

ASB to ASB Settlement Protocols

("settlement protocols")

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Notes:

- A. *These settlement protocols supplement the Property Transactions and E-dealing Practice Guidelines July 2012 (updated April 2015) issued by the Property Law Section of the New Zealand Law Society ("PTEPG"). These protocols are in no way a replacement or substitution for the contractual terms of any agreement for sale and purchase, unless variation from the PTEPG has been agreed in writing between the lawyers. Reversion to the PTEPG should occur immediately should these settlement protocols (being substitutions and variations to certain PTEPGs) prove unworkable.*
- B. *Use these settlement protocols only where both lawyers are capable of completing direct credit batch transactions through ASB Bank Limited ("**ASB**") FastNet Business. Should either or both lawyers not have access to ASB FastNet Business via Internet banking, both lawyers must note the greater risk involved and satisfy themselves via their ASB Relationship Manager that they are able to provide the undertakings required.*
- C. *These ASB settlement protocols replace clauses 6.6 to 6.14 of the PTEPGs. The remaining PTEPG clauses are not varied or substituted by these ASB settlement protocols.*
- D. *If both lawyers agree, these settlement protocols may be used for the settlement of other transactions such as advancing of money on mortgages and/or other securities or for the repayment of mortgages and/or other securities.*

When you act for the vendor:

- 6.6 Agree with the purchaser's lawyer that settlement can be effected between the vendor's lawyer and the purchaser's lawyer by ASB Fastnet Business and on the basis of these ASB settlement protocols, in which case send the purchaser's lawyer:
- a. written confirmation that settlement will be completed by ASB Fastnet Business;
 - b. a request for the purchaser's lawyer to agree in writing that:
 - i. they will complete the remote settlement process strictly in accordance with these settlement protocols;
 - ii. service of the notice of payment by the purchaser's lawyer occurs when the notice is actually received;
 - iii. compliance with the PTEPG (as varied or substituted by these settlement Protocols) is an essential term of the relevant agreement for sale and purchase unless further variation is agreed by both lawyers in writing; and
 - iv. any material variation from the PTEPG (as varied or substituted by these settlement protocols), without agreement in terms of 6.6 b. iii. above will entitle the vendor to decline to accept the purchaser's payment in settlement.
 - c. an encoded deposit slip or details of your ASB trust account, together with any details that must be included in the electronic transfer to enable the payment to be identified. The vendor's lawyer must provide the purchaser's lawyer with appropriate reference details to include in the ASB Fastnet Business payment reference to enable the vendor's lawyer to cross-check the payment against their ASB trust account details.
 - d. Your undertaking that:
 - i. any relevant documents are in your possession or control, or will be on settlement;
 - ii. you have pre-validated, certified and signed the instruments to which your client is a party in the e-dealing created for the transaction in your capacity as lawyer for the vendor and you will not withdraw or alter the instruments or any other instrument in the e-dealing prior to their release;
 - iii. on receipt of confirmation of payment of the settlement funds in accordance with these settlement protocols you will:
 - immediately release the instruments (subject only to the qualification in paragraph iv.);
 - not prevent or reverse the release of any instruments or withdraw any instruments after their release;
 - send to the purchaser's lawyer any relevant documents;
 - promptly authorise the release of any keys, electronic door openers and security codes; and
 - if the e-dealing is rejected or requisitioned, assist in relation to the instruments you signed and certified and take all reasonable steps within your control to correct the instruments so that registration is completed as soon as possible.
 - iv. where circumstances beyond your control result in a delay in the release you will:
 - advise the purchaser's lawyer of the delay and the cause of the delay;
 - take all available steps to effect the release as soon as possible; and
 - not disburse any of the settlement funds until the release has been effected, unless the delay is occasioned by matters solely within the control of the purchaser's lawyer or the purchaser.
 - e. Copies of any other documents required for settlement.
- 6.7 As soon as you receive confirmation of payment of settlement funds to your ASB trust account you must release the relevant instruments and send to the purchaser's lawyer by a method to be agreed any relevant documents for settlement purposes.
- 6.8 You must also authorise the release of any keys, electronic door openers and security codes.

When you act for the purchaser:

6.9

- a. Advise the vendor's lawyer in writing that you agree to settle by ASB Fastnet Business in accordance with these ASB Settlement Protocols.
- b. If you consider it appropriate, advise the vendor's lawyer when you are ready to settle. You should first have the amount required to settle in cleared funds in your ASB trust account (refer to the PTEPG Guidelines 3.49).
- c. You must then:
 - i. initiate the electronic transfer of funds by ASB Fastnet Business in accordance with these ASB settlement protocols. You must include the following essential terms:
 - A. the amount of the payment;
 - B. the ASB trust account into which the payment is being made;
 - C. the vendor's lawyer's name; and
 - D. the reference details as supplied by the vendor's lawyer.
- d. You must then provide to the vendor's lawyer a written undertaking along the following lines as soon as the electronic transfer has been made:

Settlement _____ **to** _____

I/We personally undertake that in settlement of the above transaction:

- *I/we have instructed ASB Bank Limited (**ASB**) at _____ am/pm today to pay to your ASB trust account the sum of \$_____ by ASB FastNet Business; and*
- *that the payment is from cleared funds in my/our ASB trust account and I/we will not cancel or change the payment instructions in any respect.*

I/We attach a copy of the ASB batch proof sheet confirming the payment.

(Name of firm) per

_____ *Authorised signatory (or as required by the vendor's lawyer).*

Communication Method

- e. Undertakings must be in writing and will bind your firm without any other confirmation in writing. Undertakings should be sent by an agreed method of communication. Should agreement between the parties not have been reached, undertakings should be sent by email to the person or persons in the vendor's lawyer's firm with whom the purchaser's lawyer has been dealing in the transaction.
- f. Settlement will be treated as having been made on the date and at the time when the vendor's lawyer receives both:
 - i. written confirmation of the payment from the purchaser's lawyer; and
 - ii. an ASB FastNet Business batch report displaying a "Fully Processed" status and an online verification (completed by the vendor's lawyer) to confirm funding has been received into the vendor's lawyers nominated ASB trust account.
- g. If, for any reason (including technical reasons), a batch report is not displayed (or you are unable to keep a record of a batch report) or if you are unable to send confirmation of payment by fax, email or any other agreed method of written communication, then you should contact the vendor's lawyer immediately by some other means (e.g. by telephone) to advise that the payment has been made. It will be for the vendor's lawyer to decide whether to accept as satisfactory evidence of payment such alternative confirmation as you are able to provide pending receipt of a batch report or the transmission of your fax or email or the completion of any other method of communication agreed.

When you act for the purchaser - continued:

- h. Subject always to the provisions in the relevant agreement for sale and purchase, ASB FastNet Business is available for late settlements agreed by the lawyers to occur later than 4pm on the date of settlement. A late settlement is one that occurs between 4pm and 7pm on the date of settlement and can be achieved using these settlement protocols provided both lawyers and their respective clients agree. The purchaser's lawyer must confirm to the vendor's lawyer in writing, in addition to these ASB settlement protocols above, by no later than 3pm on the date of settlement, that:
 - i. they have agreed the late payment through their ASB Relationship Manager; and
 - ii. the funds to be remitted electronically through ASB FastNet Business are within the purchaser's lawyer's firm's approved funding limits.

The purchaser's lawyer must obtain agreement to perform the late settlement and/or exceed the firm's usual payment limits from their ASB Relationship Manager by no later than 3pm on the date of settlement.

Where the delay with settlement only becomes apparent to the purchaser's lawyer after 4pm on the date of settlement, the purchaser's lawyer must obtain the agreement as stated above and provide the confirmation in writing to the vendor's lawyer by 5pm.

Generally:

- 6.10 These ASB settlement protocols may be followed for the settlement of other transactions (e.g. relationship property settlements, mortgage advances and repayments) if both parties agree and can make payment by ASB Fastnet Business.
- 6.11 Payment should include any additional interest that may be payable in terms of the agreement to cover the period up to the time at which the confirmation of payment is actually received by the vendor's lawyer. As a matter of courtesy and co-operation, the purchaser's lawyer must endeavour to complete settlement as early on the date of settlement as is reasonably practicable in the circumstances.
- 6.12 You must comply with the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008*. In particular, rule 10.6 if you make an incorrect payment to a lawyer. See also rules 10.4 and 10.5 of those rules.
- 6.13 Documents sent to the vendor will be at the purchaser's risk in transit.

NOTE: Accordingly, ASB confirms that direct credit payments processed using ASB FastNet Business from a lawyer's nominated ASB trust account to another lawyer's nominated ASB trust account are sent as cleared funds and are irrevocable, subject always to technical system failure or error on ASB's part. If such a technical system failure or error is identified, ASB will immediately reverse such payment and notify both the lawyers. In such an event, both lawyers should complete the settlement as provided for in PTEPG Guideline 6.6a.

Keep in touch



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