



Following the announcement on Monday of the imminent '[Level 4](#)' lockdown on 25 March, the New Zealand Law Society's Property Law Section (PLS) has considered the pressing issue of property settlements at Level 4.

The PLS supports the Government's current endeavours to limit the movement of people, and encourages property lawyers to do what they can to help achieve this end. It remains unclear at the time of writing if property lawyers are providing an 'essential service' under Level 4, following the [Chief Justice's message yesterday](#) on the arrangements for courts following the rise in COVID-19 alert level. The Law Society is seeking clarification regarding what other activity will fall under the definition of essential business, and we are in ongoing discussions with the Minister's office and the Registrar-General of Land.

Unfortunately, the vast majority of transactions due to settle over the next four weeks of Level 4 lockdown will most likely have parties that are not in a position to settle. Even if the prerequisite documentation has been attended to, moving companies will not be operating so vendors will be unable to give vacant possession; equally purchasers will have no means of moving their own furniture. Any such relocation will likely be a breach of the Level 4 lockdown requirements.

Even if property lawyers can continue to operate, there are many factors outside their control that might significantly impact on the practicalities of settlement, such as:

- Key personnel in law firms being in self-isolation
- Clients overseas in isolation who cannot access documents
- Clients unable to sign documents (e.g. elderly clients who might struggle with technology)
- Furniture removal firms unable to operate due to lockdown
- Inability to have services such as electricity/gas etc connected

### **Property Law Section's recommendation**

For these reasons, the PLS recommends using the following clause to amend existing Agreements for Sale and Purchase or Auction Agreements due to settle during the Level 4 lockdown:

**“The parties agree that settlement is hereby deferred to the 10<sup>th</sup> working day after the Government reduces the Covid-19 Level to Level 2 or below, or to such other date as may be mutually agreed. For the sake of clarity neither party shall have any claim against the other in relation to this deferral.”**

Part of the rationale for this recommendation is that it is arguable that ‘days’ for the duration of the ‘Level 4’ status are not ‘working days’ in terms of the Agreement for Sale and Purchase. Irrespective of whether that is subsequently held to be the case, the Property Law Section stands by the above recommendation.

Where other circumstances exist, the parties may mutually agree to adopt alternatives that suit their particular situation. For example, a purchaser may wish to settle to avoid a change in circumstances in the future that may result in a lender reassessing availability of funds. Again, that would require the vendor's agreement.

## **Conclusion**

We recommend that that above approach be adopted, to avoid lengthy arguments and potential litigation. The other major event in recent times that had similar implications was the sequence of Canterbury earthquakes. Experience from that time shows that collegiality and goodwill between parties led to the best outcomes for all concerned until normal business was able to resume. To that end, the Property Law Section asks that practitioners show true consideration to their colleagues, while balancing client interests. The clear message from Prime Minister Jacinda Adern is to "be kind" to one another, and the same applies in our professional dealings during this unprecedented time.

We will provide further updates as any new information comes to hand in this rapidly evolving environment.

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**Property Law Section Chair**

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