



# Compliance Matters

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For most firms, the majority of challenges during the compliance process are around what documentation needs to be retained, in what format and for how long.

In this information sheet, we take a look at these issues, suggest some workable approaches that have been tried and tested by other firms who are now successfully *e-dealing* and highlight some of the more common failings found during the compliance review process.

## > **What documentation do you need to keep and for how long?**

Under section 164c of the Land Transfer Act 1952 and associated Regulations, conveyancers must hold supporting evidence showing the validity of their certifications. They need to retain this evidence for 10 years from the date the instrument to which the certification relates is lodged for registration.

What this means in practice varies from instrument to instrument as highlighted below:

Instrument Type	On behalf of...	Supporting Evidence	Other
<b>Discharge/Withdrawal</b>	Bank or Institutional Chargeholder	<ul style="list-style-type: none"> <li>• A copy of the completed Discharge/Withdrawal; <b>or</b></li> <li>• All pages of the signed letter from the Chargeholder</li> </ul>	Copy of Power of Attorney and certificate of non-revocation, photo identification and consents, etc, as appropriate.
	Private Chargeholder	<ul style="list-style-type: none"> <li>• Authority &amp; Instruction form(s)</li> </ul>	
<b>Mortgages*</b>	Bank or Institutional Mortgagee	<ul style="list-style-type: none"> <li>• Authority &amp; Instruction form(s) for registered proprietor(s)/ mortgagor(s)</li> <li>• All pages of the signed letter of instruction</li> <li>NB if the mortgagor and/or property identifier is not mentioned in the letter, other relevant documentation should be supplied</li> </ul>	
	Private Mortgagee	<ul style="list-style-type: none"> <li>• Authority &amp; Instruction form(s) for registered proprietor(s)/ mortgagor(s)</li> </ul>	
<b>Transfers</b>	Transferor	<ul style="list-style-type: none"> <li>• Transferor Authority &amp; Instruction</li> </ul>	
	Transferee	<ul style="list-style-type: none"> <li>• Transferee Authority &amp; Instruction</li> </ul>	

\* Where a conveyancer is acting for both the mortgagor and mortgagee (as is normal practice), both authorities will need to be produced.

The New Zealand Law Society has also produced a number of *e-dealing* resources. These can be found at <http://www.lawyers.org.nz/memregissuesedealing.asp>



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## ***How have other firms dealt with e-dealing compliance?***

The approach taken by firms who are now successfully *e-dealing* has largely been determined by the approach they have taken historically. They are:

**a) Separate folder**

Firms that have historically stored their abstracts in a separate folder have adopted a similar approach for the client Authority & Instruction (A&I) form and its attachments. The A&I is placed in a separate folder, in chronological order. While not strictly necessary, some firms also copy the A&I for the file. This is probably appropriate in the case of a mortgage as the full letter of instruction from the mortgagee should be annexed to the A&I as proof of the authority from the mortgagee to create the mortgage.

**b) Scanning**

Firms that have already adopted scanning of all files for storage are scanning the A&I and copying this to a separate electronic folder.

**c) On file only**

Some firms have elected to simply retain everything on file. Given the relatively small number of dealings selected for compliance review, firms have worked on the basis that the slight increase in time taken to retrieve these files is still less than would be involved in copying and separately storing the A&I forms. Whether this is workable will largely depend on whether files are held on or off site.

**d) Deeds**

The less risk approach is to hold the A&I in Deeds. This is beyond the requirements both of legislation and the NZLS Guidelines. Once *e-dealing* becomes mandatory for all instrument types, Deeds storage under this approach will become significant and make the purging of files after the prescribed retention period more difficult.

In summary, the volume of transactions selected for compliance review is relatively small. If your client files are readily accessible on site for at least six months after the closure of the file, this should suffice without needing to hold the A&I separately. If you are already set up to scan your files then this approach could be adopted for the A&I.

## > ***What are some of the more common failings found during compliance review?***

The majority of follow-up action required following a review relates to failure to secure and produce client identification and authorities in line with the above.

Common issues include:

- 1. Authority to register a transfer** – an Authority and Instruction (A&I) form should be completed by the transferor(s) and transferee(s) and retained as evidence.
- 2. Registration of a new mortgage** – in most cases, conveyancers have supplied an A&I form completed by the mortgagor, but some have omitted to include an authority from the mortgagee.
- 3. Authority for discharge of mortgage** – failure to supply appropriate authorities.



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4. **Client identity** - a copy of the form of photo ID used to identify the client (where applicable) should be attached to the A&I form.
5. **Power of Attorney** – a copy must be supplied together with a certificate of non-revocation if an A&I is being completed by someone acting as attorney.
6. **Solicitor party to the transaction** – if a solicitor is a party to the transaction, he or she need not personally complete an A&I form if signing and certifying the instrument in his or her own right. If a solicitor is a party to the transaction, he or she should avoid certifying or acting on behalf of others in the same transaction where this could give rise to a conflict of interest.