide adequate evidence of their continuous occupation of the property to the Registrar, in order to have the title recorded in their name. Otherwise the property will remain 'limited as to title', and not be subject to the rule of indefeasibility, meaning the Crown will not provide compensation for loss resulting from the defect.

These situations are rare, but should an affected transaction arise, the prospective purchaser would need to be fully informed of the situation and recommended to seek independent legal or technical advice before proceeding to enter into a transaction.

Interests, encumbrances and restrictions

An **interest** refers to any right, claim or privilege that an individual has in relation to a parcel of land. For example, the interests of a mortgage lender, a lessee, or adjoining landowner.

Note: In this topic we have included the most common interests and encumbrances that may affect value or use or may be material to a purchaser or lessee.

A **non-possessory interest** in land can refer to the right of one person or entity to use, or to restrict the use of land that belongs to another person or entity.

The holder of a non-possessory interest has certain and specific rights with regard to the use of the parcel of land in question, without holding title to it. The owner of the land has the full rights of ownership, subject to any encumbrances; for example, rights of way, water rights and/or building covenants.

An **encumbrance** can be defined as: a right to, interest in, or legal liability on real property that does not prohibit passing title to the property but may diminish its value.

Examples of encumbrances include the following:

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

An encumbrance will not prevent title from passing in a real estate transaction. The title will pass subject to any encumbrances and will 'run with the land', until satisfied, even when title is transferred to a new owner.

While a purchaser's lawyer typically performs a title search, licensees must be aware of their existence and any implications because encumbrances can have a negative impact on land value, enjoyment or use. Licensees must make sure that potential purchasers are also aware of any encumbrances and recommend that they seek independent legal advice prior to entering into a transaction.

Encumbrances on a property can usually be found listed in the 'interests' section on the record of title.

Read the following scenario and consider if the licensee has breached the Rules (refer Appendix 1).

Scenario 2

Complainants (prospective purchasers) entered into a sale and purchase agreement for land which was advertised as a "vacant 2930m² industrial section" with the intention of expanding their existing business.

The Licensee listing the property had made preliminary enquiries and ascertained that the land comprised not one property (title), but two adjacent properties (two titles). He obtained the corresponding titles and corrected the agency agreement accordingly but did not search the encumbering documents. The Licensee noted that the titles were "particularly complex in nature" and accordingly advised prospective purchasers to seek independent legal advice.

During due diligence, the Complainants' lawyer discovered that the City Council owned a 4 metre wide corridor running through the centre of the property that was intended as a cycle track. This meant the property was unsuitable for their intended use, and the Complainants would have been "left with two worthless pieces of land on either side of the cycle-way corridor".

The Complainants cancelled the sale and purchase agreement upon the advice of their lawyer.

They complained to the Real Estate Authority because the material encumbrance was not disclosed to them prior to entering into the sale and purchase agreement.

A search of the related documentation on the title prior to marketing would have alerted the licensed salesperson, and / or the agency, to the encumbrance.

During the investigation the REA also discovered that the licensed salesperson's manager was a licensed salesperson and not qualified to supervise. The agency was joined in the Complaint.

Complaint number: C15143

<http://www.nzlii.org/nz/cases/NZREAA/2017/104.html>

The agency was found guilty of unsatisfactory conduct and breach of rules 8.3 and 8.4 and a breach of section 50 of the Real Estate Agents Act 2008 (supervision).

Note the following comments from the Committee:

- [para 3.5] "The Committee acknowledges that the Licensee was not expected to have the degree of legal knowledge potentially required to understand and explain the complex titles to the Complainants without assistance, and that legal advice did need to be sought. It does, however, consider the Licensee should not have commenced marketing the Property for sale until he had obtained advice and did understand the titles and any implications of the instruments registered on them."
- [para 3.7] "The Committee considers the Licensee should have notified the Agency of the complexity of the titles and had a duty to seek advice from a "competent person" in respect of the titles prior to marketing the Property. The Licensee did not have a clear understanding of the instruments registered on the titles but did recognise he could not understand them and correctly decided a solicitor's advice was needed. **The error the Licensee made was in not obtaining that solicitor's advice himself, or through the Agency, prior to marketing,** and relying on the Complainants' solicitor to advise the Complainants in that respect."

Caveats

A caveat (from the Latin, *let the person beware*) gives notice to anyone searching the title that the caveator (a person who lodges a caveat) is protecting a claim of an unregistered interest against the property. A caveat doesn't create any new rights but serves to protect existing ones. For example, a lender who has granted a loan that is not registered on the title may choose to caveat the title (this might be a family loan not registered on the title). Alternatively, a purchaser to whom the owner has agreed in writing to sell the property, or a beneficiary under a trust may also caveat the title.

The majority of caveats prevent registration of dealings. This means that if the property is sold, the Registrar at LINZ will be unable to register the new owner's name on the record of title until the caveator has either withdrawn the caveat, or accepted such registration, or it is removed by court order.

In situations where a licensee is asked to market a property which is subject to a caveat, it is important to immediately make enquiries to the client. If necessary, suggest they seek legal advice so that they are able to confirm in writing the ability to provide clear title at the time of settlement. If written evidence is not available, licensees should carefully consider whether they should commence marketing of the property.

Notice of claim

A notice of claim has a similar effect to a caveat but is lodged in accordance with the Property (Relationships) Act 1976. It provides protection to the person lodging it, even though there may be no dispute about the disposal of the property and the distribution of proceeds from such disposal.

As with a caveat, in situations where a licensee is asked to market a property which is subject to a notice of claim, it is important to immediately make enquiries about the situation with the client. If necessary, suggest they seek legal advice so that they are able to confirm in writing the ability to provide clear title at the time of settlement. If written evidence is not available, licensees should carefully consider whether they should commence marketing of the property.

Statutory land charges

A statutory land charge may be registered against the record of title of a property by a crown entity, who has a financial interest in the property such as a debt or part ownership. For example, local authority charges, unpaid rates or legal aid.

As with a caveat, the land cannot be transferred to new ownership without the charge first being lifted; for example, settlement of unpaid rates.

In situations where a licensee is asked to market a property which is subject to a statutory land charge, it is important to immediately make enquiries to the client. If necessary, you should also suggest they seek legal advice to confirm in writing the ability to provide clear title at the time of settlement. If written evidence is not available, licensees should carefully consider whether they should commence marketing of the property.

Leases and residential tenancies

Lease

A lease is a contract between an owner of a commercial property or space (lessor) and a person or entity who rents the commercial property or space (lessee). This may be a lease of the land, or part of the land, or more commonly, a lease of space in a building on the land. An agreement to lease may be prepared in the first instance by a licensee; a deed or memorandum of lease follows (prepared by the lessor's solicitor).

Under a lease, the lessor agrees to allow the lessee to occupy and use the property or space in exchange for a valuable consideration (rent).

The deed or memorandum of lease document will set out the rights and obligations of the parties. This includes the right to exclusive possession of the leased area by the lessee, the distribution of costs for such things as maintenance, rates, and other items associated with the property, and any rights of renewal. Although the lessee occupies the property or space, the lessor remains the owner and holds the title to the property.

A lease of greater than three years' duration can be registered on the title. This gives certainty to the lessee that their rights to occupy the property will not be undermined if it is sold during the period of the lease. However, there is no actual obligation to register a lease.

It is important that licensees and parties involved in the transaction understand the type of lease in place, the terms of that lease, (e.g. rent review periods) and its impact should the new owner wish to take vacant possession.

If you are marketing a property, space, or business which is subject to a lease / leases, you should obtain the lease document(s), and familiarise yourself with the contents and make any necessary disclosure to prospective purchasers.

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). Under a tenancy, the landlord agrees to allow the tenant to occupy and use the property in exchange for a valuable consideration (rent).

The tenancy agreement will set out the rights and obligations of the parties, including the right to exclusive possession of the property by the tenant. The agreement must comply with the requirements of the Residential Tenancies Act 1986 (RTA)⁴.

For example, under the RTA, provided the tenancy is not a fixed term, the vendor must give 42 days' notice to the tenant upon the sale of the property by the vendor.

Although the tenant occupies the property, the landlord remains the owner and holds the title to the property.

It is important that licensees and parties involved in the transaction understand the type of tenancy agreement in place (fixed term or periodic), the terms of that tenancy agreement, and its impact should the new owner wish to take vacant possession.

If you are marketing a property which is subject to a tenancy agreement(s), you should obtain the tenancy agreement document(s) and familiarise yourself with the contents.

Be aware that if *vacant possession* is a condition in the sale and purchase agreement, the vendor and tenants must have time to comply with any notices given and statutory obligations under the RTA.

The licensee is not required to police the tenants in a property or to give them notice. This is the responsibility of the landlord.

Where there is a tenancy in place then a licensee should consult their agency checklist to ensure that they have met all their obligations. These should include but are not limited to the following:

- Appropriate notice is given to tenants of upcoming open homes
- Purchasers know that the property is tenanted and the type of tenancy agreement in place (periodic or fixed term) and how this might impact on whether property passes as vacant possession or on settlement dates
- Work with the vendor to arrange that all copies of keys are obtained before settlement.

⁴ Refer Residential Tenancies Amendment Bill

Easements

An easement is a legal right for another person or party to carry out some form of activity or pass over another person's land but is not a possessory right. For example, rights of way or water rights.

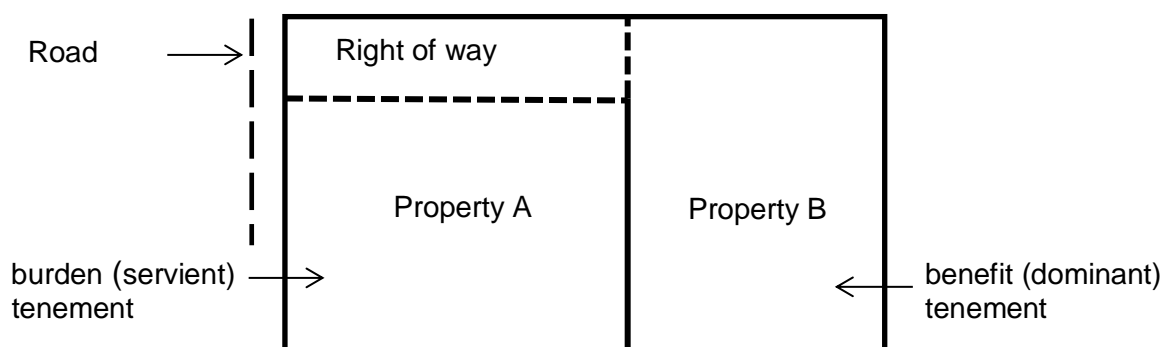
Easements generally involve burden (previously *servient*) and benefit (previously *dominant*) tenements.

A **burden** tenement is the lot that owns the land over which the easement passes.

A **benefit** tenement is the lot that has the right to pass over or access the land over which the easement passes.

An easement passes with title ownership and continues to benefit any successors in title to that land.

In the diagram below, Property A has created a right of way easement over their land in favour of Property B.



The easement on the record of title which is the benefit tenement will be identified as "Appurtenant hereto ...".

Where the easement relates to the burden tenement, the interest may record it with the statement "Subject to ...".

In other cases, it may just say "Easement as to ..." or similar.

An 'easement in gross' relates to public utilities, such as power, water supply and drainage, which has no benefited tenement, but does have a burden tenement.



Key Point

- Check on the title whether there are any easement issues
- If easement issues apply, check the conditions of the easement
- It is common for properties to have one or more easements recorded on the title for the provision of public services, such as electricity and gas, water, drainage, sewage, telecommunications and so on. It is important to know the location of such easements, especially if there are plans to develop or redevelop the property. Some easements impose restrictions on building, because of the requirement to access the public services for repairs and maintenance by the relevant authority
- It is important to remember that not all rights of way are shown on the record of title, and that the survey plan will need to be consulted in such situations
- Other types of easements may not be recorded on the record of title; for example, old drainage easements, though they may appear on district, city, or unitary plan maps
- Some easements are general or common law, such as an easement protecting against the undermining of a neighbour's property. These easements are not registered on individual records of title, because they are universal concepts
- Point out any easements to prospective purchasers and recommend that they speak with their solicitor who can obtain a copy of the document creating the easement and explain in detail what it means to the purchaser

Encroachments

An encroachment can occur in one of two ways:

- Where the subject land invades onto a neighbouring property, or
- Where the neighbouring property invades onto the subject land

For example, a fence may have been erected along a line that extends beyond the legal boundary. In this case, the matter would be dealt with under the terms of the Fencing Act 1978.

Occasionally, a building or other structure will have been constructed beyond the legal boundary of the property to which it applies. Provisions of sections 321 to 325 of the Property Law Act 2007 give the Court powers to grant an easement to cover the affected area, order the removal of the offending structure or part of a structure, or require a boundary realignment to resolve the problem.

Prior to marketing, licensees are expected to take reasonable steps to confirm the nature and location of the boundaries of the property. Prospective purchasers must be advised of any encroachment issues and recommended to get legal advice before entering into a transaction.

Most local and unitary council websites and LINZ agencies provide GIS-Mapping or other forms of aerial maps that provide digital overlays which give an indication of legal boundaries in relation to the land and dwellings for any given property. These overlays provide useful information and can be particularly helpful in identifying any encroachment issues.

Encroachments can be serious issues to deal with. They can mean that both properties involved are unmarketable as the encroaching property does not have title to all land on which the improvements have been made. Similarly, the property encroached on does not have use of all the land.

On occasion, the adjacent property may be Crown or Crown entity land (for example, local authority) where there is no title. Licensees should enquire with the vendor whether there are encroachment agreements in place with the Crown or Crown entity and whether these agreements can be assigned to a new owner.

If the encroachment is such that it prevents the owner of the affected property from giving vacant possession to a purchaser, this may be considered under the Contract & Commercial Law Act 2017.

There may be grounds for cancellation. If not, the purchaser would have the right to claim compensation for the defect in title, or damages for the failure to give vacant possession. This is a matter that extends beyond the required skill of a real estate licensee and therefore should be referred to a solicitor or other technical adviser no later than inducement, or as soon as the licensee becomes aware of the problem.

Building line restrictions

Building line restrictions are imposed under the Public Works Act 1981. These were historically put in place at the time of subdivision because authorities wished to protect the areas immediately adjacent to a road (less than 20 metres wide), in case they needed to widen the road at a later date.

Building line restrictions specify that buildings are not allowed to be situated within a certain distance of the centreline of the road or the road boundary.

Some properties will have building line restrictions recorded on the title, stating 'subject to building line restriction' (or BLR) plus the document number. In some cases, building line restrictions are not included in the record of title, but are included on the District, City or Unitary Plan.

When marketing a property to which building line restrictions apply, you will need to make all endeavours to verify that there has not been an encroachment over the building line. Purchasers looking to improve the property also need to be aware of any limits of any future building potential.

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.

Marginal strips

When Crown land adjacent to foreshore, a lake, a river or stream greater than 3 metres wide is sold or otherwise disposed of, a strip of land no less than 20 metres wide is deemed to be reserved. This means that 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, which supersedes the Land Act 1948, uses the term 'marginal strips' to define this land. It has a similar provision to the replaced section 58 of the Land Act. All strips previously created under section 58 of the Land Act were deemed to become marginal strips under the Conservation Act.

There is a difference between the strips created under section 58 of the Land Act and marginal strips created under the Conservation Act. Those created under the Land Act do not move with any change of shape or alteration of the course of the abutting water body, whereas those created under the Conservation Act do.

Where a marginal strip is reserved, it is required to be recorded on the record of title of the subject land. There will generally be a memorial on the title deeming the first 20 metres of this property (where it abuts a waterway) to be reserved from sale.

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

It is important to consider marginal strips that are noted on a record of title and to communicate their implications to prospective purchasers.

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Covenants

A **protective** or **restrictive covenant** is an interest in land according to the Property Law Act 2007 and is registered on the record of title.

Restrictive covenants are the most common, by which the owner of the burdened property agrees with the owner of the benefited property (who receives the benefit) not to take some action that might otherwise have been done. Property owners are bound by covenants to perform or not perform in specified ways.

Covenants may be private agreements between parties or may be imposed by the council. Information on why a council encumbrance or covenant was imposed should be held on the relevant council property file.

It is common for developers to use private covenants commonly known as building covenants, to control how future owners both develop and maintain the land. This is especially relevant for residential developments that are being marketed with certain characteristics.

The developer often drafts covenants relating to the nature or style, size and value of buildings to be erected, or imposes other limitations on the use of the property. While in most cases, identical covenants are applied to each property within the subdivision (as a blanket provision), some developers register individual covenants on each parcel of land prior to sale.

The developer retains their option to register or not register covenants on the remaining land. If the land needs to be sold under urgency, then it is possible that the subject properties will be sold without the covenants that were applied to earlier property transactions in the same subdivision.

Types of protections and / or restrictions that may be imposed through covenants include:

- Use of materials for buildings
- Size, style or colour of building
- Setback and side-line from roads or adjacent properties
- Protection of native bush, wetlands, and other conservation issues
- Protection of historic buildings and features
- Bulk and location, particularly heights to preserve views
- Requirement for approval of plans by the developer (even after building and resource consent is obtained)
- Required timeframe for construction
- Use of the site for a home occupation
- The use of minor residential units
- Restrictions on pets and animals allowed to live at location.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Read the following scenario and consider if the licensee has breached the Rules (refer Appendix 1).

Scenario 3

Having purchased a large property on the understanding that it was suitable for a wedding venue, the purchasers found there was a restrictive covenant on the title prohibiting the property from being used for commercial activity.

The need to apply for a resource consent to use the property as a wedding venue had been included in a discussion between the purchasers and the licensed salesperson selling the property, prior to them entering into an agreement to purchase.

Furthermore, the purchasers were aware that the property was not 'zoned' for commercial activity.

No mention of the restrictive covenant was made, and it later transpired that the salesperson was not aware of its existence. However, a due diligence clause was included in the agreement.

The purchasers, who complained to the Real Estate Authority, paid \$830,000 for the property and, upon finding they could not use it for a wedding venue, on-sold it a few years later for \$440,000, incurring a considerable loss.

Complaint number: [2016] NZREADT 8 / C05525

<http://www.nzlii.org/nz/cases/NZREADT/2016/8.html>

You can read more about this decision through the 'Search complaints decisions' link at rea.govt.nz

Fencing covenants

Fencing covenants may place restrictions on fences, shrubbery or trees, in order to maintain certain specified height limits. Commonly, these occur in conjunction with the land, and most bind subsequent owners.

A fencing covenant usually has the effect of allowing a sub-divider or developer to avoid their contribution to a fence between their property and adjoining land, as provided for in the Fencing Act 1978. Fencing covenants such as this are recorded on the record of title but expire at the time of sale of the adjoining land to the first purchaser, or at the end of twelve years. However, the covenant may remain on the record of title.

Fencing agreements (defined under Section 2 of the Fencing Act 1978), differ from covenants; they are an agreement between adjoining neighbours to limit the height of a fence between their two properties for aesthetic reasons, or to not erect a fence at all. Fencing agreements do not need to be registered on the record of title, but if they are, they have the effect of binding future owners of the affected properties.

Consent notices under section 221 of the Resource Management Act 1991

Consent notices under section 221 of the Resource Management Act 1991(RMA) apply to transactions involving land to be subdivided.

These consent notices are a form of covenant between the council and the land owner imposed through a subdivision consent that restricts certain activities and buildings allowed on a site.

For example, the number of homes on a property, the number and location of accessory buildings, garages and decks, foundations, not building over certain areas of the land, complying with some aspect of the District Plan, protecting heritage aspects, or the protection of trees.

These consent notices cover conditions that must be complied with on a continuing basis by the current owner and subsequent owners after the deposit of the survey plan. Such conditions may include engineering works, density, site coverage, and the location of building platforms.

Because a consent notice is an agreement between the council and the land owner, the council would enforce any non-compliance.

A consent notice is legally deemed to be an instrument creating an interest in the land within the meaning of section 51 of the Land Transfer Act 2017, and a covenant running with the land when registered under the Land Transfer Act.

Section 221(3) of the RMA enables conditions specified in consent notices to be varied or cancelled by agreement between the land owner and the council, at any time after the deposit of the survey plan.

Licensees should make sure any consent notices listed on a title are obtained. It will need to be confirmed that the property complies with the consent notice and that the terms of the consent notice will not affect any proposed development of the land.

Any such consent notices must be fully disclosed, and parties be advised to seek legal advice before proceeding to enter into a transaction.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Notices under sections 71-74 of the Building Act 2004 relating to building on hazard-prone land

Notices under sections 71-74 of the Building Act 2004 relate to building on hazard-prone land. These notices prohibit building consents for buildings, or major alterations, on sites subject to hazards in certain specified circumstances.

There is an exception in this section that a building consent can be issued where certain requirements are met, one of which is that a notation is placed on the title that a consent has been issued.

Under section 71 of the Building Act, a building consent cannot be issued at all if the land and the proposed building work cannot be adequately protected from the hazard in question. However, a development could be allowed under section 72 even if there is still a risk from the hazard, as long as the work itself will not accelerate or worsen that risk and provided there is a warning on the title (section 74).

Licensees should make sure any proposals involving a site with a section 71 restriction on a title are understood by prospective purchasers. Any such proposals must be fully disclosed, and parties be advised to seek legal advice before proceeding to enter into a transaction.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Notices under sections 75-83 of the Building Act 2004 relating to the construction of buildings on two or more allotments

Section 75 of the Building Act 2004 gives a council the ability to issue a building consent to construct a building over land that is owned by the applicant in fee simple and comprises or partly comprises two or more allotments of one or more existing subdivisions.

The council must issue a certificate containing a condition that restricts any of the affected allotments from being transferred or leased except in conjunction with each other. The certificate containing the condition must be registered on the Record of Title.

Licensees should make sure any restriction on a title under sections 75-83 are understood by prospective purchasers. Any such restrictions must be fully disclosed, and parties be advised to seek legal advice before proceeding to enter into a transaction.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Amalgamation conditions imposed under section 241 of the Resource Management Act 1991

Sections 220(1)(b) and 220(2)(a) of the Resource Management Act 1991(RMA) provide for a subdivision consent to be issued subject to a condition requiring that land be amalgamated and held either in one title or subject to a covenant between the land owner and the council that restricts its disposal, lease or otherwise except in conjunction with other land.

This condition must be entered on the title as a memorandum (under section 241). The landowner is then restricted from disposing of any separate parcels of land, or land being held on other titles, unless the REA's approval is obtained.

It is important that any proposals involving a site with a section 241 memorandum on a title are fully investigated through communications with the relevant authority's subdivision officers.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Māori land

Māori land is defined by section 129 of Te Ture Whenua Māori Act 1993.

- **Māori customary land** – this is land held by Māori in accordance with tikanga Māori. It has not been transferred into freehold title by the Māori Land Court, nor ceded to the Crown.
- **Māori freehold land** – this is land where the ownership has been determined by the Māori Land Court by freehold order.
- **General land owned by Māori** (other than freehold) – this is land owned by five or more people and where the majority of owners are Māori.
- **Crown land reserved for Māori** - this land set aside by the Crown for the use and benefit of Māori.

Any transfer of Māori land requires the consent of the Māori Land Court.

There are three critical pieces of search information that are required to begin a search of Māori land.

These are:

- The owner's name
- The block name
- The Māori Land Court District in which the land is situated

When searching for Māori land records, if the land description includes a Māori block name as part of the description, the Māori Land Information Base (MLIB) on Te Puni Kokiri's website is a good resource to use.

Land Information New Zealand (LINZ) can be referred to, especially if the land description does not include a Māori block name. It is important to remember, however, that before the Te Ture Whenua Māori Act 1993 was put in place, it was not compulsory for orders made by the Māori Land Court to be registered with LINZ and therefore LINZ records may not be complete.

To obtain definitive information, enquiries should be made to the Māori Land Court, as it holds the majority of Māori land records.

Where land is identified as Māori land, licensees should liaise with their supervising agent or branch manager, follow the agency's procedures and discharge all disclosure obligations.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Memorials relating to the resumption of land in terms of section 27A of the State Owned Enterprises Act 1986

Section 27A of the State Owned Enterprises Act 1986 provides for the resumption (return) of land on the recommendation of the Waitangi Tribunal.

It requires a memorial be placed on all titles to Crown land transferred to any state-owned enterprises under that Act to the effect that under section 27B, the Waitangi Tribunal, can in specified circumstances order the Crown to take back or 'resume' a property to be used in settling a Treaty claim (if the Crown and claimant groups cannot first agree on a settlement).

There is provision for similar memorials to be noted on the titles of former Crown railway land, and land transferred by the Crown to tertiary educational institutions.

These memorials remain on the titles even if they are sold to third parties and are not removed until claims over the area concerned have been settled, or affected Māori groups agree to their removal.

These memorials are a warning that the property may be used for settling Treaty claims through resumption by the Crown. If this happens, compensation is paid as if the property were being acquired under the Public Works Act 1981.

It is important that any proposals involving a site with 27A memorandum on a title are fully investigated through communications with the relevant authority's subdivision officer or legal adviser. All available information should be disclosed to potential purchasers and the appraised value should reflect any s 27A notices.

A potential purchaser proposing to purchase and / or develop land with a section 27A memorandum must be recommended to seek legal advice prior to entering into a transaction.

Reference:

<http://www.qualityplanning.org.nz/index.php/supporting-components/readingandinterpreting>

Record of title exercises

Record of title – example 1

Refer to the record of title information on pages 45 - 49 and answer the questions that follow.



RECORD OF TITLE UNDER LAND TRANSFER ACT 2017 CROSS LEASE Search Copy



R.W. Muir
Registrar-General
of Land

Identifier NA84A/185
Land Registration District North Auckland
Date Issued 19 October 1990

Prior References
NA76B/346

Estate Fee Simple - 1/11 share
Area 4891 square metres more or less
Legal Description Lot 1 Deposited Plan 130189

Registered Owners
Christopher Theophilus Fernandez, Carol Joan Fernandez and Chriselle Rhea Fernandez

Estate	Leasehold	Instrument	L C203780.18
		Term	999 years as from and including the 3.10.1990

Legal Description Flat 9 Deposited Plan 141614

Registered Owners
Christopher Theophilus Fernandez, Carol Joan Fernandez and Chriselle Rhea Fernandez

Interests

C203780.2 Lease of Flat 1 Composite CT NA84A/177 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.2 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.4 Lease of Flat 2 Composite CT NA84A/178 issued- 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.4 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.6 Lease of Flat 3 Composite CT NA84A/179 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.6 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.8 Lease of Flat 4 Composite CT NA84A/180 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.8 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.10 Lease of Flat 5 Composite CT NA84A/181 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.10 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.12 Lease of Flat 6 Composite CT NA84A/182 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.12 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.14 Lease of Flat 7 Composite CT NA84A/183 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.14 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.16 Lease of Flat 8 Composite CT NA84A/184 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.16 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
Land Covenant in Lease C203780.18 - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.18 Lease of Flat 9 DP 141614 for the space of 999 years as from and including the 3.10.1990 Composite CT NA84A/185 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)
C203780.20 Lease of Flat 10 Composite CT NA84A/186 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)

Transaction Id 55584242
Client Reference roatham001

Search Copy Dated 12/11/18 10:29 am, Page 1 of 2
Register Only

Identifier

NA84A/185

Land Covenant in Lease C203780.20 - 19.10.1990 at 12.12 pm (Affects Fee Simple)

C203780.22 Lease of Flat 22 Composite CT NA84A/187 issued - 19.10.1990 at 12.12 pm (Affects Fee Simple)

Land Covenant in Lease C203780.22 - 19.10.1990 at 12.12 pm (Affects Fee Simple)

10550315.5 Mortgage to ANZ Bank New Zealand Limited - 6.9.2016 at 4:59 pm

LAND DISTRICT NORTH AUCKLAND
Survey Blk. & Dist. XIV WAITEMATA
NZMS 261 Sheet Record Map No. HENDERSON 1

PLAN OF FLATS ON LOT 1 DP 130189

Scale 1: 500 Date AUGUST 1990

TERRITORIAL AUTHORITY: WAITAKERE CITY
Surveyed by: TRIPP ANDREWS & PARTNERS

W16516

SWANSON ROAD
STURGES ROAD

FLAT 1
FLAT 2
FLAT 3
FLAT 4
FLAT 5
FLAT 6
FLAT 7
FLAT 8
FLAT 9
FLAT 10
FLAT 11

DP 16989
DP 16989
DP 16989
DP 16989
DP 16989
DP 16989
DP 16989
DP 16989
DP 16989
DP 16989

COMMON AREA
COMMON AREA
COMMON AREA
COMMON AREA
COMMON AREA
COMMON AREA
COMMON AREA
COMMON AREA
COMMON AREA
COMMON AREA

DIAGRAM 'A'
NOT TO SCALE

DIAGRAM 'A'
NOT TO SCALE

Registered Owners
Act 1974 I hereby certify that construction of the
buildings depicted hereon commenced on or after
1st April 1979 and a building permit for the
construction of the buildings depicted has been
issued by the Waitakere City
Council pursuant to its by laws.

Dated this 7th day of September 1990
Terry Lavin
Subdivision & Development Manager

Areas shown to be subject to restrictive covenants
to be shown in the plan
Boundaries of areas to be leased are shown
unless otherwise shown.
Boundaries of areas to be leased are shown
unless otherwise shown.
S = steps P = porch L = landing

I, Cori David Strougie, of Auckland
registered surveyor and holder of an annual
practising certificate hereby certify that the buildings
shown hereon are erected in the position shown and
are situated within the boundaries of CT 168/346
and that the plan is correct.
Dated this 17th day of August 1990
Signature

Total Area 4891 m²
Comprised in CT 168/346 (all)

Registered Owners and holder of an annual practising certificate, in accordance with the provisions of the Survey Act 1980, hereby certify that this plan has been made from surveys conducted by me or under my direction, that all rights and interests are correctly and fully shown, and that the plan is correct and in accordance with the Survey Regulations 1972 or any regulations made in substitution thereof.

Dated at 19 day of August 1990
Signature

Field Book Reference Plan
Examine 1990
Approved as to Survey 2 10/90
Deposited this 3rd day of October 90
Chief Surveyor
Registered
DP 141614



<p>Approved: REGISTERED SURVEYORS</p>	<p>BEARING AND COORDINATE DATUM: OLD CADASTRAL ORIGIN: MT EDEN 700000 mN 300000 mE</p>	<p>New CT Allocated - LOT 1 - CT 76B/346</p>	<p>Total Area 4891 m² Comprised in CT 12C/1477 (all) & CT 12C/1478 (all)</p>	<p>1. Carl David Stroupe Registered Surveyor and holder of an annual practicing certificate for who may act as a registered surveyor pursuant to section 28 of the Land Survey Act 1980. The survey was conducted on the 1st day of March 1989 at Auckland this 1st day of March 1989. Dated at Auckland this 1st day of March 1989. Field Book Transverse Book Reference Points DP 574/79 Examined <i>W. G. G. G.</i> Correct Approved as to Survey <i>W. G. G. G.</i> 3 141 89 Deposited this 10th day of May 1989 DP 130189 File 6206 Approved Instructions</p>	<p>LAND DISTRICT NORTH AUCKLAND SURVEY BLK. & DIST. XIV WAITEMATA NZMS 261 SH1 RECORD MAP No</p>	<p>PLAN OF LOT 1 BEING LOTS 2 & 3 DP 574/79</p>	<p>TERRITORIAL AUTHORITY HENDERSON BOROUGH Surveyed by TRIPP ANDREWS & PARTNERS Scale 1:500 Date FEBRUARY 1989</p>
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COMPILED PLAN

L & S FORM 903

W. G. G. G. GENERAL DEPARTMENT OF LANDS AND SURVEY NEW ZEALAND WELLINGTON

Printed by Surveyors Ltd Auckland, New Zealand.

Extract from Memorandum of Lease C203780.18 – first line, page 2 of title

DATED this 18th day of October 1990

Executed by the lessors
PEARCE BRESNEHAN
DESIGN & BUILD LIMITED

(by the affixing of its common seal)
in the presence of



[Signature]
DIRECTOR
Director

Executed by the lessee
PEARCE BRESNEHAN
DESIGN & BUILD LIMITED

(by the affixing of its common seal)
in the presence of



[Signature]
DIRECTOR
Director

SCHEDULE B
Lessee's Covenants

Pay Outgoings

Pay Rent and Rates

1. (1) The lessee shall pay the rent annually in advance, provided that the lessors have demanded payment by notice in writing served upon the lessee during the period of one calendar month following the beginning of the rental year in respect of which it is payable.

(2) The lessee shall pay all rates and charges which are separately levied or charged in respect of the said flat, and in respect of the lessee's undivided share in the said land.

(3) To the extent that no separate rates or charges are so levied or charged, the lessee shall pay to the lessors a land share of the rates and charges levied or charged in respect of the whole of the said land.

Pay Maintenance Expenses

2. (1) Subject to subclause (2) (upon demand in writing by the lessors or a person duly nominated by the lessors or a majority of the lessors pursuant to clause 22) the lessee shall pay:

(a) A flat share of all costs and expenses properly incurred by the lessors in respect of the said building and flat.

(b) A land share of all costs and expenses properly incurred by the lessors in respect of the said land.

(2) Any repairs required or work done in respect of any part of the said land or the said building or any services connected with or required for the said land or the said building which arise directly from the negligent act or wilful omission of the lessee, his servants, agents, or invitees, or of any person residing in the said flat, shall be the sole responsibility of the lessee and he shall pay to the lessors the whole of the cost accordingly.

Residential Purposes only – No Pets

3. The lessee shall use the flat for residential purposes only and shall not bring into or keep in the flat any cat, dog, bird, or other pet which may unreasonably interfere with the quiet enjoyment of the other lessees of the said building or which may create a nuisance.

Not Create Fire Hazard

4. The lessee shall not bring into or keep in the flat any goods or any substances of a highly combustible nature or do anything (including the unauthorised use of light and power fittings) which may render an increased premium payable for the insurance of the said building or which may make void or voidable any such policy of insurance. The lessee shall comply with all statutes, regulations, and by-laws of any local authority insofar as they affect the use of the flat by the lessee.

Keep Clear of Rubbish

5. The lessee shall not leave or place in the passageways, stairways, or parking area, or in the grounds surrounding the said building, any receptacles or obstructions whatsoever and shall not deposit any refuse or rubbish therein or thereon and shall place any garbage cans in the location approved of by the lessors or a majority of them.

Not Cause Nuisance

6. The lessee shall not use the flat for any illegal or immoral purposes and shall refrain from causing excessive noise or disturbance within the flat which may be likely to cause a nuisance or an annoyance to the lessors or to the occupants of any of the other flats in the said building.

Right to Inspect

7. The lessee shall permit the lessors or their representatives at all reasonable times to enter upon the flat to inspect the condition of the flat.

No Structural Alterations

8. The lessee shall not (without the consent in writing of the lessors or a majority of them for that purpose on every occasion first had and obtained) make any structural alterations to the flat, or to any partition walls therein, or to any passageway or stairways leading thereto and shall not take any action which might constitute danger or risk to the said building.

Pay Electricity, etc.

9. The lessee shall duly and punctually pay all charges for water, electricity, gas, or other supplies or services relating solely to the flat.

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LT23C

[Signature]
*which shall have the effect of altering the external dimensions thereof.

Record of title – example 2

Refer to the record of title information on pages 52 and 53 and answer the questions that follow.



RECORD OF TITLE UNDER LAND TRANSFER ACT 2017 FREEHOLD Search Copy



R. W. Muir
Registrar-General
of Land

Identifier NA111A/936
Land Registration District North Auckland
Date Issued 26 November 1997

Prior References

NA67C/632

Estate Fee Simple
Area 5.3330 hectares more or less
Legal Description Lot 1 Deposited Plan 180313

Registered Owners
Peter Noel Martin as to a 1/2 share
Carolyn Suzanne Hacker as to a 1/2 share

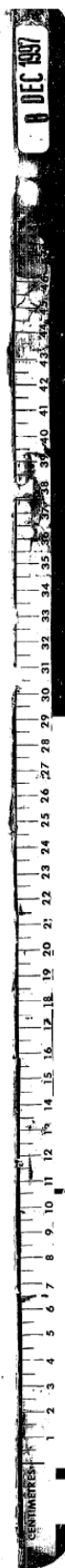
Interests

Appurtenant hereto is a water right created by Transfer 644766
D219658.4 Resolution pursuant to Section 321(3)(c) Local Government Act 1974 - 26.11.1997 at 11.05 am
Appurtenant hereto is a right of way, and telecommunications rights specified in Easement Certificate D228844.1
- 18.12.1997 at 12.35 pm
Appurtenant hereto is a right of way and a right to convey water created by Easement Instrument 7543353.8 -
17.9.2007 at 9:00 am

Transaction Id 55584319
Client Reference roatham001

Search Copy Dated 12/11/18 10:31 am, Page 1 of 1
Register Only

U.S. FOREST SERVICE, DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.



Appendix

Appendix 1 – Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012

Contents

Pursuant to section 14 of the Real Estate Agents Act 2008, the Real Estate Agents Authority, with the approval of the Minister of Justice given in accordance with section 17 of that Act, and after consultation in accordance with section 16 of that Act, makes the following rules.

Rules

These Rules make up the Real Estate Agents Authority code of professional conduct and client care. The Rules were made by the Authority and notified in the New Zealand Gazette.¹ The rules set minimum standards of conduct and client care that licensees are required to meet when carrying out real estate agency work and dealing with clients.

Important note

The Real Estate Authority (REA) is the operating name of the Real Estate Agents Authority (REAA). Please note that this publication uses the legal name 'Real Estate Agents Authority (REAA)' due to a requirement to maintain consistency with legislation.

1 Title

These rules are the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

2 Commencement

These rules come into force on 8 April 2013.

3 Scope and objectives

- 3.1 These practice rules setting out a code of professional conduct and client care have been prepared by the Real Estate Agents Authority (**the Authority**). They constitute the Professional Conduct and Client Care Rules required by section 14 of the Real Estate Agents Act 2008.
- 3.2 These practice rules set out the standard of conduct and client care that agents, branch managers, and salespersons (collectively referred to **as licensees**) are required to meet when carrying out real estate agency work and dealing with clients.
- 3.3 These practice rules are not an exhaustive statement of the conduct expected of licensees. They set minimum standards that licensees must observe and are a reference point for discipline. A charge of misconduct or unsatisfactory conduct may be brought and dealt with despite the charge not being based on a breach of any specific rule.
- 3.4 These practice rules must be read in conjunction with the Act and regulations, and do not repeat duties and obligations that are included in the Act or regulations.

4 Interpretation

- 4.1 In these rules,—

Act means the Real Estate Agents Act 2008.

customer means a person who is a party or potential party to a transaction and excludes a prospective client and a client.

prospective client means a person who is considering or intending to enter into an agency agreement with an agent to carry out real estate agency work.

regulations means regulations made pursuant to the Act.

- 4.2 Unless the context otherwise requires, terms used in these rules have the same meaning as in the Act.

5 Standards of professional competence

- 5.1 A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.
- 5.2 A licensee must have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

6 Standards of professional conduct

- 6.1 A licensee must comply with fiduciary obligations to the licensee's client.
- 6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.
- 6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute.
- 6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.

7 Duty to report misconduct or unsatisfactory conduct

- 7.1 A licensee who has reasonable grounds to suspect that another licensee has been guilty of unsatisfactory conduct⁵ may make a report to the Authority.
- 7.2 A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct⁶ must make a report to the Authority.
- 7.3 A licensee must not use, or threaten to use, the complaints or disciplinary process for an improper purpose.
- 7.4 If a licensee learns that a person is committing an offence by undertaking real estate agency work without a licence, the licensee must immediately report the matter to the Authority.

8 Duties and obligations of agents

Promoting awareness of rules

- 8.1 An agent who is operating as a business must display these rules prominently in the public area of each office or branch, and provide access to them on every website maintained by the agent for the purposes of the business.
- 8.2 A licensee must make these rules available to any person on request.

Supervision and management of salespersons

- 8.3 An agent who is operating as a business must ensure that all salespersons employed or engaged by the agent are properly supervised and managed.⁷

⁵ Unsatisfactory conduct is defined in the Act: see section 72

⁶ Misconduct is defined in the Act: see section 73

Ensuring knowledge of regulatory framework and promoting continuing education

- 8.4 An agent who is operating as a business must ensure that all licensees employed or engaged by the agent have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.
- 8.5 An agent who is operating as a business must ensure that licensees employed or engaged by the agent are aware of and have the opportunity to undertake any continuing education required by the Authority.

9 Client and customer care

General

- 9.1 A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.
- 9.2 A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.
- 9.3 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.
- 9.4 A licensee must not mislead customers as to the price expectations of the client.
- 9.5 A licensee must take due care to—
 - (a) ensure the security of land and every business in respect of which the licensee is carrying out real estate agency work; and
 - (b) avoid risks of damage that may arise from customers, or clients that are not the owner of the land or business, accessing the land or business.
- 9.6 Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

Agency agreements and contractual documents

- 9.7 Before a prospective client, client, or customer signs an agency agreement, a sale and purchase agreement, or other contractual document, a licensee must—
 - (a) recommend that the person seek legal advice; and
 - (b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and
 - (c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b).
- 9.8 A licensee must not take advantage of a prospective client's, client's, or customer's inability to understand relevant documents where such inability is reasonably apparent.
- 9.9 A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for signature unless all material particulars have been inserted into or attached to the document.

⁷ The Act defines what is meant by a salesperson being properly supervised and managed by an agent or a branch manager for the purposes of section 50 of the Act: see section 50(2)

- 9.10 A licensee must explain to a prospective client that if he or she enters into or has already entered into other agency agreements, he or she could be liable to pay full commission to more than 1 agent in the event that a transaction is concluded.
- 9.11 On notice of cancellation of an agency agreement being given or received by the agent under the agreement, the agent must advise the client, in writing, of the name of each customer (if any) in respect of whom the agent would claim a commission, were the customer to conclude a transaction with the client.
- 9.12 An agent must not impose conditions on a client through an agency agreement that are not reasonably necessary to protect the interests of the agent.
- 9.13 When authorised by a client to incur expenses, a licensee must seek to obtain the best value for the client.

Conflicts of interest

- 9.14 A licensee must not act in a capacity that would attract more than 1 commission in the same transaction.
- 9.15 A licensee must not engage in business or professional activity other than real estate agency work where the business or activity would, or could reasonably be expected to, compromise the discharge of the licensee's obligations.

Confidentiality

- 9.16 A licensee must not use information that is confidential to a client for the benefit of any other person or of the licensee.
- 9.17 A licensee must not disclose confidential personal information relating to a client unless—
 - (a) the client consents in writing; or
 - (b) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the licensee by the client; or
 - (c) the licensee is required by law to disclose the information; or
 - (d) the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993.
- 9.18 Where a licensee discloses information under rule 9.17(b), (c) or (d), it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.

10 Client and customer care for sellers' agents

- 10.1 This rule applies to an agent (and any licensee employed or engaged by the agent) who is entering, or has entered, into an agency agreement with a client for the grant, sale, or other disposal of land or a business.

Appraisals and pricing

- 10.2 An appraisal of land or a business must—
 - (a) be provided in writing to a client by a licensee; and
 - (b) realistically reflect current market conditions; and
 - (c) be supported by comparable information on sales of similar land in similar locations or businesses.

- 10.3 Where no directly comparable or semicomparable sales data exists, a licensee must explain this, in writing, to a client.
- 10.4 An advertised price must clearly reflect the pricing expectations agreed with the client.
- Relationship between prospective client's choices about how to sell and licensee's benefits**
- 10.5 Before a prospective client signs an agency agreement, the licensee must explain to the prospective client how choices that the prospective client may make about how to sell or otherwise dispose of his or her land or business could impact on the individual benefits that the licensee may receive.
- Agency agreements**
- 10.6 Before a prospective client signs an agency agreement, a licensee must explain to the prospective client and set out in writing—
- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the appraisal provided under rule 10.2:
 - (b) when the agency agreement ends;
 - (c) how the land or business will be marketed and advertised, including any additional expenses that such advertising and marketing will incur;
 - (d) that the client is not obliged to agree to the additional expenses referred to in rule 10.6(c):
 - (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.
- Disclosure of defects**
- 10.7 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Where it would appear likely to a reasonably competent licensee that land may be subject to hidden or underlying defects⁸, a licensee must either—
- (a) obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect; or
 - (b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.
- 10.8 A licensee must not continue to act for a client who directs that information of the type referred to in rule 10.7 be withheld.
- Advertising and marketing**
- 10.9 A licensee must not advertise any land or business on terms that are different from those authorised by the client.

⁸ For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weathertightness problems. A licensee could reasonably be expected to know of this risk (whether or not a seller directly discloses any weathertightness problems). While a customer is expected to inquire into risks regarding a property and to undertake the necessary inspections and seek advice, the licensee must not simply rely on caveat emptor. This example is provided by way of guidance only and does not limit the range of issues to be taken into account under rule 10.7.⁸

Contractual documentation and record keeping

- 10.10 A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.
- 10.11 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.
- 10.12 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

11 Client and customer care for buyers' agents

- 11.1 This rule applies where an agency agreement authorising an agent to undertake real estate agency work for a client in respect of the purchase or other acquisition of land or a business on the client's behalf (a buyer's agency agreement) is being entered into, or has been entered into.
 - 11.2 Before a prospective client signs a buyer's agency agreement, a licensee must explain to the prospective client and set out in writing —
 - (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the average of the estimated price range of the land or business that the client is seeking to purchase:
 - (b) when the agency agreement ends:
 - (c) any additional services that the licensee will provide, or arrange for the provision of, on the client's behalf and the expenses relating to those services payable by the client:
 - (d) that the client is not obliged to agree to the additional expenses referred to in rule 11.2(c):
 - (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.
 - 11.3 A licensee must not undertake real estate agency work with customers, or other licensees, on terms that are different from those that are authorised by the client on whose behalf the licensee is carrying out real estate agency work.
 - 11.4 A licensee must submit all offers that the licensee is instructed by the client to make concerning the purchase or acquisition of any land or business, provided that such offers are in writing.
 - 11.5 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.
 - 11.6 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.
- ## **12 Information about complaints**
- 12.1 An agent must develop and maintain written in-house procedures for dealing with complaints and dispute resolution. A copy of these procedures must be available to clients and consumers.

- 12.2 A licensee must ensure that prospective clients and customers are aware of these procedures before they enter into any contractual agreements.
- 12.3 A licensee must also ensure that prospective clients, clients, and customers are aware that they may access the Authority's complaints process without first using the in-house procedures; and that any use of the in-house procedures does not ⁹preclude their making a complaint to the Authority.
- 12.4 A licensee employed or engaged by an agent must advise the agent within 10 working days of becoming aware of—
- (a) any complaint made to the Authority against them, the decision of the Complaints Assessment Committee made in respect of that complaint, and any order made by the Committee in respect of that complaint; and
- (b) if the matter proceeds to the Tribunal, the decision of the Tribunal in respect of the matter, and any order made by the Tribunal in respect of the matter.
- 12.5 If a licensee was employed or engaged by a different agent at the time of the conduct relevant to the complaint referred to in rule 12.4, the licensee must also provide the information referred to in rule 12.4(a) and (b) to that agent within 10 working days of becoming aware of the complaint.

13 Revocation

The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (SR 2009/304) are revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989. Date of notification in Gazette: 13 December 2012. These rules are administered by the Real Estate Agents Authority, PO Box 25 371, Featherston Street, Wellington