

SOLICITORS INSTRUCTIONS

**General information
and requirements.**



These General Instructions are to be read in conjunction with the Westpac New Zealand Limited (“Westpac NZ”) Personalised Solicitors’ Instructions sent to you for each new facility or security Westpac NZ requests you to act for it in. Together these General Instructions and the Personalised Solicitors’ Instructions comprise our Instructions to you. When giving us a Solicitors’ Certificate, you confirm you’ve met the requirements in both our Personalised Solicitors’ Instructions and these General Instructions.

Westpac NZ and its parent, Westpac Banking Corporation ABN 33 007 457 141, (incorporated in Australia) (“Westpac”), are separate registered banks and between them provide a wide range of banking services. Recognising that some customers will have facilities with both Westpac NZ and Westpac, all securities, guarantees and other surety arrangements to be provided in relation to facilities provided by Westpac NZ and Westpac (or either of them) will be granted in favour of Westpac NZ for the benefit of itself and Westpac, to be held in accordance with the respective liabilities owed to each of them.

In this document, Westpac and Westpac NZ are together referred to as the “Banks”.

The Nature of Your Instructions, Professional Indemnity Insurance, Disclosure and Solicitor’s Certificate

General.

On receipt of the Personalised Solicitors’ Instructions you need to:

- a) familiarise yourself with all of the terms of the Documents and the Solicitors’ Certificate;
- b) satisfy yourself that the Customer and every Guarantor (if any) has capacity to make an informed decision, can lawfully enter into the Documents, and that the performance of their obligations under the Documents do not conflict with any law or its constitutional documents; and
- c) advise Westpac NZ immediately and seek further instructions if:
 - i) you become aware that a change is required to the loan and/or security structure; or
 - ii) security is to be given by a third party which is not linked to the Customer’s obligations by way of a guarantee.

Other than the requirements set out in these General Instructions and Westpac NZ’s Personalised Solicitors’ Instructions, we do not rely on you to verify the pre-printed contents of any Document, but we do require you to verify and amend, as necessary, the pre-populated contents.

If:

- a) prior to the issue of your Solicitors’ Certificate to the Banks; or
- b) after the issue of your Solicitors’ Certificate, but before you disburse the proceeds of any facilities

you become aware of anything which could affect the validity, priority, or enforceability of the Documents and/or the Bank’s security, please advise Westpac NZ immediately and seek further instructions.

Professional Indemnity Insurance.

By accepting these Instructions, you certify that you hold a professional indemnity insurance policy with cover which:

- a) meets the minimum standards for professional indemnity (as referred to in rule 3.4(b) of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008) as specified by the New Zealand Law Society from time to time;
- b) has a claim limit equal to or greater than the maximum commitment under the facilities offered; and
- c) provides cover for all actions required of you in the undertaking of this transaction, with no circumstances existing such that conditions of cover are not met, cover is excluded or the policy may be voided by the insurer.

If you do not hold such insurance, please notify Westpac NZ immediately as we may wish to instruct another solicitor.

Disclosure.

If the facility is a consumer credit contract, as that term is defined in the Credit Contracts and Consumer Finance Act 2003 (“CCCFA”), please attend to initial disclosure in accordance with the CCCFA.

If, and to the extent, required by the CCCFA, you should ensure disclosure is made to any Guarantors (or, if any Guarantor is to be advised by an independent solicitor, ensure that independent solicitor makes disclosure to the Guarantor) in accordance with the CCCFA (“**Guarantee Disclosure**”). Any required Guarantee Disclosure will include giving the Guarantor a copy of the Guarantee and Indemnity and disclosing to the Guarantor the key information set out in Schedule 1 of the CCCFA in relation to each consumer credit contract to which the Guarantee and Indemnity applies.

For the purposes of disclosure you may assume that the provided Documents are the only consumer credit contracts for which Guarantee Disclosure is also required. If the facility is not a consumer credit contract then Guarantee Disclosure is not required.

Your Solicitors’ Certificate.

If you are personally connected with the Customer, any Guarantor or the relevant transaction, your Solicitors’ Certificate must be completed by a partner independent of the transaction. If, you are a sole practitioner, you must contact Lending Services to arrange for the Personalised Solicitors’ Instructions to be issued to a partner or director of another firm.

Examples of a personal connection are set out below (without limitation):

- a) you are a director, shareholder or beneficiary of the Customer or a Guarantor or in any other way personally connected to the Customer or a Guarantor in any borrowing security, or guaranteeing capacity, as trustee or otherwise;
- b) you have a close personal relationship with the Customer or any Guarantor; or
- c) you have an interest in the property being sold or purchased by the Customer.

You must not amend the form of the Solicitors’ Certificate as provided by Westpac NZ, except for inserting the name of the Customer and the Guarantor and inserting the relevant details in the signing block in the Solicitors’ Certificate.

The Solicitors’ Certificate must be signed by a practising New Zealand solicitor who is a partner, director, or sole principal of your firm. We do not accept Solicitors’ Certificates signed by conveyancing practitioners, public trustee companies or community law centres. The Banks acknowledge that your Solicitors’ Certificate is received on the following basis:

- a) unless we have confirmed otherwise, we will make the following assumptions for the purposes of the Solicitors’ Certificate:
 - i) copies of Documents examined by you conform to the originals, and all documents examined by you are authentic and complete;
 - ii) all signatures on Documents examined by you are genuine;
 - iii) in the case of each company:
 - in determining that it enters into the transactions contemplated by the Documents, its directors have acted for a proper purpose;
 - its entry into the transactions contemplated by the Documents is in its best interests or, where permitted by its constitution, the best interests of its holding company; and
 - no receiver, administrator or liquidator has been appointed to any company, and no company has been made subject to statutory management (and these assumptions are not contradicted by your search of the Register of Companies); and
- b) your Solicitors’ Certificate does not certify as to the form and printed content of the Documents provided to you, but it does certify as to the pre-populated content of the Documents provided to you.

Investigations Required by You and Customer Identification

General.

You will need to make enquiries and obtain copies of public records as is prudent in order to make the statements contained in the Solicitors’ Certificate and to protect the Banks’ interests. This may include searches at the Land Information New Zealand Office (“**LINZ**”), the register of companies maintained by the New Zealand Registrar of Companies and the Personal Property Securities Register (“**PPSR**”).

You are required to ensure the correct land is included in the mortgage required by Westpac NZ. You must conduct appropriate title searches and other appropriate investigations. In addition to the main title for the relevant land, you must include in the mortgage any accessory units, common areas or other ancillary interests in land.

You must (where you act for those parties):

- a) ensure the pre-populated names, if any, are correctly inserted into the Documents and amend as necessary; and
- b) ensure the pre-populated security details, if any, are correctly inserted into the Documents and amend as necessary.

You need to verify and complete the Customer's and any Guarantor's details correctly in the Documents. You must review and confirm every name in any General Security Agreement and Specific Security Agreement that is pre-populated, and when not pre-populated, you must complete the details to meet the data requirements of Part 1 of Schedule 1 to the Personal Property Securities Regulations 2001 ("**Regulations**") as Westpac NZ will be relying on those completed details when registering its financing statements. More details about acceptable identification and proof of address are available at westpac.co.nz/AML.

You must (where you act for those parties) ensure that the Customer and the Guarantor have done all things necessary to be authorised to enter into the obligations set out in the Documents and to execute the Documents (including, as appropriate, obtaining any necessary resolutions and consents).

Encumbrances etc.

Please ensure that any charge, limitation, encumbrance, restriction, easement or covenant affecting land contained in the record(s) of title that is likely to prejudice Westpac NZ's mortgage is brought to Westpac NZ's attention and specifically approved by Westpac NZ.

Westpac NZ considers an encumbrance to be prejudicial to its mortgage if the encumbrance does not expressly prohibit the encumbrancee from exercising any of the powers and remedies given to an encumbrancee under the Land Transfer Act 2017 and the Property Law Act 2007, including the power of sale given to a mortgagee.

Statutory Consents and Approvals.

Unless you have notified us otherwise, we are assuming (and will rely upon the fact) that you are not aware of any breach of any relevant building and local authority consent or compliance certificate that may be required under the Resource Management Act 1991 and/or the Building Act 2004. Please note:

- a) if you become aware of any unremedied non-compliance with those Acts you must immediately notify Westpac NZ; and
- b) Westpac NZ may require that the non-compliance be remedied before drawdown can proceed.

Overseas Investment Act 2005.

You must comply with the Overseas Investment Act 2005 when giving effect to the acquisition of any residential land or other sensitive land. For these purposes, you are not acting as our agent and will not hold yourself out as our agent.

Rates.

Please ensure that any local or regional authority rates arrears will be cleared on settlement.

Customer Identification.

Before the Banks can provide drawdown or open an account for a Customer, we are required in terms of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to ensure that certain information has been provided and verified to verify the identity of the Customer and certain other information provided in the relevant application forms. Please refer to Westpac NZ's list of acceptable verification documentation (available at westpac.co.nz/AML).

Note that the identity information required to verify the Customer may already have been obtained by the Banks where completed application forms have been returned.

Mortgage and Security Requirements

First Ranking.

Unless otherwise stated, you should assume that any Document creating a security interest in favour of Westpac NZ is intended to create a first ranking security interest.

Mortgage of Land (General).

In relation to a Landonline electronic dealing, you must hold a duly signed Client Authority and Instruction form (as

approved by the New Zealand Law Society and the Registrar-General of Land) for the dealing from your client authorising the dealing. If there are any other parties to the dealing (such as in a multi-party dealing) you must satisfy yourself that all electronic dealing requirements are in place so that Westpac NZ's mortgage can be immediately submitted for registration on settlement.

Please forward to Westpac NZ:

- a) in the case of any paper dealing, as soon as the mortgage is registered and returned to you, the registered mortgage and a post registration search copy of each record of title; and
- b) (unless automatically provided to Westpac NZ by LINZ) in the case of any Landonline electronic dealing, as soon as the mortgage is registered, a post registration search copy of each record of title and a view instrument search of the registered mortgage.

If Westpac NZ is being granted a subsequent mortgage with the consent of the prior mortgagee, Westpac NZ requires a deed of priority to be entered into to determine a priority limit for the prior mortgagee (see "Priority Arrangements" below).

If there are indicators that the property may be Māori land, please ensure an appropriate search of the Māori Land Register is undertaken to verify or otherwise. If the search indicates the property is Māori land, please advise Westpac NZ immediately.

Registered Licence to Occupy.

If the title to the property to be mortgaged is a registered licence to occupy ("Licence") pursuant to part 3, subpart 6 of the Land Transfer Act 2017, you must ensure that:

- a) if required in terms of the Licence, the written consent of the licensor to the mortgage by the Customer of its interest to Westpac NZ is obtained;
- b) there is no existing breach of the terms of the Licence which would entitle the licensor to cancel the Licence or refuse to register the Licence in favour of the Customer;
- c) the pre-emptive rights (if any) of the other shareholders and licensees have been waived; and
- d) if any security is held by a creditor of the licensor, that creditor has consented to the mortgage by the Customer of the Licence to Westpac NZ.

Unregistered Licence to Occupy.

If the title to the property to be mortgaged is an unregistered licence to occupy ("Unregistered Licence") pursuant to part 3, subpart 6 of the Land Transfer Act 2017, you must ensure that:

- a) if required in terms of the Unregistered Licence, the written consent of the licensor to the Specific Security Agreement being granted by the Customer in respect of the Unregistered Licence to Westpac NZ is obtained;
- b) the pre-emptive rights (if any) of the other shareholders and licensees have been waived;
- c) if any security is held by a creditor of the licensor, that creditor has consented to the Specific Security Agreement being granted by the Customer in respect of the Unregistered Licence to Westpac NZ; and
- d) the Deed of Covenant in Relation to Unregistered Licence is executed by all parties. If there is likely to be any delay in your client signing the Deed of Covenant, we recommend that a copy of the Deed is submitted in advance to the licensor company for their approval to prevent any delay in settlement, particularly if there are any clauses in the Deed that they may require clarification or amending.

Leasehold Estates.

If any property over which a mortgage is being taken is a leasehold estate (other than a composite title), you must check that the term of the lease is sufficient for the purposes of the mortgage over the lease.

Unit Titles.

Where the title to the property to be mortgaged is a stratum estate under the Unit Titles Act 2010 (referred to as the "Act"), you must ensure that you:

- a) obtain the following information (either by obtaining the disclosure statements referred to in sections 146 and 147 of the Act or by requesting the necessary information under section 206 of the Act, or otherwise):

- i) a copy of the body corporate's operational rules;
 - ii) details of the contribution levied by the body corporate;
 - iii) details of any amounts owed to the body corporate by the owner of the property which remain unpaid;
 - iv) details of any repair work performed, or intended to be performed, by the body corporate in relation to which the owner of the property has incurred, or is likely to incur, costs, and details of any cost which remains unpaid; and
 - v) details of any proceedings pending against the body corporate in any court or tribunal;
- b) disclose to Westpac NZ any matter contained in that information which you consider would adversely affect Westpac NZ's interests as mortgagee; and
- c) give notice to the body corporate (in terms of section 134(5) of the Act) and to the body corporate's insurer of Westpac NZ's interests in the property as mortgagee and provide documents evidencing the same.

General Security Agreement/Specific Security Agreement.

If the party executing the General Security Agreement or Specific Security Agreement is a trust and the names have not been pre-populated, then complete the "Organisation" section of the debtor description as follows:

name of organisation: [insert name of trust], including [insert full names of trustees] as trustees of [insert name of trust].

If the names have been pre-populated, then you must confirm the names are correctly pre-populated and amend as necessary.

If the party executing the General Security Agreement or Specific Security Agreement is a partnership, or if the names have not been pre-populated, then complete the "Organisation" section of the debtor description as follows:

name of organisation: [insert name of partnership], including [insert full names of partners] as partners of [insert name of partnership].

If the names have been pre-populated, then you must confirm the names are correctly pre-populated and amend as necessary.

You need to verify all necessary details of the motor vehicles or aircraft in order to complete the serial- numbered goods register in the relevant annexure to the General Security Agreement or Specific Security Agreement (as applicable).

The details must be completed so as to meet the requirements of clause 9 of Schedule 1 to the Regulations, as Westpac NZ will be relying on those completed details when registering its financing statement.

Specific Security Agreement over Shares.

You need to complete annexure 1 of the Specific Security Agreement by describing, in accordance with section 36 of the Personal Property Securities Act 1999, the shares required by Westpac NZ to be the subject of the security agreement.

If the shares are publicly listed, please arrange for the faster identification number to be cancelled. The facilities cannot be drawn down until we receive confirmation from the securities registry that the cancellation has been affected.

If the shares are not publicly listed, please ensure that any share certificate or other documents of title for any shares have been provided to us prior to settlement. If no share certificate has been issued, please arrange for a share certificate to be issued and provided to us prior to settlement.

Enquiries and Searches for Taking Security over Personal Property.

Please ensure you search the PPSR to identify any financing statements that refer to any of the same collateral as will be covered by our security interest. If your searches indicate that another secured party has a security interest (or if you are aware that another party has or proposes to obtain an interest) in the same collateral as will be covered by our security interest, you must urgently contact us to seek further instructions (including the approval of priority arrangements, if necessary). When contacting us for further instructions you must advise us as to the effect of the relevant security interest on our priority position. For that purpose, you may assume (unless you are aware of the contrary) that a party who has registered a financing statement has a security interest in all of the collateral described in that financing statement.

Priority Arrangements.

Where priority arrangements are necessary, Westpac NZ will instruct you with further details to enable you to prepare subordination and priority document(s) using the templates on the New Zealand Bankers' Association website (nzba.org.nz/priority).

Insurance.

Please ensure that the Customer is advised that all assets the subject of Westpac NZ's security are to be insured for a nominated sum insured amount at least equal to its full replacement cost (including earthquake insurance where required) against normal risks and that Westpac NZ's interests are noted on all policies using its full name, *Westpac New Zealand Limited*. Please request a certificate of currency from the insurer unless the property is bare land, and enclose the certificate of currency when you provide the Solicitors' Certificate to Westpac NZ. The certificate of currency must note Westpac New Zealand Limited's interest as first mortgagee. Unless you are advised otherwise, Westpac NZ does not require to hold the policy document. Westpac NZ's additional requirements for insurance of unit title properties are contained above.

Signing of Documents

General.

You must (where you act for those parties):

- a) ensure that the Customer and each Guarantor signs and dates any Document to which it is a party; and
- b) explain to the Customer and each Guarantor the meaning and effect of all Documents.

No alterations are to be made to any of the Documents without Westpac NZ's prior written approval, except where alterations to pre-populated details are necessary. Where alterations are approved, these must be initialled by all parties to the Document.

Execution of Documents.

All of the Documents must be signed in the following manner (and witnessed where we have specified on the Document that this is required):

- a) for natural persons, all individuals must sign any Documents;
- b) for trusts, partnerships, informal groups and associations, all trustees, partners or members must sign any Documents;
- c) for incorporated societies and charitable trusts, any Documents must be signed in accordance with the relevant constitutional documents;
- d) for New Zealand incorporated companies, any Documents must be signed in accordance with section 180 of the Companies Act 1993 and the company's constitution (if applicable); and
- e) for non-New Zealand incorporated companies any Documents must be signed in accordance with the laws of its country of incorporation.

Power of Attorney.

The Banks require that the Customer and the Guarantor sign Documents personally. You must obtain Westpac NZ's prior written consent if it is intended that an attorney sign Documents on behalf of the Customer or Guarantor. Please be aware that:

- a) Westpac NZ must be provided with an original or certified copy of any relevant power of attorney before Westpac NZ will consider granting its prior written consent;
- b) any Document signed under a power of attorney should have attached to it a signed certificate of non-revocation dated not earlier than the date of execution of the Document;

- c) if the attorney is in New Zealand and is acting on behalf of an existing customer of the Banks and the attorney:
- i) is not a signatory of an account of the Banks (either an account of the Customer or the Guarantor or a personal account); or
 - ii) has not already provided to the Banks:
 - acceptable identification verifying their full name and date of birth; and
 - their relationship to the Customer or the Guarantor,

then the attorney must take acceptable identification to a Westpac NZ branch for sighting by Westpac NZ staff and must provide suitable evidence of their relationship to the Customer or the Guarantor. The attorney must do this before the attorney acts on behalf of the Customer;

- d) if the attorney is unable to go into a Westpac NZ branch for any reason, they can get a copy of their acceptable identification certified by a trusted referee and the copy can be handed into a Westpac NZ branch; and
- e) if the Customer or the Guarantor and the attorney are not existing customers of the Banks then proof of the attorney's physical address (not a PO Box), in addition to acceptable identification, must also be taken into a Westpac NZ branch. The attorney should do this before the Customer or the Guarantor establishes a business relationship with Westpac NZ and, in any event, before the date of the relevant drawdown.

If the attorney is overseas and is acting on behalf of an existing customer of the Banks and the attorney:

- a) is not a signatory of an account of the Banks (either an account of the Customer, Guarantor or a personal account); or
- b) has not already provided to the Banks:
 - i) acceptable identification verifying their full name and date of birth; and
 - ii) their relationship to the Customer or the Guarantor,

then please act on our behalf to obtain their acceptable identification and their relationship to the Customer or Guarantor, by doing the following. These requirements must be met before the attorney acts on behalf of the Customer:

- a) the loan/facility agreement(s), mortgage and account opening form(s) are to be forwarded to the attorney's overseas based solicitor. They will attend to disclosure/sign-up and the identity requirements; and
- b) the attorney is to be formally identified by an offshore trusted referee and provide to the Banks prior to drawdown a certified copy/copies of acceptable identification certified by an offshore trusted referee and the attorney's relationship to the Customer or Guarantor.

The certified copy/copies is/are to be dated, certified and signed as being true and correct by the offshore trusted referee.

If the Customer, the Guarantor and the attorney are not existing customers of the Banks then proof of the attorney's physical address (not a PO Box), in addition to acceptable identification, must also be certified by an offshore trusted referee. The attorney should do this before the Customer or the Guarantor establishes a business relationship with Westpac NZ and, in any event, before the date of the relevant drawdown.

We will not accept a power of attorney granted to an individual in a personal capacity to be used for Documents required to be signed by that person as a director of a company (please note we will accept Documents signed under a power of attorney granted by the company itself, or signed by an alternate director, if permitted by the relevant company's constitution);

We will not accept a power of attorney for a trustee of a trust, unless:

- a) the relevant circumstances in the Trusts Act 2019 apply;
- b) the power of attorney contains a deed of delegation which specifically authorises the attorney to act on behalf of the grantor in that capacity; and
- c) it is not restricted by the Trust Deed.

If the document signed by the attorney is to be registered by LINZ, please ensure the power of attorney under which the attorney was appointed is in a registrable form.

For persons authorised under a power of attorney signed overseas by the Customer or Guarantor, the power of attorney must have been witnessed by a Notary Public, using the English language, and the seal of the Notary Public must be attached to the original power of attorney document.

More details about acceptable identification, trusted referees (including offshore trusted referees) and proof of address are available at westpac.co.nz/AML.

Advising Guarantors

Guarantee.

If you are advising a Guarantor that you are unable to meet in person, the Guarantor may have their signature witnessed by an appropriate third party listed below.

If the Guarantor is located:

- a) in New Zealand – the Guarantor’s signature must be witnessed by a New Zealand solicitor or New Zealand Justice of the Peace;
- b) in Australia – the Guarantor’s signature must be witnessed by an Australian solicitor or Notary Public; or
- c) overseas (other than in Australia) – the Guarantor’s signature must be witnessed by a Notary Public.

The Guarantor can also have their signature witnessed by an officer at a New Zealand consulate or embassy in the overseas country where the Guarantor is located.

You must take all reasonable steps that you deem appropriate and necessary in order to provide the Banks with an un-amended Guarantor’s Solicitor’s Certificate as set out in the Deed of Guarantee.

It is your responsibility to ensure there is a full understanding by every Guarantor of the obligations being undertaken and there is no undue influence being exerted on the Guarantor. In particular, if you are also acting on behalf of the Customer, or are in any way associated with the Customer, you should advise every Guarantor that he/she should seek independent legal advice before signing the guarantee because of the Guarantor’s risk of liability under the guarantee.

Every Guarantor should also be advised that, if the Guarantor does not understand the financial risks of guaranteeing the Customer, then the Guarantor should also seek independent financial advice. All costs are for the account of the Customer.

When you do refer a Guarantor to an independent solicitor for advice, please send to that solicitor a copy of these General Instructions and Westpac NZ’s Personalised Solicitors’ Instructions, the guarantee (both for the Guarantor and the counterpart for the Banks), and any other document provided by the Banks for disclosure purposes.

The Banks strongly recommend that each Guarantor takes independent legal advice. However, if any Guarantor declines to take independent legal advice, please advise Westpac NZ and ensure that the “waiver of independent legal advice” form is signed by that Guarantor. In such cases, you will need to provide the advice to the Guarantor and execute the solicitors’ certificate in the guarantee.

Trusts

Where the Customer or Guarantor is a trust, please insert into the Documents (if not pre-populated):

“[the full names of the trustees of the Trust] as trustees of [insert name of Trust] (the “Trust”) constituted by a certain deed of trust dated [insert date] (the “Trust Deed”).”

The Banks’ standard trustee limitation of liability provision is contained in clause 35 of the Deed of Guarantee and Indemnity, clause 5.13 of Memorandum of Mortgage number 2023/4367 and clause 26 of the General Security Agreement and Specific Security Agreement. If the provision is not contained in the relevant loan or security document you should contact the instructing unit of Westpac NZ, which will provide you with details of the appropriate provision for the relevant document. Westpac NZ will not agree to any alternative clause, although you may add, for clarification in respect of any independent trustee of the trust, a clause in the following form:

“For the purposes of clause [insert appropriate clause number] as at the date of this [insert name of document i.e. Agreement, Guarantee, mortgage, deed] [name of trustee] is considered by the trustees to be an independent trustee.”

An independent trustee must have no beneficial interest under the trust deed. Further details of what constitutes an independent trustee are contained in the Banks’ standard trustee limitation of liability provisions.

For any enquiries regarding these Instructions, please contact Lending Services whose details will be provided with each Personalised Solicitors’ Instruction Letter you receive.



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