



# Real Estate

## Continuing Professional Development

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# Legal ownership and tenure (title)

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## Learning objectives

At the end of this topic, you will be able to:

- explain what essential documents are and where to find them
- explain the key elements found on a record of title
- explain the different types of legal tenure.

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## Terms used in this guide

In this guide, we will use various terms related to real estate agency work and complaints processes. This table will explain key terms

Term/abbreviation	Notes
CAC	This abbreviation stands for the Complaints Assessment Committee.
Client	A client is a person on whose behalf an agent carries out real estate agency work under a signed agreement. In this guide, we will consider that the agency has a client relationship with the seller and, therefore, that seller is their 'client', and any buyers or potential buyers are 'customers'.
Code of Conduct	We will refer to the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 as the 'Code of Conduct'.
Consumer	In the context of this guide, the word 'consumer' refers to buyers and sellers and potential buyers and sellers in the real estate sale and purchase process.
Customer	A customer is a person who is a party or a potential party to a transaction and excludes a client or potential client (as defined in rule 4.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012). The meaning of 'customer' depends on with whom the agency has a client relationship.
Disciplinary Tribunal	We will refer to the Real Estate Agents Disciplinary Tribunal as the Disciplinary Tribunal.
Purchaser	The person buying the property (sometimes referred to as the 'buyer')
REA	This abbreviation stands for the Real Estate Authority.
Vendor	The person selling the property (sometimes referred to as the 'seller')

## 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 2017<sup>1</sup>; also known as a computer register, unique identifier or property title)
- Land Information Memorandum (LIM report) – refer to separate continuing professional development topic

### 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.

## 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.

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<sup>1</sup> The Land Transfer Act 2017 came into force in November 2018

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.

### *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)<sup>2</sup>

**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>

<sup>2</sup> 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 <sup>3</sup> ", "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.	

<sup>3</sup> 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

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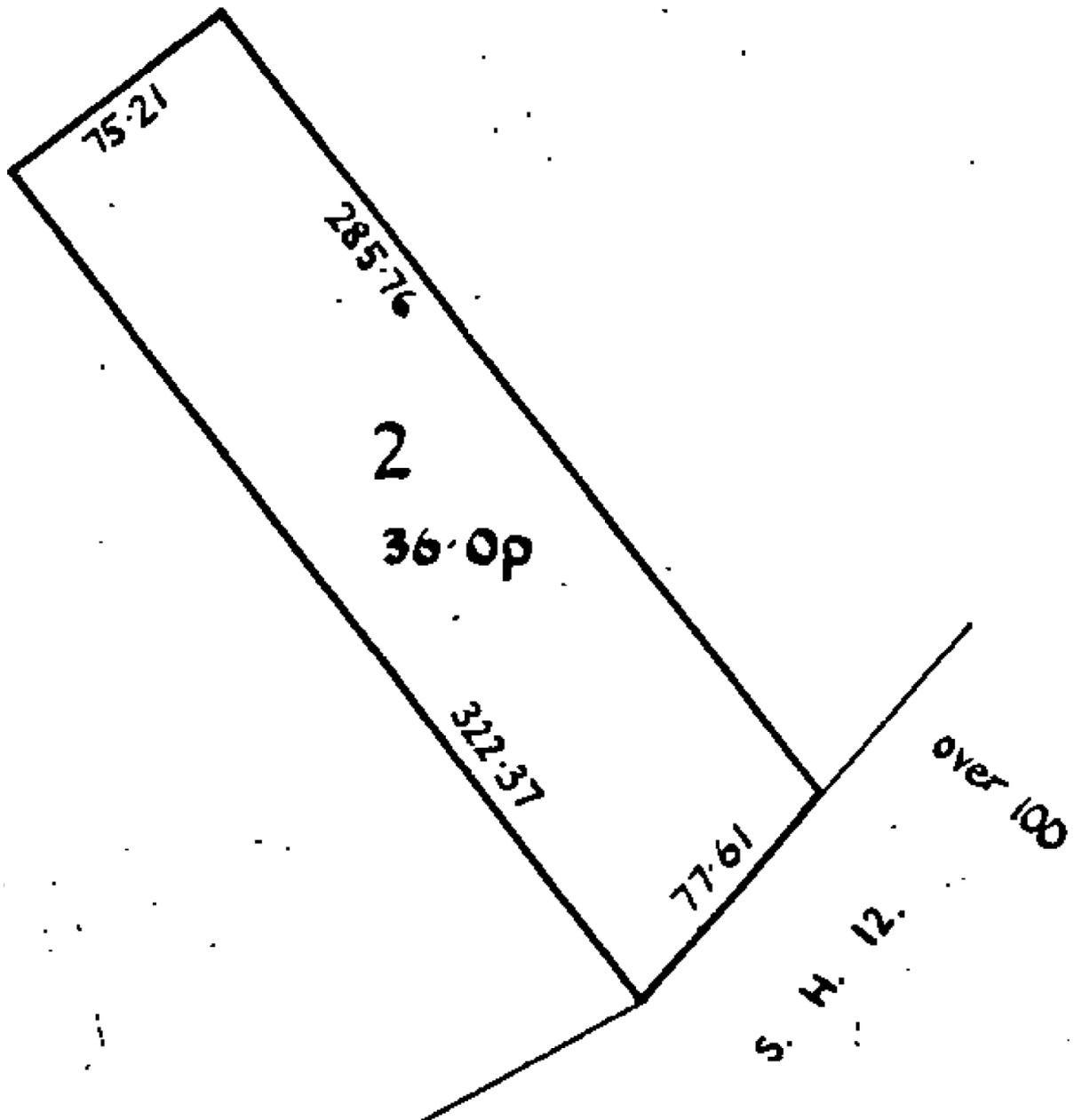
**Estate**                      Fee Simple  
**Area**                        911 square metres more or less  
**Legal Description** Lot 2 Deposited Plan 58450

**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 Waitotemarama Gorge Road at Pakanae and proceeding in a Southerly direction to its intersection with the southern end of Waitotemarama Gorge Road at Waitotemarama 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





## Questions

1. Refer to the record of title on the previous two pages. What is the title's unique reference and the legal description?

2. Refer to the record of title on the previous two pages. What does Easement Certificate A249658 refer to and what is the date of lodgement?

3. Refer to page 2 of the title on the previous page. What does "S.H. 12" refer to and what is the reference that provides the information on the title?

## 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 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

### 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 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 ensuring 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**, [www.unittitles.govt.nz/buying-or-renting-a-unit-title/buying-a-unit-title/](http://www.unittitles.govt.nz/buying-or-renting-a-unit-title/buying-a-unit-title/)), 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 case study and answer the questions that follow.

## Case study 1

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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 told 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](https://www.rea.govt.nz).



## Questions

4. What rules, if any, did the licensee breach?

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.”



## Questions

5. What should the licensee have done to avoid the complaint arising?

## 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:** <https://qualityplanning.org.nz/index.php/node/963>

## 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 case study and answer the question that follows.

## Case study 2

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Complainants (prospective purchasers) entered into a sale and purchase agreement for land which was advertised as a "vacant 2930m<sup>2</sup> 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**

You can read more about this decision through the 'Search complaints decisions' link at [rea.govt.nz](http://rea.govt.nz).



**Questions**

6. What rules, if any, did the licensee breach?

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.

The licensee should follow the same procedure as above for a notice of claim and caveat as they would in situations where a licensee is asked to market a property which is subject to a statutory land charge.

## 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 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).

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.

## 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.

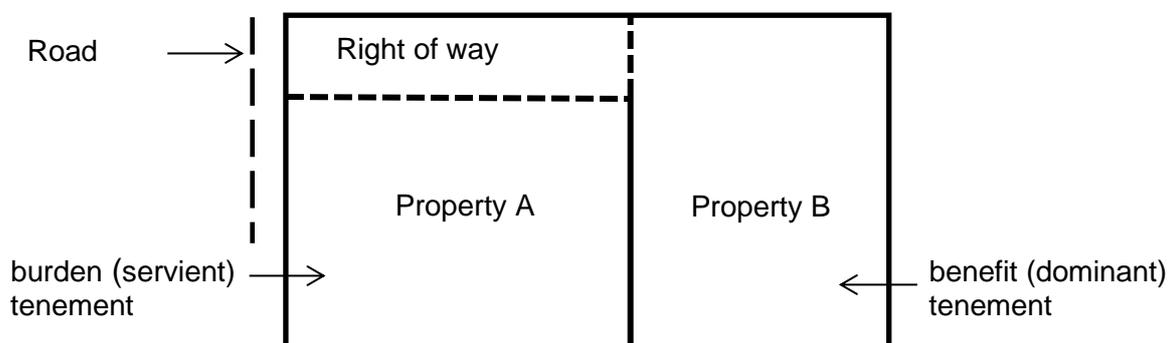
Easements generally involve burden (previously *servient*) and benefit (previously *dominant*) tenements.

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.

**Reference:** <https://qualityplanning.org.nz/index.php/node/963>

## 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:** <https://qualityplanning.org.nz/index.php/node/963>

Read the following case study and answer the questions that follow.

### Case study 3

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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**

You can read more about this complaint and decision in the REA decisions database at [rea.govt.nz](http://rea.govt.nz).



### Questions

7. What rules, if any, did the licensee breach?

## 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:** <https://qualityplanning.org.nz/index.php/node/963>

## 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:** <https://qualityplanning.org.nz/index.php/node/963>

## 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:** <https://qualityplanning.org.nz/index.php/node/963>

## 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:** <https://qualityplanning.org.nz/index.php/node/963>

## Māori land

The following types of land are defined in 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) – a group of persons of whom a majority are Maori.
- **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:** <https://qualityplanning.org.nz/index.php/node/963>

## 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:** <https://qualityplanning.org.nz/index.php/node/963>

## Record of title exercises

### Record of title – example 1

Refer to the record of title information 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

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**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

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<b>Estate</b>	Leasehold	<b>Instrument</b>	L C203780.18
		<b>Term</b>	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

**REGISTERED OWNERS**  
 Pursuant to Section 314 of the Resource Management 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 **Waiitakerē City** Council pursuant to its by laws.

Dated this **7<sup>th</sup>** day of **September** 1990  
**Tanya Leavin**  
 Subdivision & Development Manager

Areas shown to support restrictive covenants (A) through (L) and (M) are shown to support restrictive covenants. Boundaries of areas to be leased are along the external face of exterior walls, structures and roofs unless otherwise shown.

S = steps P = porch L = landing

I, **Cori David Strouge** 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 CT168/346 and that the plan is correct.

Dated this **17<sup>th</sup>** day of **August** 1990

**Cori David Strouge**  
 Signature

Total Area **4891 m<sup>2</sup>**  
 Comprised in **CT168/346 (all)**

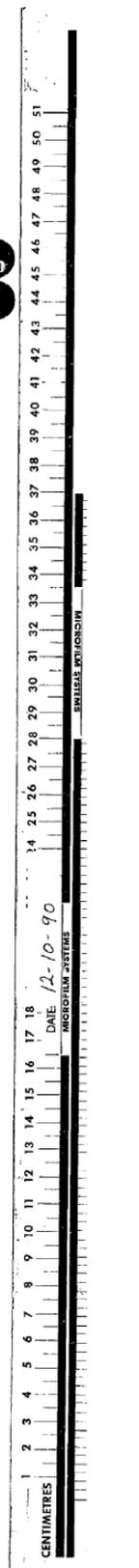
Registered Owners and holder of a leasehold certificate, in whole or in part, may as a registered surveyor pursuant to section 25 of the Survey Act 1989 hereby certify that this plan has been made from surveys conducted by me or under my direction. This plan and survey are correct and no amendments or alterations have been made since the registration of this plan in accordance with the provisions of section 192 of the Survey Act 1989.

Dated at **Wellington** this **19<sup>th</sup>** day of **August** 1990

Field Book **19** Signature **[Signature]**  
 Reference Plan **19** Transverse Book **19**  
 Examined **AGRAKE** Correct **AGRAKE**  
 Approved as to Survey **[Signature]**  
 2 10 190 **[Signature]** Chief Surveyor  
 Deposited this **3<sup>rd</sup>** day of **October** 1990  
**[Signature]** District Registrar  
 DP 141614

Flat 18A/177 NEW CAT. ALLOCATED  
 Flat 7 8A/183  
 Flat 2 8A/178 Flat 8 8A/184  
 Flat 3 8A/179 Flat 9 8A/185  
 Flat 4 8A/180 Flat 10 8A/186  
 Flat 5 8A/181 Flat 11 8A/187  
 Flat 6 8A/182

TERRITORIAL AUTHORITY WAITAKERE CITY  
 Surveyed by **TRIPP ANDREWS & PARTNERS**  
 Scale 1: 500 Date **AUGUST 1990**



W. A. HENDERSON, DIRECTOR GENERAL, DEPARTMENT OF SURVEY AND LAND INFORMATION, NEW ZEALAND

FORM 10 SURVEY PLANS 1.1. AUCKLAND, NEW ZEALAND

CENTIMETRES

DATE 12-10-90

MICROFILM JUSTICES

SPRIZALE KTI KONJIM

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

44 45 46 47 48 49 50 51

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

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FORM 10 SURVEY PLANS 1.1. AUCKLAND, NEW ZEALAND

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FORM 10 SURVEY PLANS 1.1. AUCKLAND, NEW ZEALAND

CENTIMETRES

DATE 12-10-90

MICROFILM JUSTICES

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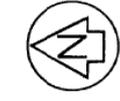
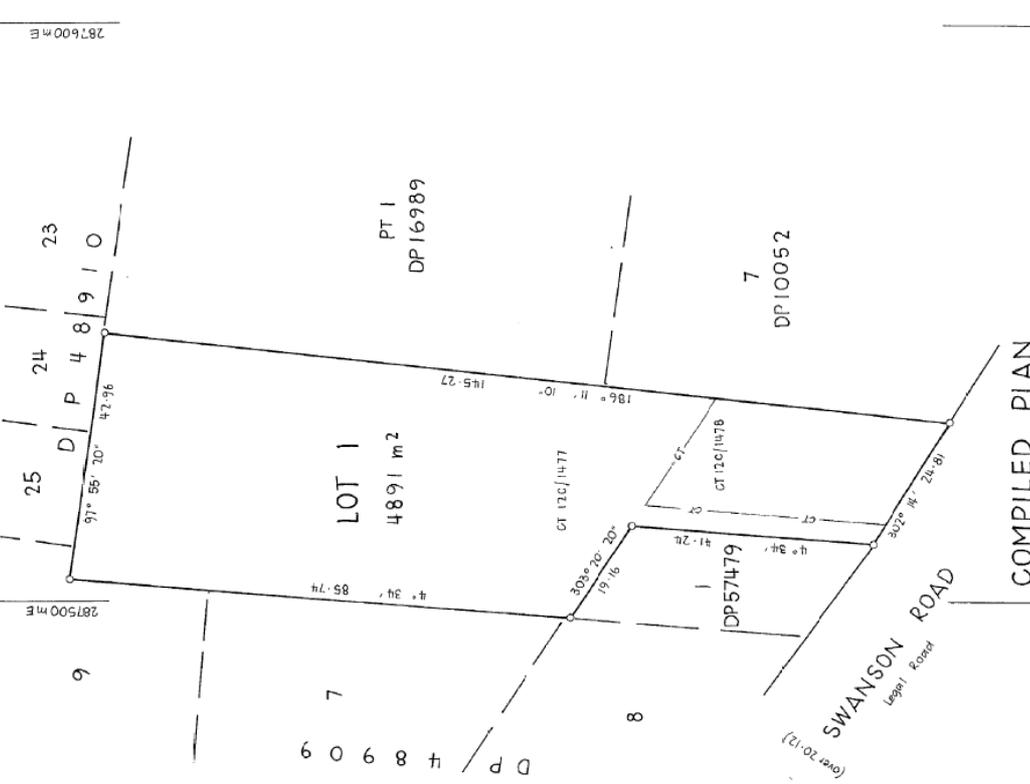
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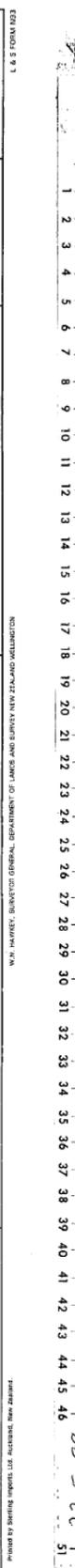
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 Approved: <i>M. B. J. J. J.</i> REGISTERED DINNERS	 TO00640 m N		TO00540 m N
BEARING AND COORDINATE DATUM: OLD CADASTRAL ORIGIN: MT EDEN 700000 m N 3000000 m E		New CT Allocated - LOT 1 - CT 76B/134G	
Total Area 4891 m <sup>2</sup> Comprised in CT 12C/1477 (all) & CT 12C/1478 (all)		Registered Surveyor and holder of an annual practicing certificate (who may act as a registered surveyor pursuant to section 26 of the Survey Act 1980) and holder of a current certificate of registration from surveys executed by me or under my direction, that both plans and survey are correct and have been made in accordance with the provisions of the Survey Act 1980 or any regulations made in substitution thereof. Dated at Auckland this 1 <sup>st</sup> day of March 1989	
Filed Book Transverse Book Reference Points DP 57479		Examined <i>M. J. J.</i> Correct <i>W. J. J.</i>	
Approved as to Survey 3 14 89		Deposited this 10 <sup>th</sup> day of May 1989 District Land Registrar DP 130189	
File 6206 Received 83 MAR 1989 Districts		TERRITORIAL AUTHORITY HENDERSON BOROUGH Surveyed by TRIPP ANDREWS & PARTNERS Scale 1:500 Date FEBRUARY 1989	
LAND DISTRICT NORTH AUCKLAND SURVEY BLK. & DIST. XIV WAITEMATA NZMS 261 SH1 RECORD MAP No.		PLAN OF LOT 1 BEING LOTS 2 & 3 DP 57479	



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

DATED this 18<sup>th</sup> day of October 1990

Executed by the lessors  
**PEARCE BRESNEHAN**  
**DESIGN & BUILD LIMITED**



*[Handwritten Signature]*  
DIRECTOR  
Director

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

Executed by the lessee  
**PEARCE BRESNEHAN**  
**DESIGN & BUILD LIMITED**



*[Handwritten Signature]*  
DIRECTOR  
Director

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

**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.

*[Handwritten Signature]*

\*which shall have the effect of altering the external dimensions thereof.

*[Handwritten Signature]*



## Questions

**Answer the following questions by selecting the correct answers.**

8. This record of title refers to what type of tenure?

<input type="checkbox"/>	A.	Freehold (fee simple) estate
<input type="checkbox"/>	B.	Cross-lease

9. What is the legal description of the fee simple estate?

<input type="checkbox"/>	A.	Lot 1, Deposited Plan 130189
<input type="checkbox"/>	B.	Flat 9 , Deposited Plan 141614

10. The various owners of the fee simple estate hold their shares in a co-ownership arrangement. What is the nature of that co-ownership?

<input type="checkbox"/>	A.	Joint tenancy
<input type="checkbox"/>	B.	Tenancy in common

11. Christopher Theophilus Fernandez, Carol Joan Fernandez, and Chriselle Rhea Fernandez, as executors, are co-owners in the leasehold estate. What is the nature of that co-ownership arrangement?

<input type="checkbox"/>	A.	Joint tenancy
<input type="checkbox"/>	B.	Tenancy in common

12. How many cross lease properties are registered on the fee simple estate?

<input type="checkbox"/>	A.	Ten
<input type="checkbox"/>	B.	Eleven

13. What is the number of the lease registered to Flat 9 on the fee simple estate?

<input type="checkbox"/>	A.	C203780.18
<input type="checkbox"/>	B.	C203780.16

14. What is the unique identifier number for the cross lease title to Flat 1?

<input type="checkbox"/>	A.	NA84A/185
<input type="checkbox"/>	B.	NA84A/177

15. Is the land covenant registered against lease C203780.18 a benefit or an encumbrance to Flat 9 Deposited Plan 141614?

<input type="checkbox"/>	A.	Benefit
<input type="checkbox"/>	B.	Encumbrance

16. Is there a caveat registered on the title?

<input type="checkbox"/>	A.	Yes
<input type="checkbox"/>	B.	No

17. Referring to the Extract from Memorandum of Lease C203780.18 – page 2, do the cross-lease title holders have unencumbered rights to keep pets on the property?

<input type="checkbox"/>	A.	Yes
<input type="checkbox"/>	B.	No

18. Referring to the Extract from Memorandum of Lease C203780.18 – page 2, are the cross-lease title holders able to carry out structural alterations without consent in writing from the lessors?

<input type="checkbox"/>	A.	Yes
<input type="checkbox"/>	B.	No

## 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

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*Transaction Id* 55584319  
*Client Reference* roatham001

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





## Questions

**Answer the following questions by selecting the correct answers.**

19. This computer freehold register refers to what type of tenure?

<input type="checkbox"/>	A.	Freehold
<input type="checkbox"/>	B.	Cross-lease

20. The proprietors are co-owners in the fee simple estate. What is the nature of that co-ownership arrangement?

<input type="checkbox"/>	A.	Joint tenancy
<input type="checkbox"/>	B.	Tenancy in common

21. The 'prior references' on the title refers to a unique identifier number. What is the number?

<input type="checkbox"/>	A.	NA111A/396
<input type="checkbox"/>	B.	NA67C/632

22. Under 'interests' (the first entry) on the title, a water right is created by Transfer 644766. What are the words that indicate the property is the benefited (dominant) tenement for this right?

<input type="checkbox"/>	A.	Appurtenant hereto
<input type="checkbox"/>	B.	Water right

23. The title shows the date on which it was issued. What is that date?

<input type="checkbox"/>	A.	26 November 1997
<input type="checkbox"/>	B.	1 November 2007

24. Under 'interests' there are rights of way created by way of easement. How many easement documents would need to be searched to ascertain the extent of those rights?

<input type="checkbox"/>	A.	One
<input type="checkbox"/>	B.	Two