

# New requirements for lawyers offering contributory mortgages

## Background: Securities Act/NZLS regime

Offers of contributory mortgages made by contributory mortgage brokers who are not lawyers are regulated under the Securities Act (Contributory Mortgage) Regulations 1988 (**Regulations**). The Regulations exempt brokers from certain disclosure and governance requirements, under the Securities Act 1978.

The Securities Act (Contributory Mortgage – Solicitors and Incorporated Law Firms) Exemption Notice 2013 (**Exemption Notice**) exempts lawyers (subject to conditions) who act as contributory mortgage brokers, from compliance with the Regulations. The conditions in the Exemption Notice provide lawyers with a separate compliance regime under New Zealand Law Society (**NZLS**) rules and regulations pursuant to the Lawyers and Conveyancers Act 2006 (**NZLS regime**)<sup>1</sup>. The Exemption Notice expires on 30 September 2016. From that date, the NZLS will cease to supervise lawyers who act as contributory mortgage brokers and the FMA will assume responsibility for supervising all contributory mortgage brokers.

## Your options during transition

Since 1 July 2014, all lawyers and incorporated law firms operating under the Exemption Notice have been required to register as a financial service provider on the financial service providers register<sup>2</sup>.

Since 1 December 2014 lawyers have been able to elect to offer contributory mortgages under the Financial Markets Conduct Act 2013 (**FMC Act**), or under the NZLS regime or under the Regulations. Lawyers are able to continue to offer contributory mortgages under the NZLS regime until the Exemption Notice expires on 30 September 2016. Thereafter, contributory mortgages can be offered in accordance with the Regulations until 30 November 2016<sup>3</sup>. This means that lawyers offering or managing contributory mortgages, after 30 September 2016 must comply with the Regulations (unless such mortgages are offered under the FMC Act). The Regulations require brokers to be registered as a broker, have an auditor and carry on business through a nominee company with a trust account<sup>4</sup>.

From 1 December 2016 all **new** offers of contributory mortgages **must** be made under the FMC Act. However, contributory mortgages issued prior to 1 December 2016 may continue to be managed under the Regulations until they are cancelled, redeemed, forfeited or the obligations under them are discharged.<sup>5</sup>

<sup>1</sup> Section 6(1) of the Securities Act (Contributory Mortgage-Solicitors and Incorporated Law Firms) Exemption Notice 2013

<sup>2</sup> Section 6(2) of the Securities Act (Contributory Mortgage-Solicitors and Incorporated Law Firms) Exemption Notice 2013

<sup>3</sup> Clause 7 of Schedule 4 of the FMC Act

<sup>4</sup> Regulation 9 of the Securities Act (Contributory Mortgage) Regulations 1988

<sup>5</sup> See clause 53 of Schedule 4 of the FMC Act - <http://www.legislation.govt.nz/act/public/2013/0069/latest/DLM4702346.html>.



The NZLS and the FMA are working together to transfer information currently held by NZLS pursuant to its role as supervisor. From 1 October 2016 the FMA will supervise all contributory mortgage brokers.

### New offers under the FMC Act regime

New offers of contributory mortgages must be made under the FMC Act from 1 December 2016. The FMC Act does not contain specific provisions for dealing with contributory mortgages. Instead brokers will need to develop equivalent offers of financial products or services under the FMC Act. For example:

- setting up a Managed Investment Scheme - this will require a licensed manager and independent licensed supervisor who hold the scheme property. Schemes will also need to be registered
- offering debt securities - this will require an independent licensed trustee
- operating a peer-to-peer lending service.

Financial products and/or services provided under the FMC Act are subject to the disclosure and governance requirements set out in the FMC Act.

### Frequently asked questions

#### What are the key dates I need to remember?

<b>1 July 2014</b>	All lawyers offering contributory mortgages must be registered on the financial service providers register.
<b>1 December 2014</b>	New contributory mortgages may be offered under the FMC Act. However contributory mortgages may also be offered under NZLS regime, or under the Regulations.
<b>30 September 2016</b>	The Exemption Notice expires and the NZLS regime no longer applies. All brokers who continue to offer contributory mortgages must comply with the Regulations. New contributory mortgages may be offered under the Regulations or under the FMC Act.
<b>1 October 2016</b>	The FMA assumes responsibility for supervising all contributory mortgage brokers.
<b>1 December 2016</b>	All brokers who offer <b>new</b> contributory mortgages must comply with the FMC Act. Any contributory mortgages established prior to this date may continue to operate under the Regulations.



### **Will there be new exemptions for lawyers?**

No, the FMA will not grant any new exemptions from the Regulations in respect of contributory mortgages operating after 30 September 2016.

Likewise, there will be no exemption granted to lawyers (or other contributory mortgage brokers) under the FMC Act regime.

### **I don't want to operate under the Regulations after 30 September 2016 - what are my options?**

If you do not wish to manage contributory mortgages under the Regulations you must, prior to 30 September 2016, either:

- cease operations (i.e. redeem, transfer or sell all mortgages); or
- re-offer your contributory mortgages under the FMC Act.

### **Can I manage my existing mortgages under the Regulations and offer new mortgages under the FMC Act?**

Yes, however in doing so you will need to comply with two different compliance regimes.

### **Start planning now**

We encourage you to plan and be ready for the end of the NZLS regime on 30 September 2016. Plan what you need to do to ensure you can meet your requirements under the Regulations and/or the FMC Act.

### **Where can I find more information?**

For more general information about the FMC Act, visit our website [www.fma.govt.nz](http://www.fma.govt.nz). You can also subscribe to receive FMA Updates for the latest news.