

**Reprint
as at 12 November 2018**



**Lawyers and Conveyancers Act (Lawyers: Nominee
Company) Rules 2008**

(SR 2008/213)

Pursuant to section 96 of the Lawyers and Conveyancers Act 2006, the New Zealand Law Society, with the approval of the Minister of Justice and after consultation in accordance with section 100 of that Act, makes the following rules.

Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Formation of lawyers nominee company	5
5 Name of lawyers nominee company	6
6 Operation of lawyers nominee company	6
7 Authorities	7
8 Information to be given to investors	8
9 Development mortgages	8
10 Release of securities	9
11 Registration of securities	9
12 Disclosure of association	9
13 Default procedures	9
14 Powers of Law Society in respect of lawyers nominee company	10
15 Merger and amalgamation of practices	11
16 Liquidation of lawyers nominee company	11
17 Notices	12
18 Barrister sole	12
19 Transitional	12

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

The rules are administered by the Ministry of Justice.

Schedule 1	13
Constitution of [name of nominee company] Lawyers Nominee Company Limited	
Schedule 2	17
Application for consent to form lawyers nominee company	
Schedule 3	18
Specific authority for investment in name of lawyer's nominee company	
Schedule 4	20
Specific authority: Information to be given to investors in respect of mortgage	
Schedule 5	22
Information and other matters to be contained in valuation report	

Rules

1 Title

These rules are the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008.

2 Commencement

These rules come into force on 1 August 2008.

3 Interpretation

3.1 In these rules, unless the context otherwise requires,—

Act means the Lawyers and Conveyancers Act 2006

associated person, in relation to a lawyers nominee company, means—

- (a) any director or shareholder:
- (b) any parent or sibling of a director or shareholder:
- (c) any employee of a director or shareholder:
- (d) any spouse, or child of any such director, shareholder, or employee:
- (e) any trustee of any trust of which any such director, shareholder, parent, sibling, employee, spouse, or child is a beneficiary

capital value has the same meaning as in section 2(1) of the Rating Valuations Act 1998

development mortgage means any mortgage or charge over land that is being or is intended to be subdivided or improved or on which buildings or other improvements are being or are intended to be erected, altered or developed

district valuation roll has the same meaning as in section 2(1) of the Rating Valuations Act 1998

improvements has the same meaning as in section 2(1) of the Rating Valuations Act 1998

independent registered valuer means a registered valuer instructed and employed independently of any mortgagor or owner of property to be charged in favour of a lawyers nominee company and who has no relationship with, or interest in or with, the mortgagor or the lawyer acting for the mortgagor that is likely to influence the judgment of the registered valuer

inspector means a person who is appointed by the Law Society to the inspectorate under regulation 24(2) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008

investor means any person who invests or intends to invest money through a lawyers nominee company or who is the legal or beneficial owner of any security

land value has the same meaning as in section 2(1) of the Rating Valuations Act 1998

Law Society means the New Zealand Law Society

lawyer means a person who holds a current practising certificate as a barrister and solicitor but does not include a barrister sole

lawyer attorney and **lawyer trustee** mean and include any of the following persons who act either solely or jointly with any of the following persons as the attorney or agent of an investor or the trustee of trust funds:

- (a) any lawyer:
- (b) any partner, employee, or agent of the lawyer:
- (c) any nominee of the lawyer unless the person is nominated and appointed pursuant to a power or authorisation under statute, order of the court, deed, will, or otherwise:
- (d) the spouse of any person referred to in paragraph (a), (b), or (c):
- (e) any company registered under the Companies Act 1993 (including a lawyers nominee company but not including a company that is a listed issuer) of which the lawyer is a director within the meaning of the Companies Act 1993, or of which the principal financial benefit or effective control is directly or indirectly vested in any 1 or more of the persons referred to in paragraph (a), (b), (c), or (d):
- (f) any other incorporated or unincorporated body (other than a body that is a listed issuer) in relation to which the lawyer occupies a position comparable to that of a director within the meaning of section 2(1) of the Companies Act 1993, or of which the principal financial benefit or

effective control is directly or indirectly vested in any 1 or more of the persons referred to in paragraph (a), (b), (c), or (d)

lawyers nominee company means a company formed and operated by a lawyer pursuant to these rules

listed issuer has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

modified land value means an amount equal to the land value of any land after the deduction of the costs of removal or demolition of any building or improvements on the land

practice means a law practice whether conducted by 1 lawyer, a partnership of lawyers, or an incorporated law firm

registered valuer means a person who is a registered valuer within the meaning of the Valuers Act 1948

responsible lawyer means every lawyer who operates a lawyers nominee company and includes a lawyer who is, or is required by these rules to be, a director or shareholder of the lawyers nominee company

security means—

- (a) any mortgage of land; and
- (b) any other security that a lawyers nominee company is permitted by law to hold

specific authority means—

- (a) an authority in the form set out in Schedule 3, without amendment except as provided for in the form, which, before the investment is made, is properly completed, dated, and signed by the investor or each of the investors making the investment; but
- (b) does not include an authority given by a lawyer attorney or a lawyer trustee unless the authority is given also by some other person who has authority to make the investment and who is not a lawyer attorney or lawyer trustee; and
- (c) where joint investors are acting pursuant to a power or authorisation under statute, order of the court, deed, or otherwise, the specific authority must be signed by each investor

spouse, in relation to a person, includes a civil union partner or anyone who, although not married to the person concerned, lives as that person's wife, husband, or partner on a domestic basis

valuation period means the period within 4 months before the date upon which the written statement required by rule 8 is given to the investor; or if the lawyer acting for the investor is satisfied that there are no matters that, since the date of valuation, have adversely affected the security or would otherwise render the valuation report inaccurate or unreliable in any material respect,

within any longer period not exceeding 1 year as the lawyer considers appropriate

valuation report means a written report relating to land or an interest in land that is, or is to be, charged as security for an advance through a lawyers nominee company and that—

- (a) is prepared and signed by an independent registered valuer; and
- (b) has a date within the valuation period; and
- (c) contains the information and other matters specified in Schedule 5.

3.2 Any reference in these rules to a lawyers nominee company in relation to a lawyer means the lawyers nominee company which that lawyer's practice operates or of which that lawyer is, or is required by these rules to be, a director or shareholder.

3.3 Any reference to or obligation imposed by these rules on a lawyer in relation to a lawyers nominee company extends to and includes all lawyers who operate or are directors or shareholders of that lawyers nominee company.

Rule 3.1 **lawyer attorney** and **lawyer trustee** paragraph (e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Rule 3.1 **lawyer attorney** and **lawyer trustee** paragraph (f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Rule 3.1 **listed issuer**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

4 Formation of lawyers nominee company

4.1 No lawyers nominee company may be formed and registered without the prior written consent of the Law Society to its formation, its proposed name, and its registered office.

4.2 The application for consent must be in the form set out in Schedule 2.

4.3 The Law Society may impose those terms and conditions which it thinks fit in granting consent and may from time to time by notice to the lawyer or lawyers operating or proposing to operate the lawyers nominee company add to, vary, amend, or revoke any such terms and conditions or impose new terms and conditions.

4.4 A lawyers nominee company must have a constitution in the form set out in Schedule 1 and no alteration may be made to the constitution without the written consent or direction of the Law Society.

4.5 No change may be made in the registered office or address for service of a lawyers nominee company without the written consent or direction of the Law Society.

4.6 Each lawyer who operates a lawyers nominee company or who is a principal director or shareholder of a practice which operates a lawyers nominee company must be a director of the company and a majority of the principals or directors of the practice must hold shares in the company.

5 Name of lawyers nominee company

- 5.1 The name of a lawyers nominee company must be approved by the Law Society and the company must not change its name without the approval or direction of the Law Society.
- 5.2 The name of a lawyers nominee company must have a recognisable connection with the practice proposing to operate it and must contain the words “Lawyers Nominee Company Limited” or “Solicitors Nominee Company Limited”.
- 5.3 The decision of the Law Society in respect of any name submitted for approval is final and no appeal lies in respect of the decision.
- 5.4 The Law Society may require a responsible lawyer to cause a lawyers nominee company to change its name to another name nominated or approved by the Law Society.

6 Operation of lawyers nominee company

- 6.1 Each responsible lawyer must take all reasonable steps to ensure that at all times the lawyers nominee company complies with these rules, and all obligations imposed upon a lawyers nominee company under these rules are also personal obligations of each responsible lawyer.
- 6.2 Despite section 16 of the Companies Act 1993, and despite anything contained in its constitution, no lawyers nominee company may carry on any business or do any act, matter, or thing except in accordance with or incidental to the following objects:
- (a) to act as a nominee company holding securities upon a bare trust for investors and as a nominee to lend money:
 - (b) on behalf of investors, to exercise and enforce all or any of the powers, rights, remedies, and benefits conferred by, attaching to, or resulting from or incidental to or consequent upon the holding of a security:
 - (c) on behalf of investors, to buy in at the sale pursuant to any power of sale conferred by any security any property in which the investors have an interest and to resell the property or any part or parts of the property by public auction, private contract, or otherwise and pending the resale to exercise all or any of the rights and powers of an owner and pay and discharge rates and other outgoings in respect of the property and generally manage the same:
 - (d) on behalf of investors, to execute and give all variations, discharges, transfers, instruments, acknowledgements, and other documents and perform all acts and things that may be required in respect of any security held by the company.
- 6.3 A responsible lawyer must ensure that the lawyers nominee company does not carry on business, nor does any act, matter or thing, otherwise than in accordance with or incidental to the objects specified in sub-rule 6.2.

- 6.4 Each responsible lawyer must ensure that the lawyers nominee company complies at all times with the Companies Act 1993 and any amendment or re-enactment thereof and must operate the company strictly in accordance with its constitution, and with these rules.
- 6.5 All costs, fees, and expenses in connection with the formation, registration, licensing, audit, management, operation, and liquidation of a lawyers nominee company must be borne jointly and severally by the directors from time to time, and in the event of liquidation, by the directors at the time of the passing of the resolution to liquidate, and must not be a charge on the company.
- 6.6 If the Law Society appoints a director pursuant to sub-rule 14.1(a), whether in addition to, or in substitution for, any director or directors of a lawyers nominee company, the persons so appointed will be indemnified by the lawyers who were directors of the company immediately preceding the appointment against all costs, claims, expenses, and charges whatsoever arising out of the appointment or office, whether directly or indirectly, and no preceding director is relieved of any liability for which they or any of them would have been responsible had the appointment or appointments not been made.
- 6.7 A responsible lawyer must not give any undertaking, promise, or assurance personal or otherwise and whether in writing or otherwise to an investor that any moneys invested in a security will be repaid before the time or times the moneys are due for repayment in terms of that security unless a definite arrangement has been made for the moneys to be available by the time for repayment so undertaken, promised, or assured, by repayment by the borrower or substitution with moneys of another investor.
- 6.8 A responsible lawyer must not accept an investment in a security held by a lawyers nominee company in respect of which the borrower is in default, whether by way of an additional advance or in substitution for an existing investment or investments in the security, unless full advice has been given to the investor as to the security and as to the nature of the default or defaults and the investor has given express written authority for the investment prior to the investment being made.
- 6.9 A responsible lawyer must not allow the lawyers nominee company to take or hold any security from any associated person.
- 6.10 Nothing in these rules renders a responsible lawyer personally liable to indemnify a lawyers nominee company against any damages, interest, or costs for which that lawyers nominee company becomes liable to any other person.

7 Authorities

- 7.1 A responsible lawyer must not permit an investment to be made in the name of a lawyers nominee company by an investor unless the investment is made in accordance with a specific authority.

- 7.2 Specific authorities must be filed and maintained by the responsible lawyer so as to be readily available for inspection by the responsible lawyer's auditor or a Law Society inspector.

8 Information to be given to investors

- 8.1 Before any investment is made by a lawyers nominee company in accordance with a specific authority authorising investment in a security (not being a development mortgage to which rule 9 applies), the responsible lawyer must ensure that the investor has been forwarded or given—

- (a) a written statement signed by or on behalf of the responsible lawyer containing the information and matters specified in Schedule 4; or
- (b) in respect of securities other than mortgages, a written statement containing particulars of the borrower, the terms of the security, and the value of the security that provides in respect of that security substantially the information that is required by Schedule 4 in respect of mortgages.

- 8.2 If a specific authority refers to a document previously received by the investor that—

- (a) relates to the security in respect of which the investment is to be made; and
- (b) as at the date the specific authority is signed, the document previously received contains all the information and other matters required by sub-rule 8.1(a) or (b), as the case may be,—

then the requirements of sub-rule 8.1(a) or (b) are satisfied.

- 8.3 The Law Society may at its discretion and by general dispensation in respect of a lawyers nominee company vary the period within which the written statements required by this rule must be forwarded or given to investors.

9 Development mortgages

A responsible lawyer must not permit a lawyers nominee company to advance money on the security of a development mortgage where—

- (a) either—
 - (i) the mortgagor is required to apply the whole or part of the principal sum secured, or to be secured by the mortgage towards the costs of subdividing or improving the land, or erecting, altering, or developing any buildings or other improvements on the land, as the case may be; or
 - (ii) the mortgagee retains the whole or part of the principal sum pending the mortgagor effecting the subdivision or improvement of the land, or the erection, alteration, or development of any buildings or other improvements on the land, as the case may be; and

- (b) the amount of the principal sum secured or to be secured by the mortgage, or the aggregate amount of the principal sum secured or intended to be secured by the mortgage and any other mortgages ranking or intended to rank prior to or equally with the mortgage, exceeds two-thirds of the modified land value of the land as set out in a valuation report; and
- (c) the cost of subdividing or improving the land, or erecting or altering, or developing any buildings or other improvements on the land, as the case may be, exceeds 5% of the capital value of the land after completion of the development as stated in a valuation report.

10 Release of securities

- 10.1 No security may be released (whether wholly or partially) before the responsible lawyer receives and holds on behalf of the investors all moneys secured by the security, without the prior written consent of all of the investors or pursuant to dispensation granted by the Law Society under sub-rule 13.6.
- 10.2 Sub-rule 10.1 does not apply to any partial release of a security where,—
 - (a) before the partial release is given, a valuation report has been obtained which states that in the opinion of the independent registered valuer the value of the balance of the land to remain charged after the partial release will provide adequate security for the principal sum secured; and
 - (b) all conditions (if any) stipulated in the security as the conditions upon which partial releases may be given, have been fulfilled.

11 Registration of securities

- 11.1 Each responsible lawyer must ensure that every security which is legally required to be registered is so registered, as soon as practicable after the principal sum secured or any part thereof is advanced.
- 11.2 Without limiting sub-rule 11.1, every mortgage of land granted to a lawyers nominee company must be registered under the Land Transfer Act 2017.

Rule 11.2: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

12 Disclosure of association

If any associated person is a guarantor or indemnifier of the obligations of a borrower under a security, the written statement to be forwarded or given to an investor under rule 8 must disclose the association.

13 Default procedures

- 13.1 Each responsible lawyer must ensure that written notice in accordance with sub-rule 13.3 is given to each investor in a security as soon as is reasonably practicable on the occurrence of any of the following events:
 - (a) default by the borrower for 30 days in payment of—
 - (i) interest; or

- (ii) any part of the principal sum; or
 - (iii) any other moneys due under the security; or
 - (b) any other default by the borrower under the security unless the default does not materially affect the investors or the security.
- 13.2 Default by a borrower in payment of interest, principal, or other moneys due under the security must be notified, notwithstanding that the investors have received payment of the interest or other moneys by a guarantor or indemnifier, or a lawyer.
- 13.3 The notice under sub-rule 13.1 must—
- (a) specify the action the responsible lawyer is taking or proposes to take in respect of the default; and
 - (b) request each investor forthwith to advise the responsible lawyer if the investor does not agree with the action or proposed action specified.
- 13.4 The responsible lawyer must determine the appropriate action to be taken in respect of any default, taking into account (as far as it is reasonable so to do having regard to the responsible lawyer's responsibility to all the investors in the security) the advice or instructions of each investor. Where the advice or instructions from investors conflict, the responsible lawyer must have particular regard to the advice or instructions of those investors who hold a majority in value of the principal sum secured.
- 13.5 In the event of a significant change in the action that a responsible lawyer is taking in respect of a default, where practicable a further notice must be given to investors as provided in sub-rule 13.3.
- 13.6 The Law Society, on the application of a responsible lawyer, may grant such dispensations from this rule upon any condition or conditions that the Law Society in its absolute discretion may think fit to enable or facilitate the responsible lawyer to act to protect the interests of the investors in any security under which the borrower has made default.
- 13.7 Each responsible lawyer must keep the investors reasonably informed as to the progress and results of the action taken by the responsible lawyer.
- 13.8 A responsible lawyer is not in breach of this rule if a default occurs that has not and could not reasonably be expected to become known to the responsible lawyer.

14 Powers of Law Society in respect of lawyers nominee company

- 14.1 The Law Society or a lawyer appointed by the Law Society may from time to time and at any time exercise in respect of a lawyers nominee company any 1 or more of the following powers:
- (a) by notice appoint any person as a director, or remove any director from office and appoint any person as a director in place of the director so removed:

- (b) execute, in the name of any shareholder or of the personal representative of a deceased shareholder, a share transfer in favour of any person, firm, or corporation and require the transfer to be entered in the register of members or share register, as the case may be, of the lawyers nominee company:
- (c) by notice under sub-rule 14.2 require a lawyers nominee company to be liquidated and nominate the person to be appointed liquidator:
- (d) sign, in the name of any shareholder or of the personal representative of a deceased shareholder, those resolutions, notices, appointments, and other documents and do those acts, matters, and things that are, in the opinion of the Law Society or its appointee, necessary to appoint the nominated liquidator and have the lawyers nominee company liquidated.

14.2 Any notice given under sub-rule 14.1(a) or (c)—

- (a) may be given upon those terms and conditions which the Law Society thinks fit and the Law Society upon notice may from time to time vary, amend, or revoke any such terms and conditions or impose new terms and conditions:
- (b) must be given to the lawyers nominee company and to each director of the company.

15 Merger and amalgamation of practices

- 15.1 No lawyer may operate more than 1 lawyers nominee company without the express consent of the Law Society.
- 15.2 The Law Society may impose any terms and conditions it thinks fit in granting consent under sub-rule 15.1 and may from time to time by notice to the responsible lawyer vary, amend, or revoke those terms and conditions.
- 15.3 If 2 or more practices merge or amalgamate their practices, all, or all except 1, of the lawyers nominee companies of the practices must be liquidated within 6 months of the merger or amalgamation or within a longer period authorised by the Law Society and the lawyers of the merged or amalgamated practices must ensure that before any company is put into liquidation, all securities have been transferred to a new lawyers nominee company formed by the merged or amalgamated practice or to a continuing lawyers nominee company.

16 Liquidation of lawyers nominee company

- 16.1 Every responsible lawyer operating a lawyers nominee company must ensure that within the period specified in any notice given by the Law Society pursuant to sub-rule 14.1(c) all resolutions for liquidation are passed and the nominated liquidator appointed.
- 16.2 Notice of the liquidation of any lawyers nominee company must immediately be given to the Law Society by the lawyers who operated the company prior to liquidation.

17 Notices

Any notice by the Law Society to a lawyers nominee company or a lawyer—

- (a) may be comprised in 1 or more documents in writing, fax, email, or other means of communication:
- (b) in the case of a lawyers nominee company, must be addressed to its registered office, and in the case of a lawyer, must be addressed to the lawyer's last known business or residential address:
- (c) will be given if personally delivered to the appropriate address or dispatched by the Law Society by the selected means of communication.

18 Barrister sole

A barrister sole is not permitted to operate or to be a director of a lawyers nominee company.

19 Transitional

- 19.1 These rules replace the Solicitors Nominee Company Rules 1996 which have been revoked by the repeal of the Law Practitioners Act 1982.
- 19.2 Every solicitors nominee company existing at the commencement of these rules and that was subject to the Solicitors Nominee Company Rules 1996, is subject to these rules.

Schedule 1
**Constitution of [name of nominee company] Lawyers Nominee
Company Limited**

r 4.4

1 Interpretation

- 1.1 *Definitions:* In this Constitution, unless the context otherwise requires,—
- Act** means the Companies Act 1993
- Board**, in relation to a company, means—
- (a) the directors of a company who number not less than the required quorum acting together as a board; or
 - (b) if the company has only 1 director, that director
- company** means [name of nominee company] Lawyers Nominee Company Limited
- Law Society** means the New Zealand Law Society
- practice** means a law practice whether conducted by 1 lawyer, a partnership of lawyers, or an incorporated law firm
- regulation** means one of the regulations contained in this Constitution
- rules** means the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008.
- 1.2 *Definitions in Act:* Any expression not defined in this Constitution but defined in the Act has the same meaning in this Constitution as in the Act.
- 1.3 *Construction:* In this Constitution, if not inconsistent with the context,—
- (a) words importing the singular number only include the plural and vice versa;
 - (b) words importing persons include firms, incorporations, and partnerships;
 - (c) headings do not affect the interpretation of this Constitution;
 - (d) reference to a statute includes—
 - (i) amendments to that statute; and
 - (ii) a statute passed in substitution; and
 - (iii) regulations passed under that statute or any of its amendments or under a statute passed in substitution.
- 1.4 *Conflict with rules:* The powers and authorities conferred on shareholders or the board of the company pursuant to this Constitution or the Act are subject in all respects, to the full extent permitted by law, to the powers and authorities vested in the Law Society by the rules. In any case where this Constitution is in conflict with the rules, then the rules prevail.

2 Scope of Constitution

Subject to sub-regulation 1.4, the company, the board, the shareholders and directors of the company each have the rights, powers, duties, and liabilities set out in the Act except to the extent that they are negated or modified in accordance with the Act by this Constitution.

3 Company name

A director on behalf of the board may apply to change the name of the company with the approval of an ordinary resolution and the written consent of the Law Society.

4 Shares

4.1 *One class*: All shares in the company are of the same class and rank *pari passu* in all respects.

4.2 *Issues of shares*: Subject to sub-regulations 4.1 and 4.3, the board may issue shares at any time, in any number and for the consideration that the board determines.

4.3 *Shareholding qualification*: The board may issue shares to any person who is a lawyer. A person who is not a lawyer may not hold shares in the company.

4.4 *No pre-emptive rights*: Section 45 of the Act does not apply to the company and existing shareholders have no pre-emptive rights in respect of the issue of shares.

5 Company may acquire its own shares

The company may, in accordance with sections 58 to 65, 107, and 110 to 112C of the Act, acquire its own shares.

Schedule 1 regulation 5: amended, on 17 September 2008, by section 14(2) of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

6 Transfer of shares

6.1 *Power to refuse or delay*: Subject to regulation 7, the board may in the board's absolute discretion refuse to register any transfer of shares and is not bound to give any reason for the exercise of its discretion.

6.2 *Transferee's qualification*: The board must not approve the transfer of shares to any person who is not a lawyer.

7 Shareholder attorney

A lawyer who has been appointed to act as attorney for any shareholder pursuant to the Lawyers and Conveyancers Act 2006 may execute in the name of the shareholder (or personal representative of that shareholder) a share transfer in favour of himself or herself or any other person qualified to be a shareholder pursuant to this Constitution and may require the same to be entered in the share register.

8 Meeting of shareholders

- 8.1 *Proceedings at meetings:* Subject to sub-regulations 8.2 and 8.3, the provisions of Schedule 1 of the Act govern proceedings at meetings of shareholders of the company.
- 8.2 *Quorum:* If the company has more than 1 shareholder, the quorum for a general meeting is 2 persons holding or representing by proxy not less than 51% of the shares in the company.
- 8.3 *Attorney:* Any shareholder may at any time and from time to time by power of attorney appoint any lawyer to be that shareholder's attorney to attend meetings of the company and on that shareholder's behalf to vote and sign any resolution in writing for the purposes of section 122 of the Act and generally to act for that shareholder in his or her capacity as a shareholder of the company as fully and effectually as such shareholder could do in person.

9 Directors

- 9.1 *Qualification:* Subject to the provisions of this regulation, all lawyers who are members of the relevant partnership or directors of the incorporated law firm must be directors of the company.
- 9.2 *Attorney:* If a lawyer has been appointed to act as an attorney for any lawyer in a sole practice pursuant to the Lawyers and Conveyancers Act 2006, the attorney may remove the lawyer concerned from office as a director and/or appoint himself or herself or any other lawyer as a director in place of the lawyer concerned or as an additional director. Any appointment or removal made under this sub-regulation may be comprised in 1 or more notices in writing served on the registered office of the company.
- 9.3 *Remuneration:* No director is entitled to the payment of remuneration or the provision of other benefits by the company for services as a director.
- 9.4 *Alternates:* Each director has the power to appoint by notice in writing to the company any person (being a lawyer) to act as an alternate director in his or her place during his or her absence or inability to act as a director and each director may at his or her discretion by notice in writing to the company remove such alternate director. The alternate director must whilst acting in place of the director exercise and discharge all the powers, rights, duties, and privileges (including the right to act as chairman) of that director and be subject in all respects to the same liabilities as that director.
- 9.5 *Resignation:* A director must vacate his or her office as director if that director—
- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
 - (b) is disqualified from being or holding office as a director in the company under section 151 of the Act; or
 - (c) ceases to be a lawyer; or

- (d) is removed by the Law Society pursuant to the rules; or
- (e) in the case of a lawyer in sole practice, is removed by his or her attorney pursuant to the power conferred under sub-regulation 9.2.

10 Proceedings of directors

- 10.1 *Schedule 3 will apply*: Subject to sub-regulations 10.2 to 10.5 (inclusive) the provisions set out in Schedule 3 of the Act govern the proceedings of the board of the company.
- 10.2 *Quorum*: The quorum necessary for the transaction of business by the directors may be fixed by the directors and unless so fixed will be such minimum number as constitutes a majority of the directors.
- 10.3 *Interested director*: A director may vote in respect of any contract or arrangement in which the director is interested and if a director does so his or her vote must be counted and the director must be counted in the quorum present at the meeting.
- 10.4 *Sole director*: If at any time there is only 1 director of the company (for whatever reason), that director has and may exercise all powers given to the director or any 2 of them under this Constitution or by law.
- 10.5 *Execution of discharge*: Any resolution authorising execution of discharges, partial discharges, memoranda of satisfaction, consents to entry of memoranda of satisfaction, variations of mortgages and other securities, and memoranda of priority of mortgages must be signed by not less than 2 directors where the number of directors is 2 or more and by the sole director where there is only 1 director.

11 Authority to bind the company

A contract or other enforceable obligation may be entered into by the company in any manner prescribed by section 180 of the Act.

12 Accounts, audit and statutory requirements

The directors must comply and ensure that the company complies with the provisions of the Lawyers and Conveyancers Act 2006, the rules, the Lawyers and Conveyancers Act (Trust Account) Regulations 2008, and any other relevant rules, requirements, or procedures as may be prescribed from time to time by the Law Society.

Schedule 2
Application for consent to form lawyers nominee company

r 4.2

To the New Zealand Law Society

In accordance with the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008, I/we* apply for your consent to—

- (a) my/our* forming a lawyers nominee company:
- (b) the use of the name “[*name of nominee company*] Lawyers Nominee Company Limited”:
- (c) the registered office of the company being at [*address*].

*Select one.

I/We* undertake that the Constitution will be in the form prescribed by the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008.

*Select one.

Date:

Signature:

Name:

Schedule 3

Specific authority for investment in name of lawyer's nominee company

r 3.1

To [*name of law practice*]

I/We* instruct and authorise you to invest on my/our* behalf the sum of \$[*amount*] on security of a [*select from the following those that apply*]

- first mortgage of land or an interest in land
- second mortgage of land or an interest in land
- general security agreement
- other registered security [*indicate nature and priority*]

in accordance with the details given below.

*Select one.

I/We* further instruct you and authorise that the documents of security in respect of the investment be completed in the name of the company set out below, which is entitled as its directors deem appropriate to exercise on behalf of the investors all the rights, powers, and remedies conferred by law including the power to buy in at any sale of the property charged by the security and to be indemnified by the investors proportionately in respect of all costs, claims, and other liabilities arising in relation to the investment.

*Select one.

I am/We are* aware that the company acts as a trustee for myself/us* and other investors (if any) in the security, and that I am/we are* not entitled to call for repayment of my/our* investment during the term indicated below nor for the transfer to my name/our* names of the security or any part thereof nor to direct the officers of the company as to the exercise of their duties and that neither you nor the company accepts any personal liability for delay in repayment of the principal sum or in payment of interest or the non-performance by the borrower of his/her/its* obligations or otherwise than arising from professional duty.

*Select one.

The details regarding the investment are:

Borrower:

Security: [*particulars of property to be charged and nature of security*]

If the security is not a first charge, details of the charge(s) having priority:

Total principal sum to be secured:

Term of security:

Interest:

Other terms:

I/We* acknowledge that I/we* have received a copy of this authority.

†I/We* acknowledge that I/we* have previously received information relating to this investment pursuant to rule 8 of the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008.

*Select one.

†Omit this paragraph if it does not apply.

Name of lawyers nominee company:

Name of investor:

Postal address of investor:

I/We* acknowledge I am/we are* aware that any loss of this investment will not be reimbursed by the Lawyers' Fidelity Fund.

*Select one.

Date:

Signature(s) of investor(s):

Note

This form may not be altered except as provided in this form (*see* the definition of specific authority in sub-rule 3.1 of the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008). However, where the form is used in relation to a contributory mortgage (*see* the Lawyers and Conveyancers Act (Trust Account) Regulations 2008) taken other than through a lawyers nominee company, it may be consequentially amended to the extent necessary.

Schedule 4
**Specific authority: Information to be given to investors in respect of
mortgage**

r 8.1

- 1 The name, address, and occupation/description of each mortgagor under the mortgage.
- 2 The name, address, and occupation/description of any guarantor or indemnifier of the obligations of the mortgagor under the mortgage and a description of the material terms of the guarantee or indemnity, as the case may be.
- 3 The address, legal description (including the mortgagor's estate or interest), and proposed use of the land charged or to be charged by the mortgage.
- 4 If the mortgagor's estate is leasehold, a statement that a copy of the lease is available to the investor free of charge, on request.
- 5 A brief description of any collateral security.
- 6 In relation to the principal sum,—
 - (a) the principal sum secured, or intended to be secured, by the mortgage:
 - (b) the due date for repayment of the principal sum:
 - (c) the terms of any right of early repayment of the principal sum.
- 7 In relation to interest payable under the mortgage,—
 - (a) the rate of interest and any penalty rate payable:
 - (b) the dates upon which payments of interest are due:
 - (c) details of any collection commission or other amounts to be deducted from the interest by the practice:
 - (d) a description of the manner in which payments of interest will be collected from the mortgagor and disbursed to the investor.
- 8 Either—
 - (a) a copy of a valuation report in respect of the land, which includes a recommendation by the registered valuer as to the amount of a loan for which the land provides adequate security prepared and signed by the registered valuer within the period of 4 months before the date upon which the statement is given to the investor; or if the lawyer acting for the investor is satisfied that there are no matters that since the date of the valuation have adversely affected the security or that otherwise would render the valuation report inaccurate or unreliable in any material respect, within such longer period not exceeding 1 year as the lawyer considers appropriate; or
 - (b) particulars of the current valuation on the district valuation roll of the land if the amount of the advance together with any amount secured by

mortgages ranking in priority to the mortgage does not exceed two-thirds of the capital value and if the date of the valuation is within the period of 4 months before the date upon which the statement is given to the investor; or if the lawyer acting for the investor is satisfied that there are no matters that since the date of the valuation have adversely affected the security or that otherwise would render the valuation inaccurate or unreliable in any material respect, within such longer period not exceeding 1 year as the lawyer considers appropriate.

Note

- If a lawyer exercises discretion to rely on a valuation report or valuation on the district valuation roll dated earlier than 4 months before the date upon which the statement is given to the investor, the lawyer invites the investor to rely upon the lawyer's professional judgement and must be prepared to take the responsibility for dispensing with a current valuation.
 - While a valuation report or valuation on the district valuation roll dated not more than 4 months previously will be sufficiently current in most situations, the existence of such a valuation report does not release the lawyer from the lawyer's general duty to exercise professional judgement and care.
- 9 If the mortgage is not to be a first charge, details of any mortgages or other encumbrances that rank, or are to rank in priority to, or equally with the mortgage, including—
- (a) a statement of the ranking in point of security, of each such mortgage or encumbrance with respect to the mortgage; and
 - (b) the maximum principal sum secured or to be secured by each such mortgage or encumbrance in priority to the mortgage; and
 - (c) the term thereof.
- 10 A statement to the effect that a copy of the mortgage will be sent to each investor or the authorised representative of the investor, on request, and without charge.
- 11 If a guarantor or indemnifier of the obligations of the mortgagor under the mortgage is associated with the mortgagor or has any interest in the land charged by the mortgage, a statement to that effect describing the nature of the association or interest.
- 12 If an associated person is a guarantor or indemnifier of the obligations of a borrower under a security, a statement disclosing the association.
- 13 In relation to the sums to be paid to the practice,—
- (a) information about the basis on which the lawyer's fee will be charged; and

- (b) a description and quantification of any sums paid, or to be paid, in connection with the mortgage advance that are in addition to the lawyer's fee in paragraph (a), including the name of the person who has paid, or is to pay, each sum.
- 14 If any information given to the investor by or on behalf of the lawyer includes a statement by an expert, other than a registered valuer within the meaning of these rules, a separate statement, signed by the expert, to the effect that the expert has consented to the statement by the expert being given to the investor, and a statement of the expert's qualifications.

Signature of responsible lawyer:

Schedule 5

Information and other matters to be contained in valuation report

r 3.1

- 1 The name and address of the registered valuer and a brief description of the registered valuer's qualifications.
- 2 A statement that the valuation report is made by the registered valuer as an independent registered valuer within the meaning of sub-rule 3.1.
- 3 The situation, description, and area of the land that is, or is to be, charged as security for the mortgage.
- 4 A list of encumbrances appearing on the record of title for the land as at the date of the valuation report and, if the registered valuer has been instructed by the lawyer or the mortgagor that any of the encumbrances are to be discharged before registration of the mortgage, a statement to that effect.
- 5 The land value and the capital value of the land as shown on the most recent valuation on the district valuation roll of the land and the date of the valuation.
- 6 The present use of the land and, if known to the registered valuer, the proposed use of the land.
- 7 The opinion of the registered valuer as to the land value and the capital value of the land free of encumbrances.
- 8 The nature and value of any improvements situated on the land.
- 9 The basis upon which the valuation is made and any assumptions used in making the valuation.
- 10 If the land is, or to the knowledge of the registered valuer is proposed to be, used for the purpose of producing income, a statement by the registered valuer as to the amount of income that the land can be reasonably expected to produce on an annual basis under conditions prevailing at the time that the report is made.

- 11 The registered valuer's recommendation as to the amount for which the land free of encumbrances provides adequate security for a loan on first mortgage.
- 12 If the registered valuer has been instructed that the land is to remain or become, subject to any encumbrances which will rank in priority to, or *pari passu* with, the mortgage, a statement to that effect, particulars of those encumbrances and the registered valuer's recommendation as to the amount for which the land subject to those encumbrances provides, or would provide, adequate security for a loan on mortgage ranking *pari passu* with, or subject to, them, as the case may be.
- 13 A statement by the registered valuer that—
 - (a) the valuation has been prepared for use by intending lenders; and
 - (b) the registered valuer has consented to the distribution of the report to the intending lenders and that, as at the date of the valuation report, the registered valuer has not withdrawn the consent.
- 14 The date as at which the report is prepared.

Schedule 5 item 4: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Dated at Wellington this 18th day of July 2008.

The Common Seal of the New Zealand Law Society affixed in the presence of:

[Seal]

John Marshall,
President.

C Grice,
Executive Director.

Reprints notes

1 *General*

This is a reprint of the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Land Transfer Act 2017 (2017 No 30): section 250

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69): section 14(2)