

Guidance note for property settlements during the Level 4 lockdown period

At 11.59pm on Wednesday, 25 March 2020, New Zealand moved into Alert Level 4 as a response to the novel coronavirus, Covid-19, putting almost everyone in lockdown and leaving many with uncertainty in respect of property settlements that are scheduled to take place within the next four weeks.

The situation

Settlements of residential property typically involve activities that are not considered an essential business, including the activities of furniture moving businesses, therefore relocation is likely a breach of the Alert Level 4 lockdown. Most, or at least many parties, will not be in a position to settle sale and purchase transactions for various reasons, including:

- individuals may lack access to digital signing software / technology and therefore be unable to access and execute the necessary documentation for settlement to take place;
- purchasers will be unable to attend pre-settlement property inspections;
- vendors may not be able to deliver vacant possession on settlement if they occupy the property
- purchasers will have limited means of organising relocation (as furniture moving businesses will not be operational) and relocation is likely considered a breach of the lockdown requirements;

- purchasers may not be able to have essential / vital services connected such as electricity and gas
- if a settlement takes place during the lockdown and the purchaser intends to relocate after the lockdown is lifted, it is unlikely that the purchaser will be able to obtain insurance for an unoccupied property. For the property to be insured, insurers tend to require unoccupied property to be checked inside and out once a week, the property to be tidy, mail collected, and all power and water turned off, all of which cannot be achieved during the lockdown.

The lockdown will not preclude all settlements from taking place. For instance, residential and commercial settlements where the property will remain tenanted before and after settlement, forestry and agricultural acquisitions, and rural property settlements will be affected to a lesser degree.

Guidance from the PLS

The New Zealand Property Law Society's Property Law Section (PLS) have recommended, as a starting point, that parties should endeavour to amend existing agreements for sale and purchase so that settlement is deferred to the date that is ten working days after the Government has reduced the Alert Level to Level 2 or below, or at another time mutually agreed by the parties, on the basis that neither party has the right to any legal action against the other in relation to such deferral.

The above arrangement will not be suitable for all agreements, bearing in mind that practically it would not be ideal for every affected settlement in New Zealand to be deferred to take place simultaneously on one date. We advise discretion and flexibility in seeking a deferral of the settlement date.

Another consideration is that the Government may alter the Alert Level in certain regions at different times so any variations to agreements should stipulate the

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specific location to which the relevant Alert Level applies. Further, the Government could at any time increase the Alert Level after it reaches Level 2 or below, reintroducing limitations on movement or a new lockdown – this could cause issues if the settlement date has been triggered prematurely. The freedom of movement and restrictions at each Alert Level are not set in stone, and may also change over time as required.

Want to know more?

If you have, or are considering entry into, a conditional or unconditional agreement and have questions around how Alert Level 4 will affect you, please get in touch with our [Commercial Property](#) Team. While our team members are all working from home from different bubbles during the lockdown, we are continuing to stay connected with our clients during these extraordinary circumstances and are available to assist.