

**WESTERN LAW SOCIETIES
CONVEYANCING PROTOCOL
(MANITOBA)**

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PART A: PURPOSE OF THE PROTOCOL

The Western Law Societies Conveyancing Protocol is a joint initiative of the Law Societies of Manitoba, Saskatchewan, Alberta and British Columbia. The project was mandated to respond to the many changes in the residential conveyancing and financing marketplace within which Lawyers provide legal services to the public. The Protocol contemplates a new conveyancing practice, which is designed to expedite the residential mortgage process for lenders, to ensure consumers have continued access to independent legal advice, and to preserve the integrity of the Torrens land titles system and survey fabric in Western Canada.

Each Law Society has developed a real estate conveyancing Protocol which is tailored for use in that Province. The Protocols reflect jurisdictional differences in law and procedure, but are consistent in their fundamental purposes, which are:

1. to allow for the release of Mortgage proceeds and other purchase funds on Closing, for the mutual benefit of Purchasers, Vendors and Mortgagees (Since existing conveyancing practices in British Columbia effectively achieve this, the Protocol of that Province does not address funding issues.);
2. to encourage the continued exercise of due diligence by Purchasers in survey matters; and
3. to enable Lawyers to satisfy the unique security requirements of Mortgagees without obtaining a current Building Location Certificate.

The Protocol prescribes enhanced standards of conveyancing practice, which will result in better service for clients and loss prevention for Lawyers. In addition, the existing professional liability insurance coverage afforded to all Manitoba Lawyers will protect against two new types of claims, namely:

- a) claims resulting from actual loss to a Purchaser due to an intervening Registration which impairs the Purchaser's Title; and
- b) claims resulting from actual loss to a Mortgagee:
 - (i) due to an intervening Registration which takes priority over the Mortgage; or
 - (ii) due to a Survey Defect which was unknown at the date of advance but which would have been disclosed by an up-to-date Building Location Certificate or Zoning Memorandum.

In any of the above occurrences, where a claim is paid by the Professional Liability Claims Fund:

- (a) no deductible will be payable by the insured Lawyer; and
- (b) the payment will not be considered as a "Paid Claim" for purposes of future surcharges or graduated deductibles,

provided that the Lawyer has adhered to the practices prescribed by the Protocol.

Where a claim is paid by the Professional Liability Claims Fund as a result of a Vendor's failure to attend to payment of the final water account:

- (a) the deductible payable by the insured Lawyer will be reduced to \$1,000.00; and
- (b) the payment will not be considered as a "Paid Claim" for purposes of future surcharges or graduated deductibles,

provided that the Lawyer has adhered to the practices prescribed by the Protocol.

The usual insurance implications will apply to claims arising from any other error or omission.

PART B: HOW TO USE THE PROTOCOL

1. APPLICATION OF THE PROTOCOL

The Protocol details the minimum responsibilities of Lawyers in the context of a typical residential real estate transaction which involves a new mortgage financing.

The Protocol only applies to transactions or financings involving existing residential properties under the Torrens land titles system, including condominium units and multi-family dwellings containing four or fewer units. The Protocol **does not apply** to:

- (a) properties the title to which has not been brought under the provisions of *The Real Property Act (Manitoba)*;
- (b) properties newly-constructed or substantially renovated in the immediately preceding 40-day period;
- (c) transactions involving the registration of a plan of subdivision;
- (d) commercial properties, farmlands, or multi-family dwellings containing more than four units; or
- (e) transactions in which, by the terms of the parties' agreement, the Protocol closing procedure would be inappropriate.

The nature of each particular transaction and the specific instructions received from the client will govern the lawyer's duty. Lawyers are advised to obtain confirmation of instructions in every case.

Where a purchase transaction does not involve mortgage financing, the Protocol Closing procedure may still be used. In such circumstances, those Protocol provisions relating to the Purchaser's Mortgage or the requirements of the Purchaser's Mortgagee may simply be disregarded. Conversely, the Protocol procedure may be used on mortgage refinancings, in which case only those provisions relating to the Mortgage or the Mortgagee's requirements (as detailed in Part F) will apply.

2. SCOPE OF THE PROTOCOL

This Protocol prescribes the essential conditions precedent to the issuance of a Solicitor's Opinion and the release of mortgage proceeds or other purchase funds before registrations. Its focus is on practice and procedure, rather than on substantive law. It is not intended and should not be read as a comprehensive statement of the duties of a Lawyer when acting on the purchase, mortgage or sale of residential real estate. All steps otherwise required to meet current conveyancing practice standards (except to the extent inconsistent with the Protocol) must still be taken.

3. STRUCTURE OF THE PROTOCOL

The essential substance of this Protocol is contained in Part D (pages 10 to 17) and Part E (pages 18 to 27), which detail the steps to be taken by each of the Vendor's Lawyer and the Purchaser's Lawyer, respectively, in the context of a Closing under the Protocol. Parts D and E operate independently of one another; that is, the Lawyer acting for one party to a residential transaction need only refer to one of the Parts for a complete account of that Lawyer's obligations under the Protocol. Provisions relevant to both Lawyers (for example, due diligence investigations to be conducted on behalf of each party, and trust conditions to be imposed and accepted by the respective Lawyers) are contained in each of those Parts. Part F details the steps (excerpted from Parts D and E) to be taken by the Lawyer acting on a Mortgage refinancing alone.

Parts D, E and F prescribe the minimum standards of conveyancing practice for transactions which are to involve the issuance of the Solicitor's Opinion and the release of Mortgage proceeds or other purchase funds before registrations. Again, those sections are not exhaustive accounts of a conveyancing Lawyer's duties to a Vendor, a Purchaser or a Mortgagee. The Lawyer still owes the broader duties of care defined by the standards of prudent practice, the scope of the retainer and the instructions of the client.

Part C contains definitions of all capitalized terms used in this Protocol.

Following Parts A to F are six Schedules, which contain the forms of various documents contemplated under the Protocol.

Schedule I is the Solicitor's Opinion. This is a prescribed form and must not be modified, except as contemplated in the document.

Schedule II consists of a Memorandum of Trust Conditions, which is designed to simplify the process of settling Lawyers' trust conditions and undertakings on a Protocol Closing. The Memorandum of Trust Conditions (or select conditions from it) may be incorporated by reference into the Lawyer's trust letter, thereby minimizing the Lawyers' disagreements over trust conditions. Schedule III contains sample trust conditions which illustrate the manner in which the Memorandum of Trust Conditions may be incorporated into trust letters.

The remaining Schedules comprise the following:

- Schedule IV: Sample Powers of Attorney (formerly but no longer a requirement under the Protocol)
- Schedule V: Sample Declaration as to Possession
- Schedule VI: Sample Acknowledgement (for use when a current Building Location Certificate and Zoning Memorandum are not being obtained)

As indicated, these documents are sample precedents only, and may be customized to suit the circumstances of the transaction. Note, though, that variations from these scheduled forms must still conform to the essence of the documents contemplated by the Protocol. The Declaration as to Possession, in particular, requires that certain representations "or comparable variations

thereof” be included in every Declaration delivered under the Protocol. Likewise, whatever the form of trust conditions imposed and accepted by a Lawyer on a Protocol Closing, the substance of those conditions should reflect the requirements set out in the Protocol.

PART C: DEFINITIONS

In this Protocol:

- a) “Agreement” means the agreement of purchase and sale made between the Vendor and the Purchaser in relation to the Land;
- b) “Building Location Certificate” means a building location certificate and sketch prepared by a qualified Manitoba Land Surveyor in relation to the Land;
- c) “Closing” means the consummation of the transaction of purchase and sale in accordance with the terms of the Agreement or, in the case of a Mortgage refinancing, the advance of funds under the Mortgage;
- d) “Declaration as to Possession” means a statutory declaration respecting matters of title to and use and occupation of the Land, and including the declarations prescribed under Schedule V of this Protocol;
- e) “Discharge” means a discharge of Registration in the form prescribed by *The Real Property Act*, R.S.M. 1988, c. R30;
- f) “Duplicate Title” means a duplicate certificate of title to the Land issued by the Land Titles Office pursuant to Section 52 of *The Real Property Act*, R.S.M. 1988, c. R30;
- g) “Institutional Lender” means any bank, insurance company, trust and loan company, credit union, caisse populaire, or other institution which is regulated pursuant to federal or provincial legislation governing financial institutions;
- h) “Land” means all of the land and premises agreed to be sold by the Vendor to the Purchaser pursuant to the Agreement or, in the case of a Mortgage refinancing, all of the land and premises agreed to be mortgaged by the Mortgagor to the Mortgagee pursuant to the Mortgage Commitment;
- i) “Land Titles Office” means the Land Titles Office for the Manitoba district in which the Land is situate;
- j) “Lawyer” means a member of The Law Society of Manitoba or another lawyer who is entitled to practise in Manitoba;
- k) “Mortgage” means a mortgage in the form prescribed by *The Real Property Act*, R.S.M. 1988, c. R30 that is or is intended to be registered in the Land Titles Office as a charge on the Land;
- (l) “Mortgage Commitment” means the agreement under which the Mortgagee has agreed to loan funds to the Mortgagor on security of a Mortgage;

- m) “Mortgagee” means the owner of a Mortgage and, if more than one, includes each of such persons;;
- n) “Mortgagor” means the grantor of a Mortgage in favour of the Mortgagee and, if more than one, includes each of such persons;
- o) “Municipality” means the local government of the city, town or other municipal designation of the community in which the Land is situate;
- p) “Non-Permitted Registration” means a Registration on Title to the Land which, by the terms of the Agreement, the Vendor is obligated to discharge from Title or, in the case of a Mortgage refinancing, a Registration on Title to the Land which the Mortgagor is required to discharge by the terms of the Mortgage Commitment;
- q) “Order to Pay” means an irrevocable written authorization and direction to the Lawyer, detailing the manner in which funds are to be disbursed;
- r) “Permitted Registration” means a Registration on Title to the Land which, by the terms of the Agreement, the Purchaser has agreed to accept or assume or, in the case of a Mortgage refinancing, a Registration on Title to the Land which the Mortgagee agrees to accept in priority to its Mortgage;
- s) “Purchaser” means the person who has agreed to purchase the Land from the Vendor pursuant to the Agreement and, if more than one, includes each of such persons;
- t) “Registration” means any Instrument relating to a dealing with the Land or creating a mortgage, encumbrance or lien thereon, or evidencing title thereto, as registered in the Land Titles Office;
- u) “Registration Details Application” means the prescribed form of application to be submitted with documents which are to be registered in the Land Titles Office;
- v) “Solicitor’s Opinion” means the opinion on the Mortgage in the form attached as Schedule I to this Protocol, to be issued by the Lawyer prior to the advance of Mortgage proceeds;
- w) “Spouse or Common-Law Partner” means a spouse or common-law partner having homestead rights in the Land under *The Homesteads Act*, S.M. 1992, c. 46, C.C.S.M. c. H80;
- x) “Statement of Adjustments” means a statement of the adjustments to and the manner of payment of the purchase price, as prescribed by the Agreement;
- y) “Survey Defect” means any encroachment over a boundary or into a required yard or any other circumstance relating to the location of structures or improvements on the Land or

adjoining properties, which may have an adverse effect on the marketability, use or enjoyment of the Land or the Mortgagee's interest in the Land;

- z) "Title" means title to the Land, as registered in the Land Titles Office;
- aa) "Transfer" means a transfer of the Land in the form prescribed by *The Real Property Act*, R.S.M. 1988, c. R30;
- bb) "Vendor" means the person who has agreed to sell the Land to the Purchaser pursuant to the Agreement and, if more than one, includes each of such persons;
- cc) "Zoning Memorandum" means a zoning memorandum issued by the Municipality in relation to the Land; and
- dd) Any capitalized term not otherwise defined herein shall have the meaning ascribed to it under *The Real Property Act*, R.S.M. 1988, c. R30.

PART D: DUTIES OF THE VENDOR'S LAWYER

Following are the essential steps to be taken, and conditions to be satisfied, by the Vendor's Lawyer in a transaction involving the issuance of a Solicitor's Opinion and the release of mortgage proceeds or other purchase funds before the Transfer and the Mortgage have been registered.

Before Closing

1. Conduct a Title Search

- a) Confirm that Title information (as to registered ownership, legal description and Registrations) conforms to the terms of the Agreement and the information provided by the Vendor. If there is any issue as to whether the Title encompasses all but only the Land agreed to be sold, conduct further investigations by review of registered plans and the Building Location Certificate, through discussions with the Vendor and, if necessary, in consultation with a Manitoba Land Surveyor.
- b) Obtain a copy of any Registration which is not, on its face, clearly either a Permitted Registration or a Non-Permitted Registration.
- c) If Title is not encumbered by a Mortgage, determine whether the Duplicate Title is on deposit at the Land Titles Office. If not, obtain the Duplicate Title from the Vendor. If the Duplicate Title has been lost or destroyed, prepare the form of affidavit prescribed by the Land Titles Office for attachment to the Transfer. Ensure that the affidavit is properly sworn by all registered owners of the Land.
- d) Confirm that the Transfer will not require subdivision approval (i.e. that the Land to be conveyed is either all of the land legally described on the Title or the whole of a lot on a plan of subdivision, or is otherwise capable of conveyance without subdivision approval), and that no other consents or governmental approvals are required.

2. Analyze all Registrations against "exceptions from title" provisions of the Agreement

- a) Classify each Registration as either:
 - (i) a Permitted Registration, which will remain on title; or
 - (ii) a Non-Permitted Registration, which must be discharged on or before Closing.
- b) Confirm with the Purchaser's Lawyer the Registration classification.

3. Settle the Terms of Discharge for all Non-Permitted Registrations

- a) Before Closing, obtain a registrable Discharge (on satisfactory conditions) of each non-monetary Non-Permitted Registration.
- b) For each monetary Non-Permitted Registration to be paid-out on or before Closing, obtain a pay-out statement specifying the balance required to obtain a Discharge. Verify that the sale proceeds will be sufficient to satisfy all pay-out requirements. If not, arrange to obtain from the Vendor the excess funds necessary to obtain all required Discharges.
- c) Where encumbrancers are Institutional Lenders, ensure pay-out statements are:
 - (i) current;
 - (ii) in writing;
 - (iii) clear and unequivocal; and
 - (iv) addressed to the party or Lawyer who will be relying on them.
- d) Where encumbrancers are other than Institutional Lenders, arrange either:
 - (i) to receive the Discharge, or to have the Discharge unconditionally delivered to another Lawyer, before Closing, in trust on the undertaking that the Discharge shall be registered when the agreed pay-out amount has been delivered to the encumbrancer, but not before; or
 - (ii) for the Vendor to obtain interim financing to pay-out and obtain a Discharge before Closing.

4. Other Investigations

- a) Realty Taxes - Confirm the status of realty taxes. Ensure that sufficient sale proceeds or other funds will be available to satisfy all outstanding arrears and penalties, as well as the Vendor's share of current taxes not yet due.
- b) Utilities and other accounts
 - (i) Confirm the status of any utility or other account capable of forming a lien on title.
 - (ii) Confirm that an actual reading of the Vendor's water meter has been submitted to the Municipality in the preceding month. It is recommended (though not required) to have the Vendor state the current water meter reading and acknowledge the obligation to pay the final water account to

the Closing Date, in the Declaration as to Possession. If the last reading occurred more than one month previously, arrange to have an actual water meter reading conducted and submitted to the [Municipality](#), and to have the account issued and paid, on or before the Closing.

- (iii) Instruct the Vendor that the final water account reading is to be taken and submitted to the Vendor's Lawyer [or to the Municipality \(as the Lawyer directs\)](#) on or immediately before the Closing date. [Instruct the Vendor that it remains his or her obligation to pay the final water account after the Closing Date. Arrange for payment of the final water account either by the Vendor directly or by the Vendor's Lawyer from the sale proceeds.](#)
- c) Identity and Marital Status - Inquire as to the full legal name of each Vendor. If the Land is homestead, identify the Spouse or Common-Law Partner of each Vendor. Take all steps required by the prevailing standard of care (including the scrutiny and copying of identification documents) to verify the identity of each Vendor and the Spouse or Common-Law Partner of each Vendor. Confirm that the Vendor is named as the registered owner of the Land.
- d) Corporate Status - If the Vendor is a corporation, confirm with the Companies Office that the Vendor, if a Manitoba corporation, is currently in existence or, if an extra-provincial corporation, is currently registered in that office.

5. Prepare Closing Documents

- a) Statement of Adjustments.
- b) Transfer:
 - (i) Ensure that the information inserted in the Transfer conforms, to the letter, with the Title particulars.
 - (ii) Where the current name of the Vendor deviates from the name shown on the Title (due to a change in marital status or otherwise), ensure that the appropriate evidence of the change is supplied in Box 7 of the Transfer and that the necessary attachments are provided.
- c) the Vendor's Declaration as to Possession, to be made in duplicate, and executed in accordance with section 72 of *The Real Property Act*, including a declaration:
 - (i) of identity (referencing full legal name);
 - (ii) of marital status;

- (iii) of the status of homestead rights in the Land;
 - (iv) acknowledging the authority of the Lawyer to do all things necessary to complete the transaction, including the making of any necessary amendments to correct the Transfer;
 - (v) of residency;
 - (vi) that the Vendor knows of no registered or unregistered claims affecting the Land (whether in the nature of a lease, option to purchase, easement, encroachment, right-of-way, judgment, order, execution, builder's lien, charge, mortgage, encumbrance, bankruptcy claim, agreement for sale, or otherwise), other than the Agreement, the Permitted Registrations and any Non-Permitted Registrations which the Vendor's Lawyer undertakes to discharge;
 - (vii) that there has been no work done, services provided, or materials supplied to the Land within the preceding 40 days or, if such is not the case, that there are no outstanding accounts for such work, services or materials; and
 - (viii) that there are no outstanding taxes or other lienable accounts owing to the Municipality, except those for the current period which will be paid by the Vendor.
- d) the Vendor's Order to Pay, authorizing (among other payments) the pay-out of all Non-Permitted Registrations, all realty tax arrears and penalties to the Closing date and the Vendor's final water account (unless the Vendor has attended to its payment).

6. Review all Documents

Prior to Closing, carefully review all documents to ensure that:

- a) all required information (including *The Homesteads Act* evidence and consents) has been inserted;
- b) names and addresses on all documents conform precisely to the Title search and the client's instructions;
- c) the legal description on all documents conforms precisely to the Title search;
- d) the Registration numbers on all documents conform precisely to the Title search;
- e) any corrections, additions or deletions in the documents are legible and have been initialled;

- f) the documents are completely and properly executed, dated and witnessed;
- g) the names of all signatories and witnesses are properly set out; and
- h) affidavits of subscribing witness are attached, and the names, offices and addresses of witnessing officers are inserted, where required.

On Closing

Note: Prior to Closing, the parties and their Lawyers must agree that the Closing procedure shall be in accordance with this Protocol, and the respective clients' Closing obligations should be discussed and settled.

In some circumstances, a party may initially commit to a Protocol Closing, but later find itself unable to satisfy the conditions precedent to such a Closing, as prescribed by the Protocol. In such case, notice should be given to the other party's Lawyer, at the soonest possible opportunity, that the Closing cannot occur on the basis of the Protocol, and that the original terms of the Agreement shall govern the Closing.

7. Exchange Documents and Funds

7.1 Trust conditions imposed upon the Vendor's Lawyer should include the following (or variations of the following which have the same essence):

- a) That, on or before the Closing, the Vendor's Lawyer will deliver to the Purchaser's Lawyer:
 - (i) the Duplicate Title (unless the same has not been issued or is on deposit at the Land Titles Office);
 - (ii) a properly completed and executed Transfer which, to the best of the Vendor's Lawyer's knowledge, will be sufficient, when completed by the Purchaser and submitted for registration in the Land Titles Office, to cause Title to the Land to issue to the Purchaser, free and clear of Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser;
 - (iii) the Vendor's Declaration as to Possession, in a form satisfactory to the Purchaser's Lawyer, which contains, among others, the declarations

prescribed under Schedule V of the Protocol, and which is executed in accordance with section 72 of *The Real Property Act*;

- (iv) the Statement of Adjustments; and
 - (v) any key in the Vendor's Lawyer's possession which is represented as being a key to the premises on the Land;
- b) That the Vendor's Lawyer will have on hand a second executed original of the Vendor's Declaration as to Possession described in condition (a)(iii) above;
- c) That the Vendor's Lawyer will instruct the Vendor that:
- (i) vacant possession of the Land is to be given to the Purchaser on or before the date of Closing, in accordance with the Agreement, and that all keys (other than those delivered to the Vendor's Lawyer), security codes, garage door openers and other access mechanisms, are to be left on the premises;
 - (ii) the final water account reading is to be taken and submitted to the Vendor's Lawyer or to the Municipality (as the Lawyer directs) on or immediately before the Closing date;
 - (iii) all accounts for utilities supplied to the Land are to be paid in full up to the Closing date; and
 - (iv) all chattels and fixtures so described in the Agreement are to remain on the Land, free and clear of all encumbrances.
- d) That the Vendor's Lawyer will obtain a Title search (whether in verbal, electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser, and will confirm the same to the Purchaser's Lawyer, in writing (by fax, e-mail or delivery), forthwith upon receipt;
- e) That the Vendor's Lawyer will hold all sale proceeds until satisfaction of each of the foregoing conditions and, thereafter:
- (i) the Vendor's Lawyer will forthwith pay-out all Non-Permitted Registrations and, within a reasonable period, will obtain and deliver to the Purchaser's Lawyer registrable Discharges of all Non-Permitted Registrations, together with the required filing fees therefor and the cost of obtaining a new Status of Title;
 - (ii) the Vendor's Lawyer will forthwith pay the outstanding realty tax arrears and penalties affecting the Land to the Closing Date, in such amount as the

Vendor's Lawyer and the Purchaser's Lawyer have mutually acknowledged, on Closing, as being due; and

- (iii) the Vendor's Lawyer will forthwith ensure payment of the final water account (if same represents a lienable amount), such account being based on a final actual reading taken on or about the Closing date.
- (f) That, if the Transfer and Mortgage documents are held up or rejected by the Land Titles Office due to a defect in the Transfer which is remediable by the Vendor's Lawyer using all reasonable efforts, the Vendor's Lawyer will forthwith attend at the Land Titles Office or take such other steps as may be prescribed by the Land Titles Office in order to remedy such defect (whether as agent or otherwise), and will return the documents to the Purchaser's Lawyer, together with any related rejection fee, for re-submission for registration.

Note: The undertakings of the Vendor's Lawyer must be limited to matters entirely within that Lawyer's control and capable of satisfaction prior to or through the disbursement of sale proceeds immediately after receipt of a satisfactory Closing Title search. Unless the Vendor's Lawyer has expressly agreed to withhold a certain sum from the sale proceeds, from which to pay a specific debt of the Vendor which is to be quantified after Closing, it is inappropriate to attempt to impose on the Vendor's Lawyer any obligation to attend to payment of unregistered lien claims or other debts (for example, outstanding taxes or amounts due under finance or rental contracts) which are discovered after Closing but before completion of registrations.

7.2 Trust conditions imposed upon the Purchaser's Lawyer should include the following (or variations of the following which have the same essence):

- (a) That, on or before the Closing, the Purchaser's Lawyer:
 - (i) will provide the Vendor's Lawyer with the balance due on Closing, as shown on the Statement of Adjustments;
 - (ii) will have on hand the Purchaser's Mortgage, in registrable form; and
 - (iii) will have on hand the Purchaser's Declaration as to Possession, in duplicate, executed in accordance with section 72 of *The Real Property Act* and containing, among others, the declarations prescribed under Schedule V of the Protocol;
- (b) That the Purchaser's Lawyer will obtain from the Vendor's Lawyer written confirmation of receipt of a Title search (whether in verbal, electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the

Purchaser or, alternatively, the Purchaser's Lawyer will obtain such a Title search from the Land Titles Office;

- (c) That, forthwith after satisfaction of each of the foregoing conditions, the Purchaser's Lawyer will arrange for completion of any incomplete sections of the Transfer and, forthwith thereafter (and within 2 business days), will forward to the Land Titles Office the Transfer, the Duplicate Title, if applicable, and the Mortgage (accompanied by the Registration Details Application and the related fees and land transfer taxes) for registration in series in the Land Titles Office; and
- (d) That, if the Transfer and Mortgage are held up or rejected by the Land Titles Office due to a defect in the Transfer or the Mortgage which is remediable by the Purchaser's Lawyer using all reasonable efforts, the Purchaser's Lawyer will forthwith attend at the Land Titles Office or take such other steps as may be prescribed by the Land Titles Office in order to remedy such defect (whether as agent or otherwise), will pay any related rejection fee, and will re-submit the documents for registration.

Post-Closing

8. Disburse the Sale Proceeds

- a) Confirm satisfaction of all trust conditions imposed by the Purchaser's Lawyer (including receipt of a satisfactory Closing Title search and delivery of confirmation thereof to the Purchaser's Lawyer), other than those to be satisfied by means of the disbursement of funds.
- b) Forthwith disburse funds to effect the discharge of all Non-Permitted Registrations, the payment of any realty tax arrears and penalties, the payment of the final water account charges (if the same represents a lienable amount), and otherwise in accordance with the Purchaser's Lawyer's trust conditions and the Vendor's Order to Pay.
- c) Obtain and deliver to the Purchaser's Lawyer, for registration, Discharges of all Non-Permitted Registrations, together with the required filing fees.

PART E: DUTIES OF THE PURCHASER'S LAWYER

Following are the essential steps to be taken, and conditions to be satisfied, by the Purchaser's Lawyer in a transaction involving the issuance of a Solicitor's Opinion and the release of mortgage proceeds or other purchase funds before the Transfer and/or the Mortgage have been registered.

Before Closing

1. Conduct a Title Search

a) Confirm that Title information (as to registered ownership, legal description and Registrations) conforms to the terms of the Agreement and all other available information. If there is any issue as to whether the Title encompasses all but only the Land agreed to be purchased, conduct further investigations by review of registered plans and Building Location Certificate, discussions with the Vendor's Lawyer and, if necessary, in consultation with a Manitoba Land Surveyor.

b) Obtain a copy of all Registrations which may constitute Permitted Registrations.

c) If Title is not encumbered by a Mortgage, determine where the Duplicate Title is located. If lost or destroyed, confirm that the Vendor's Lawyer will be attaching to the Transfer the prescribed form of affidavit respecting the Duplicate Title.

d) Confirm that the Transfer will not require subdivision approval (i.e. that the Land to be conveyed is either all of the land legally described on the Title or the whole of a lot on a plan of subdivision, or is otherwise capable of conveyance without subdivision approval), and that no other consents or governmental approvals are required.

2. Analyze all Registrations against "exceptions from title" provisions of the Agreement

a) Classify each Registration as either:

(i) a Permitted Registration, which will remain on title; or

(ii) a Non-Permitted Registration, which must be discharged on or before Closing.

b) Confirm with the Vendor's Lawyer the Registration classification.

3. Other Investigations

- a) Realty taxes – Confirm the status of realty taxes.
- b) Utilities and other accounts – Confirm the status of any utility or other account capable of forming a lien on title.
- c) Identity and Marital Status - Inquire as to the full legal name of each Purchaser/Mortgagor. If the Land is homestead, identify the Spouse or Common-Law Partner of each Purchaser/Mortgagor. Take all steps required by the prevailing standard of care (including the scrutiny and copying of identification documents) to verify the identity of each Purchaser/Mortgagor and the Spouse or Common-Law Partner of each Purchaser/Mortgagor.
- d) Corporate Status – If the Purchaser is a corporation, confirm with the Companies Office that the Purchaser, if a Manitoba corporation, is currently in existence or, if an extra-provincial corporation, is currently registered in that office.

4. Building Location Certificate and Zoning Memorandum

- a) Obtain from the Vendor's Lawyer any available Building Location Certificate and Zoning Memorandum for the Land.
- b) If a current Building Location Certificate and Zoning Memorandum are not available through the Vendor, advise the Purchaser of the benefits and importance of obtaining a new Building Location Certificate and Zoning Memorandum, and request instructions to obtain the same.
- c) If the Purchaser declines to heed the advice to obtain a new Building Location Certificate and Zoning Memorandum, obtain from the Purchaser written acknowledgement of that advice and of the Purchaser's instructions not to obtain a new Building Location Certificate and Zoning Memorandum.
- d) Carefully review the most current Building Location Certificate and Zoning Memorandum. Compare the legal description in the Building Location Certificate to that in the Title to confirm that the Title encompasses all but only the Land.
- e) If the most recent Building Location Certificate is not current, obtain from the Purchaser a description and sketch of any changes to buildings or improvements on the Lands since the date of the Building Location Certificate.
- f) If the Purchaser indicates that there have been changes to the Land since the date of the Building Location Certificate, which changes clearly create a Survey Defect, report such information to the Mortgagee and obtain either its

instructions to obtain a current Building Location Certificate and Zoning Memorandum or confirmation that it accepts the potential Survey Defect. If the latter, qualify the form of Solicitor's Opinion, to confirm the Mortgagee's acceptance of the potential Survey Defect.

- g) If the Building Location Certificate or Zoning Memorandum discloses a Survey Defect:
 - (i) make the appropriate arrangements with the Vendor's Lawyer to enforce the Purchaser's rights against the Vendor pursuant to the Agreement;
 - (ii) advise the Mortgagee of the nature and effect of the Survey Defect, and of the arrangements made with the Vendor to remedy or compensate for the Survey Defect;
 - (iii) obtain the Mortgagee's acceptance of the Survey Defect and of the arrangements made with the Vendor to remedy or compensate for the Survey Defect; and
 - (iv) qualify the form of Solicitor's Opinion, to confirm the Mortgagee's acceptance of the Survey Defect and of the arrangements made with the Vendor to remedy or compensate for the Survey Defect.

Note: Under this Protocol, the Lawyer need not obtain a current Building Location Certificate and Zoning Memorandum in order to satisfy the Mortgagee's requirements. Upon complying with the Protocol, the Lawyer can reasonably hold the opinion that: (a) there are no Survey Defects (other than those known to the Mortgagee) which will have an adverse effect on the Mortgagee's security; and (b) a current Building Location Certificate and Zoning Memorandum need not be obtained because they are not necessary for the Mortgagee's purposes.

In the unlikely event that the Mortgagee sustains actual loss due to an unknown Survey Defect which would have been disclosed by an up-to-date Building Location Certificate and Zoning Memorandum, the Mortgagee will have a claim against the Lawyer for such loss. The Lawyer will, in turn, refer such claim to the Lawyer's professional liability insurer, for resolution. In those circumstances, no deductible will be payable by the insured Lawyer and no payment will be considered as a "Paid Claim" for purposes of future surcharges or graduated deductibles, provided that the Lawyer has adhered to the practices prescribed by the Protocol.

Two critical points must be remembered:

1. Known Defects

- (a) **The Lawyer must not assume responsibility for any loss resulting from a known Survey Defect. Where an existing Building Location Certificate**

or Zoning Memorandum discloses a Survey Defect, or where the Purchaser has identified changes to the Land since the date of the Building Location Certificate which clearly create a Survey Defect, the Lawyer's opinion to the Mortgagee must be qualified to confirm the Mortgagee's acceptance of such Survey Defect, actual or potential.

(b) Even if a Survey Defect is disclosed by an existing Building Location Certificate or Zoning Memorandum, it is not necessary to obtain a further, current Building Location Certificate and Zoning Memorandum, absent knowledge of changes to the Land which have clearly created additional Survey Defects. Again, the Mortgagee must accept the known Survey Defects, but the Lawyer can opine that no further Building Location Certificate or Zoning Memorandum is required for the Mortgagee's purposes.

2. Purchaser's Interests

The Purchaser's interests in the Land extend beyond those of the Mortgagee; the impact of a Survey Defect differs accordingly. The Lawyer must not assume responsibility for any loss accruing to the Purchaser from a Survey Defect, which is why the Lawyer must always explain to the Purchaser the importance of obtaining a current Building Location Certificate and Zoning Memorandum, and request instructions to obtain them. The Sample Acknowledgement attached as Schedule VI highlights some of the reasons the Purchaser should obtain a current Building Location Certificate and Zoning Memorandum, even though not required by the Mortgagee.

5. Prepare Closing Documents

Prepare:

- (a) the Registration Details Application, ensuring that all required information is contained in the form, that Title number references are current and complete, and that all documents in the series are listed in the proper order;
- (b) the Mortgage, ensuring that the description of the Mortgagors conforms, to the letter, with the description of the transferees as communicated to the Vendor's Lawyer;
- (c) the Mortgagor's Declaration as to Possession, to be made in duplicate and executed in accordance with section 72 of *The Real Property Act*, including a declaration:
 - (i) of identity (referencing full legal name);

- (ii) of marital status.
 - (iii) of the status of homestead rights in the Land;
 - (iv) acknowledging the authority of the Lawyer to do all things necessary to complete the transaction, including the making of any necessary amendments to correct the Mortgage;
 - (v) of residency;
 - (vi) that the Mortgagor knows of no registered or unregistered claims affecting the Land (whether in the nature of a lease, option to purchase, easement, encroachment, right-of-way, judgment, order, execution, builder's lien, charge, mortgage, encumbrance, bankruptcy claim, agreement for sale, or otherwise), other than the Agreement, the Permitted Registrations and any Non-Permitted Registrations which the Vendor's Lawyer undertakes to discharge;
 - (vii) that there has been no work done, services provided, or materials supplied to the Land within the preceding 40 days or, if such is not the case, that there are no outstanding accounts for such work, services or materials; and
 - (viii) that there are no outstanding taxes or other lienable accounts owing to the Municipality except for the current period.
- (d) the Acknowledgement of advice regarding a current Building Location Certificate and Zoning Memorandum, if applicable;
 - (e) the Order to Pay; and
 - (f) the Solicitor's Opinion.

6. Review all Documents

- a) Review the Transfer to confirm that the description of the transferors conforms precisely to the description of the registered owners on the Title.
- b) Confirm that the description and address of the transferees in the Transfer conforms precisely to that of the Mortgagors in the Mortgage.
- c) Confirm that the legal descriptions in both the Transfer and the Mortgage conform precisely to the legal description on Title.

- d) Confirm that the Registration lists in the Transfer and the Mortgage (that is, the lists of “Encumbrances, Liens and Interests” to which the documents are subject) completely and accurately record the Registrations on Title.
- e) Arrange for completion of any incomplete portions of the Transfer (for example, Box 4 – Land Transfer Tax Evidence, Box 9 – Farm Lands Ownership Declaration and Box 13 - Registering Party).
- f) Carefully review all documents to ensure that:
 - (i) all required information has been inserted;
 - (ii) any corrections, additions, or deletions are legible and have been initialled;
 - (iii) the documents are completely and properly executed, dated and witnessed;
 - (iv) the names of all signatories and witnesses are properly set out; and
 - (v) affidavits of subscribing witnesses are attached, and the names, positions and addresses of witnessing officers are inserted, where required.

7. Arrange Funding of Purchase Monies

- a) Arrange for receipt of the Purchaser’s cash to mortgage on or before Closing.
- b) Review the Mortgagee’s Instructions to Solicitor, to ensure that all instructions can be complied with and that all conditions (other than registration of the Mortgage and the Discharges of the Non-Permitted Registrations) can be satisfied on or before Closing.

Note: An essential element of the Solicitor’s Opinion is the statement that the solicitor has acted “in accordance with [the Mortgagee’s] instructions.” As on any file, but particularly under the Protocol, those instructions will define the Lawyer’s retainer. It is intended that the Solicitor’s Opinion will replace the “solicitor’s preliminary report” to the Mortgagee. Therefore, that more detailed “preliminary report” will no longer be available to limit the Lawyer’s responsibilities, or to qualify the Lawyer’s opinion, before the Mortgage proceeds are advanced. It is imperative, then, that the Lawyer carefully review each element of the Mortgagee’s instructions – whether contained in standard form “instructions to solicitors,” any documents referred to in the instructions, or any other correspondence from the Mortgagee - to identify any aspects with which the Lawyer is unable to wholly comply.

In any instance where a qualification to the Mortgagee's instructions is necessary, for example (but without limitation):

- 1. where there is a Non-Permitted Registration which the Vendor is unable to discharge and which the Purchaser has agreed to allow to remain on Title;**
- 2. where a Survey Defect is disclosed by a Building Location Certificate, Zoning Memorandum, or otherwise;**
- 3. where the instructions prescribe a form of "solicitor's report" or opinion which requires any amendment or qualification; or**
- 4. where the Mortgagee's instructions contain any other direction with which the Lawyer cannot strictly comply,**

the Lawyer must disclose the same to the Mortgagee and obtain the Mortgagee's agreement to the necessary modification of the instructions. Each such modification must be confirmed, either by letter to the Mortgagee prior to issuance of the Solicitor's Opinion or by appropriate qualification of the Solicitor's Opinion.

Where the Mortgagee's instructions mandate that a current Building Location Certificate and Zoning Memorandum be obtained, an appropriate modification of those instructions might be to the effect that the Lawyer may dispense with obtaining a current Building Location Certificate and Zoning Memorandum, provided that the Lawyer has complied with this Protocol and is of the opinion that: (a) there are no Survey Defects (other than those known to the Mortgagee) which will have an adverse effect on the Mortgagee's security; and (b) a current Building Location Certificate and Zoning Memorandum need not be obtained because they are not necessary for the Mortgagee's purposes.

c) On or before Closing, obtain a Title search (whether in verbal, electronic or paper form), which evidences that the Title is subject to no Registrations other than the Permitted Registrations and the expected Non-Permitted Registrations. Immediately thereafter, issue to the Mortgagee the Solicitor's Opinion, in such manner and together with such other documents or assurances as are required by the Mortgagee, in order to cause the Mortgagee to advance mortgage proceeds to the Purchaser's Lawyer on or before Closing.

On Closing

Note: Prior to Closing, the parties and their Lawyers must agree that the Closing procedure shall be in accordance with this Protocol, and the respective clients' Closing obligations should be discussed and settled.

In some circumstances, a party may initially commit to a Protocol Closing, but later find itself unable to satisfy the conditions precedent to such a Closing, as prescribed by the Protocol. In such case, notice should be given to the other party's Lawyer, at the soonest possible opportunity, that the Closing cannot occur on the basis of the Protocol, and that the original terms of the Agreement shall govern the closing.

8. Exchange Documents and Funds

8.1 Trust conditions imposed upon the Purchaser's Lawyer should include the following (or variations of the following which have the same essence):

a) That, on or before the Closing, the Purchaser's Lawyer:

(i) will provide the Vendor's Lawyer with the balance due on Closing, as shown on the Statement of Adjustments;

(ii) will have on hand the Purchaser's Mortgage, in registrable form; and

(iii) will have on hand the Purchaser's Declaration as to Possession, in duplicate, executed in accordance with section 72 of *The Real Property Act* and containing, among others, the declarations prescribed under Schedule V of the Protocol;

b) That the Purchaser's Lawyer will obtain from the Vendor's Lawyer written confirmation of receipt of a Title search (whether in verbal, electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser or, alternatively, the Purchaser's Lawyer will obtain such a Title search from the Land Titles Office;

c) That, forthwith after satisfaction of each of the foregoing conditions, the Purchaser's Lawyer will arrange for completion of any incomplete sections of the Transfer and, forthwith thereafter (and within 2 business days), will forward to the Land Titles Office the Transfer, the Duplicate Title, if applicable, and the Mortgage (accompanied by the Registration Details Application and the related fees and land transfer taxes) for registration in series in the Land Titles Office; and

d) That, if the Transfer and Mortgage are held up or rejected by the Land Titles Office due to a defect in the Transfer or the Mortgage which is remediable by the Purchaser's Lawyer using all reasonable efforts, the Purchaser's Lawyer

will forthwith attend at the Land Titles Office or take such other steps as may be prescribed by the Land Titles Office in order to remedy such defect (whether as agent or otherwise), will pay any related rejection fee, and will re-submit the documents for registration.

8.2 Trust conditions imposed upon the Vendor's Lawyer should include the following (or variations of the following which have the same essence):

- a) That, on or before the Closing, the Vendor's Lawyer will deliver to the Purchaser's Lawyer:
 - (i) the Duplicate Title (unless the same has not been issued or is on deposit at the Land Titles Office);
 - (ii) a properly completed and executed Transfer which, to the best of the Vendor's Lawyer's knowledge, will be sufficient, when completed by the Purchaser and submitted for registration in the Land Titles Office, to cause Title to the Land to issue to the Purchaser, free and clear of Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser;
 - (iii) the Vendor's Declaration as to Possession, in a form satisfactory to the Purchaser's Lawyer, which contains, among others, the declarations prescribed under Schedule V of the Protocol and which is executed in accordance with section 72 of *The Real Property Act*;
 - (iv) the Statement of Adjustments; and
 - (v) any key in the Vendor's Lawyer's possession which is represented as being a key to the premises on the Land;
- b) That the Vendor's Lawyer will have on hand a second executed original of the Vendor's Declaration as to Possession described in condition (a)(iii) above;
- c) That the Vendor's Lawyer will instruct the Vendor that:
 - (i) vacant possession of the Land is to be given to the Purchaser on or before the date of Closing, in accordance with the Agreement, and that all keys (other than those delivered to the Vendor's Lawyer), security codes, garage door openers and other access mechanisms, are to be left on the premises;
 - (ii) the final water account reading is to be taken and submitted to the Vendor's Lawyer or to the Municipality on or immediately before the Closing date;

- (iii) all accounts for utilities supplied to the Land are to be paid in full up to the Closing date; and
 - (iv) all chattels and fixtures so described in the Agreement are to remain on the Land, free and clear of all encumbrances.
- d) That the Vendor's Lawyer will obtain a Title search (whether in verbal, electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser, and will confirm the same to the Purchaser's Lawyer, in writing (by fax, e-mail or delivery), forthwith upon receipt;
- e) That the Vendor's Lawyer will hold all sale proceeds until satisfaction of each of the foregoing conditions and, thereafter:
 - (i) the Vendor's Lawyer will forthwith pay-out all Non-Permitted Registrations and, within a reasonable period, will obtain and deliver to the Purchaser's Lawyer registrable Discharges of all Non-Permitted Registrations, together with the required filing fees therefor and the cost of obtaining a new Status of Title;
 - (ii) the Vendor's Lawyer will forthwith pay the outstanding realty tax arrears and penalties affecting the Land to the Closing Date, in such amount as the Vendor's Lawyer and the Purchaser's Lawyer have mutually acknowledged, on Closing, as being due; and
 - (iii) the Vendor's Lawyer will forthwith pay the final water account (if same represents a lienable amount), such account being based on a final actual reading taken on or about the Closing date;
- f) That, if the Transfer and Mortgage documents are held up or rejected by the Land Titles Office due to a defect in the Transfer which is remediable by the Vendor's Lawyer using all reasonable efforts, the Vendor's Lawyer will forthwith attend at the Land Titles Office or take such other steps as may be prescribed by the Land Titles Office in order to remedy such defect (whether as agent or otherwise), and will return the documents to the Purchaser's Lawyer, together with any related rejection fee, for re-submission for registration.

Note: The undertakings of the Vendor's Lawyer must be limited to matters entirely within that Lawyer's control and capable of satisfaction prior to or through the disbursement of sale proceeds immediately after receipt of a satisfactory Closing Title search. Unless the Vendor's Lawyer has expressly agreed to withhold a certain sum from the sale proceeds, from which to pay a specific debt of the Vendor which is to be quantified after Closing, it is inappropriate to attempt to impose on the Vendor's Lawyer any obligation to attend to payment of unregistered lien claims or other debts (for example, outstanding

taxes or amounts due under finance or rental contracts) which are discovered after Closing but before completion of registrations.

Post-Closing

9.
 - a) Obtain on the Closing Date, either through the Vendor's Lawyer or from the Land Titles Office, a Title search which confirms the absence of any new Registrations.
 - b) As soon as possible (and within 2 business days of Closing), forward to the Land Titles Office the Transfer, the Duplicate Title, if applicable, and the Mortgage (with accompanying Registration Details Application and related fees and land transfer taxes) for registration, in series, in the Land Titles Office.
 - c) Obtain from the Vendor's Lawyer a Discharge of each Non-Permitted Registration, and attend to its registration in the Land Titles Office.

PART F: DUTIES OF THE MORTGAGEE'S LAWYER ON REFINANCINGS

Following are the essential steps to be taken, and conditions to be satisfied, by the Mortgagee's Lawyer in a mortgage refinancing (outside the context of a transaction of purchase and sale) involving the issuance of a Solicitor's Opinion and the release of mortgage proceeds before the Mortgage has been registered.

Before Closing

1. Conduct a Title Search

a) Confirm that Title information (as to registered ownership, legal description and Registrations) conforms to the terms of the Mortgage Commitment and all other available information. If there is any issue as to whether the Title encompasses all but only the Land agreed to be mortgaged, conduct further investigations by review of registered plans and Building Location Certificate, discussions with the Mortgagor and Mortgagee and, if necessary, consultation with a Manitoba Land Surveyor.

b) Obtain a copy of all Registrations which may constitute Permitted Registrations.

c) If Title is not encumbered by a Mortgage, determine whether the Duplicate Title is on deposit at the Land Titles Office. If not, obtain the Duplicate Title from the Mortgagor. If the Duplicate Title has been lost or destroyed, prepare the form of affidavit prescribed by the Land Titles Office for attachment to the Mortgage. Ensure that the affidavit is properly sworn by all registered owners of the Land.

d) Confirm that the Mortgage will not require subdivision approval (i.e. that the Land to be mortgaged is either all of the land legally described on the Title or the whole of a lot on a plan of subdivision, or is otherwise capable of being mortgaged without subdivision approval), and that no other consents or governmental approvals are required.

2. Analyze all Registrations against the terms of the Mortgage Commitment

a) Classify each Registration as either:

(i) a Permitted Registration, which will remain on title; or

(ii) a Non-Permitted Registration, which must be discharged on or before Closing.

- b) Confirm with the Mortgagee the classification of any Registration which is not clearly either a Permitted Registration or a Non-Permitted Registration.

3. Settle the Terms of Discharge for all Non-Permitted Registrations

- a) Before Closing, obtain a registrable Discharge (on satisfactory conditions) of each non-monetary Non-Permitted Registration.
- b) For each monetary Non-Permitted Registration to be paid-out on or before Closing, obtain a pay-out statement specifying the balance required to obtain a Discharge. Verify that the Mortgage proceeds will be sufficient to satisfy all pay-out requirements. If not, arrange to obtain from the Mortgagor the excess funds necessary to obtain all required Discharges.
- c) Where encumbrancers are Institutional Lenders, ensure pay-out statements are:
 - (i) current;
 - (ii) in writing;
 - (iii) clear and unequivocal; and
 - (v) addressed to the party or Lawyer who will be relying on them.
- d) Where encumbrancers are other than Institutional Lenders, arrange either:
 - (i) to receive the Discharge, or to have the Discharge unconditionally delivered to another Lawyer, before Closing, in trust on the undertaking that the Discharge shall be registered when the agreed pay-out amount has been delivered to the encumbrancer, but not before; or
 - (ii) for the Mortgagor to obtain interim financing to pay-out and obtain a Discharge before Closing.

4. Other Investigations

- a) Realty taxes – Confirm the status of realty taxes. Ensure that sufficient Mortgage proceeds or other funds will be available to satisfy all outstanding arrears and penalties.
- b) Identity and Marital Status - Inquire as to the full legal name of each Mortgagor. If the Land is homestead, identify the Spouse or Common-Law Partner of each Mortgagor. Take all steps required by the prevailing standard of care (including the scrutiny and copying of identification documents) to verify the identity of each Mortgagor and the Spouse or Common-Law Partner of each Mortgagor.

c) Corporate Status – If the Mortgagor is a corporation, confirm with the Companies Office that the Mortgagor, if a Manitoba corporation, is currently in existence or, if an extra-provincial corporation, is currently registered in that office.

5. Building Location Certificate and Zoning Memorandum

a) Obtain from the Mortgagor any available Building Location Certificate and Zoning Memorandum for the Land.

b) Carefully review the most current Building Location Certificate and Zoning Memorandum. Compare the legal description in the Building Location Certificate to that in the Title to confirm that the Title encompasses all but only the Land.

c) If the most recent Building Location Certificate is not current, obtain from the Mortgagor a description and sketch of any changes to buildings or improvements on the Lands since the date of the Building Location Certificate.

d) If the Mortgagor indicates that there have been changes to the Land since the date of the Building Location Certificate, which changes clearly create a Survey Defect, report such information to the Mortgagee and obtain either its instructions to obtain a current Building Location Certificate and Zoning Memorandum or confirmation that it accepts the potential Survey Defect. If the latter, qualify the form of Solicitor's Opinion, to confirm the Mortgagee's acceptance of the potential Survey Defect.

e) If the Building Location Certificate or Zoning Memorandum discloses a Survey Defect:

(i) make arrangements, so far as possible, to remedy or ameliorate the Survey Defect;

(ii) advise the Mortgagee of the nature and effect of the Survey Defect, and of the arrangements made to remedy or ameliorate the Survey Defect;

(iii) obtain the Mortgagee's acceptance of the Survey Defect, as so remedied or ameliorated; and

(iv) qualify the form of Solicitor's Opinion, to confirm the Mortgagee's acceptance of the Survey Defect.

Note: Under this Protocol, the Lawyer need not obtain a current Building Location Certificate and Zoning Memorandum in order to satisfy the Mortgagee's requirements. Upon complying with the Protocol, the Lawyer can reasonably hold the opinion that: (a) there are no Survey Defects (other than those known to the Mortgagee) which will have an adverse effect on the Mortgagee's security; and (b) a current Building Location Certificate and Zoning Memorandum need not be obtained because they are not necessary for the Mortgagee's purposes.

In the unlikely event that the Mortgagee sustains actual loss due to an unknown Survey Defect which would have been disclosed by an up-to-date Building Location Certificate and Zoning Memorandum, the Mortgagee will have a claim against the Lawyer for such loss. The Lawyer will, in turn, refer such claim to the Lawyer's professional liability insurer, for resolution. In those circumstances, no deductible will be payable by the insured Lawyer and no payment will be considered as a "Paid Claim" for purposes of future surcharges or graduated deductibles, provided that the Lawyer has adhered to the practices prescribed by the Protocol.

Two critical points must be remembered:

1. The Lawyer must not assume responsibility for any loss resulting from a **known** Survey Defect. Where an existing Building Location Certificate or Zoning Memorandum discloses a Survey Defect, or where the Mortgagor has identified changes to the Land since the date of the Building Location Certificate which clearly create a Survey Defect, the Lawyer's opinion to the Mortgagee must be qualified to confirm the Mortgagee's acceptance of such Survey Defect, actual or potential.
2. Even if a Survey Defect is disclosed by an existing Building Location Certificate or Zoning Memorandum, it is not necessary to obtain a further, **current** Building Location Certificate and Zoning Memorandum, absent knowledge of changes to the Land which have clearly created additional Survey Defects. Again, the Mortgagee must accept the known Survey Defects, but the Lawyer can opine that no further Building Location Certificate or Zoning Memorandum is required for the Mortgagee's purposes.

5. Prepare Closing Documents

Prepare:

- a) the Registration Details Application, ensuring that all required information is contained in the form and that Title number references are current and complete;
- b) the Mortgage:

- (i) ensuring that the description of the Mortgagor conforms, to the letter, with the Title particulars;
 - (ii) where the current name of the Mortgagor deviates from the name shown on the Title (due to a change in marital status or otherwise), ensure that the appropriate evidence of the change is supplied in Box 7 of the Mortgage and that the necessary attachments are provided.
- c) the Mortgagor's Declaration as to Possession, to be made in duplicate and executed in accordance with Section 72 of *The Real Property Act*, including a declaration:
 - (i) of identity (referencing full legal name);
 - (ii) of marital status;
 - (iii) of the status of homestead rights in the Land;
 - (iv) acknowledging the authority of the Lawyer to do all things necessary to complete the transaction, including the making of any necessary amendments to correct the Mortgage;
 - (v) that the Mortgagor knows of no registered or unregistered claims affecting the Land (whether in the nature of a lease, option to purchase, easement, encroachment, right-of-way, judgment, order, execution, builder's lien, charge, mortgage, encumbrance, bankruptcy claim, agreement for sale, or otherwise), other than the Permitted Registrations and any Non-Permitted Registrations which the Lawyer undertakes to discharge;
 - (vi) that there has been no work done, services provided, or materials supplied to the Land within the preceding 40 days or, if such is not the case, that there are no outstanding accounts for such work, services or materials; and
 - (vii) that there are no outstanding taxes or other lienable accounts owing to the Municipality except for the current period.
- d) the Order to Pay authorizing the pay-out of all Non-Permitted Registrations and all realty tax arrears and penalties to the Closing date; and
- e) the Solicitor's Opinion.

6. Review all Documents

Prior to Closing, carefully review the Mortgage and other documents to ensure that:

- a) all required information (including *The Homesteads Act* evidence and consents) has been inserted;
- b) the names on all documents conform precisely to the Title search;
- c) the legal description on all documents conforms precisely to the Title search;
- d) the Registration numbers on all documents conform precisely to the Title search;
- e) any corrections, additions or deletions in the documents are legible and have been initialled;
- f) the documents are completely and properly executed, dated and witnessed;
- g) the names of all signatories and witnesses are properly set out; and
- h) affidavits of subscribing witness are attached, and the names, offices and addresses of witnessing officers are inserted, where required.

8. Arrange Funding of the Mortgage

- a) Review the Mortgagee's Instructions to Solicitor, to ensure that all instructions can be complied with and that all conditions (other than registration of the Mortgage and the Discharges of the Non-Permitted Registrations) can be satisfied on or before Closing.

Note: An essential element of the Solicitor's Opinion is the statement that the solicitor has acted "*in accordance with [the Mortgagee's] instructions.*" As on any file, but particularly under the Protocol, those instructions will define the Lawyer's retainer. It is intended that the Solicitor's Opinion will replace the "solicitor's preliminary report" to the Mortgagee. Therefore, that more detailed "preliminary report" will no longer be available to limit the Lawyer's responsibilities, or to qualify the Lawyer's opinion, before the Mortgage proceeds are advanced. It is imperative, then, that the Lawyer carefully review each element of the Mortgagee's instructions – whether contained in standard form "instructions to solicitors," any documents referred to in the instructions, or any other correspondence from the Mortgagee - to identify any aspects with which the Lawyer is unable to wholly comply.

In any instance where a qualification to the Mortgagee's instructions is necessary, for example (but without limitation):

- where there is a Non-Permitted Registration which the Mortgagor is unable to discharge;

- where a Survey Defect is disclosed by a Building Location Certificate, Zoning Memorandum, or otherwise;
- where the instructions prescribe a form of “solicitor’s report” or opinion which requires any amendment or qualification; or
- where the Mortgagee’s instructions contain any other direction with which the Lawyer cannot strictly comply,

the Lawyer must disclose the same to the Mortgagee and obtain the Mortgagee’s agreement to the necessary modification of the instructions. Each such modification must be confirmed, either by letter to the Mortgagee prior to issuance of the Solicitor’s Opinion or by appropriate qualification of the Solicitor’s Opinion.

Where the Mortgagee’s instructions mandate that a current Building Location Certificate and Zoning Memorandum be obtained, an appropriate modification of those instructions might be to the effect that the Lawyer may dispense with obtaining a current Building Location Certificate and Zoning Memorandum, provided that the Lawyer has complied with this Protocol and is of the opinion that: (a) there are no Survey Defects (other than those known to the Mortgagee) which will have an adverse effect on the Mortgagee’s security; and (b) a current Building Location Certificate and Zoning Memorandum need not be obtained because they are not necessary for the Mortgagee’s purposes.

- b) Obtain a Title search (whether in verbal, electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than the Permitted Registrations and the expected Non-Permitted Registrations. Immediately thereafter, issue to the Mortgagee the Solicitor’s Opinion, in such manner and together with such other documents or assurances as are required by the Mortgagee in order to cause the Mortgagee to advance mortgage proceeds to the Lawyer on Closing.
- c) Forthwith pay-out all Non-Permitted Registrations and, within a reasonable period, obtain and submit to the Land Titles Office for registration Discharges of all Non-Permitted Registrations, together with the required filing fees.
- d) Forthwith pay all outstanding realty tax arrears and penalties affecting the Land.
- e) Forthwith (and within 2 business days), forward the Mortgage (and Duplicate Title, if applicable), together with the Registration Details Application and the related fees, to the Land Titles Office for registration.

f) If the Mortgage is held up or rejected by the Land Titles Office due to a defect in the Mortgage, forthwith attend at the Land Titles Office or take such other steps as are prescribed by the Land Titles Office in order to remedy such defect (whether as agent or otherwise), pay any related rejection fee, and re-submit the Mortgage for registration.

SCHEDULE I

Western Lawyers' Conveyancing Protocol

Solicitor's Opinion

To: *(Name of Lender)*

Date:

Re: **Mortgage Loan Number:**

Mortgage Amount:

Purchase Price:

The Parties:

Mortgagor(s): *(name and address)*

Guarantor(s): *(name and address)*

The Property:

Civic Address:

Legal Description:

I have complied with the Western Lawyers' Conveyancing Protocol (Manitoba) in the conduct of this transaction, and have acted in accordance with your instructions with respect to the real property mortgage described above. Subject to any qualifications noted below, which have been accepted by you, it is my opinion that the mortgage can now be funded and the funds disbursed.

Qualifications:

Issuing Lawyer:

Barrister and Solicitor
Member of the Law Society of Manitoba

Notes to Issuing Lawyer

Following are guidelines regarding the types of matters which ought, or ought not, to form the subject of a qualification to the Solicitor's Opinion.

1. Any known Survey Defects, however discovered, must be identified as qualifications to the Solicitor's Opinion. Such qualifications will define the limits of the Lawyer's responsibility (and that of the Lawyer's professional liability insurer) for actual losses sustained by the Mortgagee due to unknown Survey Defects. Following is an example of how such a qualification might be phrased:
 - (a) *The Building Location Certificate and Sketch prepared by Wilkes and Barnaby, Manitoba Land Surveyors, on March 17, 1986 disclosed an encroachment by the building on the mortgaged property onto the adjacent lands to the north by a maximum of .88 feet. An Easement Agreement, protecting that encroachment, was entered into between the previous owners of the affected lands, John David Ehlers and Margaret McWilliams, on April 23, 1986, and notice of that Agreement has been filed by way of caveat against title to the servient lands. A current building location certificate and sketch and zoning memorandum have not been obtained because, in my opinion, they are not required for your purposes and there are no Survey Defects, as defined in the Protocol, except as described above.*
2. Any aspect in which the Title or the Land fails to strictly comply with the Mortgagee's original instructions must be disclosed to the Mortgagee, prior to the issuance of the Solicitor's Opinion, and the Mortgagee's further instructions obtained. Each such defect and the Mortgagee's revised instructions must also be referenced in the qualifications to the Solicitor's Opinion. Following are illustrations of such qualifications:
 - (a) *Mortgage No. 1154716 in favour of First Community Loan Company secures the principal sum of \$25,000 and was registered against title to the mortgaged property on November 15, 1986. In accordance with your instructions, Mortgage No. 1154716 will continue to have priority over your mortgage.*
 - (b) *Caveat No. 1293302 was filed by Manitoba Hydro-Electric Board/Manitoba Telephone System ("MHEB/MTS") in relation to an Easement Agreement for underground power and telephone lines servicing the mortgaged property. The easement area described in Caveat No. 1293302 may include part of the mortgaged lands on which the garage is situate. MHEB/MTS have declined to postpone their Caveat No. 1293302 to your mortgage. You have accepted Caveat No. 1293302 as a permitted encumbrance which will have priority over your mortgage.*
 - (c) *The Guarantor of the Mortgage, Susan Forsythe, has no legal or beneficial interest in the mortgaged property or the mortgage loan proceeds. With your consent, Susan Forsythe has not obtained independent legal advice regarding the*

nature and effect of the Mortgage or her Guarantee. I express no opinion as to the legality, validity or binding effect of the Guarantee or its enforceability.

3. For Mortgagees, one of the main benefits of the Solicitor's Opinion is its simplicity and brevity. The Solicitor's Opinion is not to constitute a report of the various title and "off-title" investigations undertaken by the Lawyer (in the manner of the lengthy "solicitor's report" forms previously delivered to lenders). As much as possible, it is to distil the results of all those searches into the concise, "green-light signal" that "the mortgage can now be funded and the funds disbursed."

The Solicitor's Opinion should not detail encumbrances which, by the Mortgagee's instructions, are permitted, or items of non-compliance which the Lawyer will be discharging or otherwise rectifying in the course of the transaction. Examples of qualifications which should **not** be included in the Solicitor's Opinion are as follows:

- (a) Mortgage No. 1163767 in favour of Dominion Trust Company secures the principal sum of \$85,000.00, was registered on January 6, 1997, and will be paid out and discharged by the vendor from the sale proceeds.*
- (b) Caveat No. 1293304 was filed by Manitoba Hydro-Electric Board/Manitoba Telephone System on September 25, 1968 in relation to an Easement Agreement for underground power and telephone lines servicing the mortgaged property. In my opinion, Caveat No. 1293304 does not materially adversely affect your security.*
- (c) Unpaid realty taxes of \$232.46, as at September 30, 2000, are assessed against the mortgaged property, and will be paid by the vendor from the sale proceeds.*

SCHEDULE II

MEMORANDUM OF TRUST CONDITIONS

This Memorandum of Trust Conditions is contemplated for use in a Closing under the Western Law Societies Conveyancing Protocol (the "Protocol"), and may be identified as the Memorandum of Trust Conditions, LSM 2009-1.

Each capitalized term in this Memorandum of Trust Conditions shall have the meaning ascribed to it under the Protocol, except as varied by the agreement of the Vendor's Lawyer and the Purchaser's Lawyer.

On the Closing of any transaction of purchase and sale which incorporates this Memorandum of Trust Conditions by written reference, the following conditions of trust shall apply.

A. TRUST CONDITIONS BINDING THE VENDOR'S LAWYER

1. That, on or before the Closing, the Vendor's Lawyer will deliver to the Purchaser's Lawyer:
 - (a) the Duplicate Title (unless the same has not been issued or is on deposit at the Land Titles Office);
 - (b) a properly completed and executed Transfer which, to the best of the Vendor's Lawyer's knowledge, will be sufficient, when completed by the Purchaser and submitted for registration in the Land Titles Office, to cause Title to the Land to issue to the Purchaser, free and clear of Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser;
 - (c) the Vendor's Declaration as to Possession, in a form satisfactory to the Purchaser's Lawyer, which contains, among others, the declarations prescribed under Schedule V of the Protocol, and which is executed in accordance with section 72 of *The Real Property Act*;
 - (d) the Statement of Adjustments; and
 - (e) any key in the Vendor's Lawyer's possession which is represented as being a key to the premises on the Land;
2. That the Vendor's Lawyer will have on hand a second executed original of the Vendor's Declaration as to Possession described in condition (a)(iii) above;
3. That the Vendor's Lawyer will instruct the Vendor that:

- (a) vacant possession of the Land is to be given to the Purchaser on or before the date of Closing, in accordance with the Agreement, and that all keys (other than those delivered to the Vendor's Lawyer), security codes, garage door openers and other access mechanisms, are to be left on the premises;
 - (b) the final water account reading is to be taken and submitted to the Vendor's Lawyer or to the Municipality on or immediately before the Closing date;
 - (c) all accounts for utilities supplied to the Land are to be paid in full up to the Closing date; and
 - (d) all chattels and fixtures so described in the Agreement are to remain on the Land, free and clear of all encumbrances.
4. That the Vendor's Lawyer will obtain a Title search (whether in verbal, electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser, and will confirm the same to the Purchaser's Lawyer, in writing (by fax, e-mail or delivery), forthwith upon receipt;
5. That the Vendor's Lawyer will hold all sale proceeds until satisfaction of each of the foregoing conditions and, thereafter:
- (a) the Vendor's Lawyer will forthwith pay-out all Non-Permitted Registrations and, within a reasonable period, will obtain and deliver to the Purchaser's Lawyer registrable Discharges of all Non-Permitted Registrations, together with the required filing fees therefor and the cost of obtaining a new Status of Title;
 - (b) the Vendor's Lawyer will forthwith pay the outstanding realty tax arrears and penalties affecting the Land to the Closing Date, in such amount as the Vendor's Lawyer and the Purchaser's Lawyer have mutually acknowledged, on Closing, as being due; and
 - (c) the Vendor's Lawyer will forthwith pay the final water account (if same represents a lienable amount), such account being based on a final actual reading taken on or about the Closing date; and
6. That, if the Transfer and Mortgage documents are held up or rejected by the Land Titles Office due to a defect in the Transfer which is remediable by the Vendor's Lawyer using all reasonable efforts, the Vendor's Lawyer will forthwith attend at the Land Titles Office or take such other steps as may be prescribed by the Land Titles Office in order to remedy such defect (whether as agent or otherwise), and will return the documents to the Purchaser's Lawyer, together with any related rejection fee, for re-submission for registration.

B. TRUST CONDITIONS BINDING THE PURCHASER'S LAWYER

1. That, on or before the Closing, the Purchaser's Lawyer:
 - (a) will provide the Vendor's Lawyer with the balance due on Closing, as shown on the Statement of Adjustments;
 - (b) will have on hand the Purchaser's Mortgage, in registrable form, and
 - (c) will have on hand the Purchaser's Declaration as to Possession, in duplicate, executed in accordance with section 72 of *The Real Property Act* and containing, among others, the declarations prescribed under Schedule V of the Protocol;
2. That the Purchaser's Lawyer will obtain from the Vendor's Lawyer written confirmation of receipt of a Title search (whether in verbal, electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than the Permitted Registrations, the acknowledged Non-Permitted Registrations, and any Registrations arising by, through or against the Purchaser or, alternatively, the Purchaser's Lawyer will obtain such a Title search from the Land Titles Office;
3. That, forthwith after satisfaction of each of the foregoing conditions, the Purchaser's Lawyer will arrange for completion of any incomplete sections of the Transfer and, forthwith thereafter (and within 2 business days), will forward to the Land Titles Office the Transfer, the Duplicate Title, if applicable, and the Mortgage (accompanied by the Registration Details Application and the related fees and land transfer taxes) for registration in series in the Land Titles Office; and
4. That, if the Transfer and Mortgage are held up or rejected by the Land Titles Office due to a defect in the Transfer or the Mortgage which is remediable by the Purchaser's Lawyer using all reasonable efforts, the Purchaser's Lawyer will forthwith attend at the Land Titles Office or take such other steps as may be prescribed by the Land Titles Office in order to remedy such defect (whether as agent or otherwise), will pay any related rejection fee, and will re-submit the documents for registration.

SCHEDULE III

SAMPLE TRUST CONDITIONS

1. Sample of Trust Letter to Vendor's Lawyer

Re: Purchase of *****
***** from *****

Enclosed is our trust cheque in the amount of \$***** representing full payment of the balance due to your clients on Closing, as shown on your Statement of Adjustments.

The enclosed funds are sent to you in trust, on each of Conditions A.1 to A.6 inclusive of the Trust Conditions Binding the Vendor's Lawyer under the Memorandum of Trust Conditions, LSM 2009-1, [and on the following additional conditions:]

(Insert any additional conditions)

We confirm that, in the context of this transaction, reference in the Memorandum of Trust Conditions to the following terms shall have the corresponding meanings set forth:

- (a) "Closing" means _____, 200_;
- (b) "Non-Permitted Registrations" means Mortgage No. _____;
- (c) "outstanding realty tax arrears and penalties affecting the Land to the Closing date" means the sum of \$_____; and
- (d) "Permitted Registrations" means Caveat Nos. _____ and _____.

In the event that you are unable or unwilling to comply with any of the trust conditions described above, the enclosed funds are to be returned to our offices immediately upon demand.

Upon your acceptance of these trust conditions and our agreeing to any additional conditions to be imposed on our office, we undertake to comply with Conditions B.1 to B.4 inclusive of the Trust Conditions Binding the Purchaser's Lawyer under the Memorandum of Trust Conditions, LSM 2009-1.

Please advise of the manner in which our clients are to obtain the keys to the premises.

Yours truly,

2. Sample of Trust Letter to Purchaser's Lawyer:

Re: Sale of *****
***** to *****

We enclose the following:

1. Transfer;
2. Declaration as to Possession;
3. Statement of Adjustments; and
4. Keys to the subject premises.

The enclosed documents and keys are sent to you in trust, on each of Conditions B.1 to B.4 inclusive of the Trust Conditions Binding the Purchaser's Lawyer under the Memorandum of Trust Conditions, LSM 2009-1, [and on the following additional conditions:]

(insert any additional conditions)

We confirm that, in the context of this transaction, reference in the Memorandum of Trust Conditions to the following terms shall have the corresponding meanings set forth:

- (a) "Closing" means _____, 200_;
- (b) "Non-Permitted Registrations" means Mortgage No. _____;
- (c) "outstanding realty tax arrears and penalties affecting the Land to the Closing date" means the sum of \$ _____; and
- (d) "Permitted Registrations" means Caveat Nos. _____ and _____.

In the event that you are unable or unwilling to comply with any of the trust conditions described above, the enclosed documents and keys are to be returned to our offices immediately upon demand.

Provided that you accept these trust conditions, we undertake to comply with Conditions A.1 to A.6 inclusive of the Trust Conditions Binding the Vendor's Lawyer under the Memorandum of Trust Conditions, LSM 2009-1.

The enclosed keys may be released to your client, on or after the agreed date of possession, once we have received the balance due on Closing.

Yours truly,

02/04

SCHEDULE IV

SAMPLE POWERS OF ATTORNEY

Note: The Protocol formerly required that the Lawyer obtain the client's power of attorney, empowering the Lawyer to correct defects in the document which would otherwise cause its rejection by the Land Titles Office. The approved power of attorney was either the short form Limited Power of Attorney shown as Sample One below, or the longer form Limited Power of Attorney illustrated at Sample Two, which is an enduring power of attorney under *The Powers of Attorney Act (Manitoba)*.

It continues to be acceptable to obtain a party's power of attorney by way of separate written instrument, in the form of either Sample One or Sample Two below. In circumstances where the continuing capacity of a party is at issue, the prudent practice may still be to obtain that party's enduring power of attorney, substantially in the form of Sample Two below.

However, it is no longer a Protocol requirement to obtain the client's express power of attorney, nor is it appropriate to require the other party's lawyer to obtain a power of attorney from that lawyer's client. By general principles of agency law, the lawyer has the client's implied authority to conduct the matter in which the lawyer is retained and to do all things that may reasonably be expected to arise in the transaction. The Corrections Policy of the Land Titles Office recognizes that implied authority, and will allow the lawyer, as agent for the client, to correct the vast majority of document defects by way of correction letter.

(SAMPLE ONE)

LIMITED POWER OF ATTORNEY

I, (insert full name of donor) of (insert full address and postal code) appoint (insert full name of lawyer appointed) of (insert full address and postal code) to be the attorney for me and in my name and place to do all things required to be done on my behalf in order to complete the [purchase / mortgage / sale] of (insert civic address or short legal description of the property as referred to in the Offer or the Mortgage Commitment) contemplated by my agreement with (insert full names of all other parties, including the donor's mortgagee, if applicable) dated _____. For that purpose (but without limitation), my attorney may execute and deliver, or amend, correct, replace or re-execute and deliver, all documents, forms, instruments, elections, acknowledgements, consents or releases (including any consent or release under *The Homesteads Act [Manitoba]*), may give evidence on my behalf by way of affidavit, statutory declaration or otherwise concerning any matter, and may do all lawful acts which, in the opinion of my attorney, may be necessary or desirable.

SIGNED AND SEALED at _____, Manitoba, this ____ day of _____ 20 ____.

Signed, published and declared by _____)
in my presence, and at his/her request)
and in his/her presence, I have hereunder)
subscribed my name as a witness.)

_____) _____
Witness)

Name and
Occupation

**THE HOMESTEADS ACT
DONOR'S ACKNOWLEDGEMENT FOR POWER OF ATTORNEY**

I, _____, the donor named in the above Limited Power of Attorney appointing _____ as my attorney, acknowledge that:

1. I am executing this Limited Power of Attorney freely and voluntarily, without any compulsion on the part of my spouse or common-law partner;
2. I am aware of the nature and effect of this Limited Power of Attorney; and
3. I am executing this acknowledgement apart from my spouse or common-law partner.

(Name of Donor) (Signature of Donor) (Date)

(Name of Witness) (Signature of Witness) (Date)

A Commissioner for Oaths/Notary Public in and for
the Province of Manitoba. My Commission expires:

02/04

CANADA) I, _____, of
) the _____ of _____, in the
 PROVINCE OF MANITOBA) Province of Manitoba,
)
 TO WIT:)

make oath and say that:

1. I was personally present and did see the within Limited Power of Attorney and Acknowledgement duly signed, sealed and executed by the donor of the power, _____, at the _____ of _____, in the Province of Manitoba, on the _____ day of _____, 20__ and at the time of execution the donor was, in my opinion, of sound mind, memory and understanding.
2. I know the donor and he/she is, in my belief, eighteen (18) years of age or more.
3. I am a subscribing witness to the Limited Power of Attorney and Acknowledgement.
4. The Limited Power of Attorney and Acknowledgement was executed by the donor in my presence (or the donor acknowledged his or her signature in my presence), whereupon I did, in the presence of the donor, subscribe the Limited Power of Attorney and Acknowledgement as a witness.

SWORN BEFORE me at the _____ of)
 _____, in Manitoba, this)
 _____ day of _____, 20__ .)
)
 _____)
 A Commissioner for Oaths in and)
 for the Province of Manitoba)
 My Commission Expires:

 Witness

NOTE TO SOLICITOR:

In circumstances where transfer or mortgage documents must be substantially amended or re-executed by the solicitor under the Limited Power of Attorney, the Land Titles Office may require that, in addition to filing the Limited Power of Attorney, the solicitor furnish evidence to the effect that:

1. the documents executed or amended by the grantee under the Limited Power of Attorney relate to the lands described in the Limited Power of Attorney; and
2. the documents executed or amended by the grantee under the Limited Power of Attorney relate to the transaction described in the Limited Power of Attorney.

Solicitors should consult with the Land Titles Office to determine its specific requirements in any individual case.

(SAMPLE TWO)

LIMITED POWER OF ATTORNEY

I, _____ (*Insert Full Name of Donor*) of _____ (*Insert Full Address and Postal Code*) do hereby nominate, constitute and appoint _____ (*Insert Full Name of Lawyer Appointed*) of _____ (*Insert Full Address and Postal Code*)

to be the true and lawful attorney for me and in my name, place and stead, and for my sole use and benefit, to do all things required to be done on my behalf in order to complete the transaction of purchase, mortgage or sale of property contemplated by my agreement with _____ (*Insert Full Names of all other Parties, including the Donor's Mortgage, if applicable*) (the "Transaction") and for that purpose (but without limitation), to exercise any or all of the following powers:

1. to execute and deliver, or to amend, correct, replace or re-execute and deliver, all documents, forms, instruments, elections, acknowledgements, consents or releases (including any consent or release under *The Homesteads Act [Manitoba]*) and, without limitation, to give evidence on my behalf, by way of affidavit, statutory declaration or otherwise, concerning any matter;
2. to examine, state, adjust, settle or pay any account between myself and any other person, to receive and to give receipts and discharges for all sums of money which may become due and payable to me, and to compound, compromise and accept part payment in satisfaction of the payment of the whole of any debts or sums of money payable to me or to grant an extension of time for the payment of the same;
3. to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in connection with the Transaction;
4. to appoint a substitute attorney or attorneys with the same or more limited powers as are set out herein and, at pleasure, to revoke any or all powers given to such substitute or substitutes; and
5. to act generally as my attorney in relation to the Transaction and, on my behalf, to do all lawful acts which, in the opinion of my attorney, may be necessary or desirable.

I hereby declare that, for the purposes of the Transaction, my attorney shall have all powers in relation to my property as if my attorney were the owner thereof, and I hereby authorize my attorney to do on my behalf anything I can lawfully do by an attorney.

I declare that the authority given to my attorney under this Limited Power of Attorney is given for valuable consideration, is irrevocable, and is to remain in full force and effect, notwithstanding any future or periodic mental infirmity, incompetency or death on my part.

SIGNED AND SEALED at _____, Manitoba, this __ day of _____ 20__.

Signed, published and declared by _____)
in my presence, and at his/her request)
and in his/her presence, I have hereunder)
subscribed my name as a witness.)

*Witness)
Name and)
Occupation)

***Important Note as to Requirements for Witness**

In accordance with *The Powers of Attorney Act (Manitoba)*, a witness to the execution of an enduring power of attorney must be:

- (a) an individual registered, or qualified to be registered, under section 3 of *The Marriage Act (Manitoba)* to solemnize marriages;
- (b) a judge of a superior court of the province;
- (c) a justice of the peace, magistrate or provincial judge;
- (d) a duly qualified medical practitioner;
- (e) a notary public appointed for the province;
- (f) a lawyer entitled to practice in the province;
- (g) a member of the Royal Canadian Mounted Police; or
- (h) a member of a municipal police force in the province who exercises the powers of a peace officer.

Neither the attorney nor his or her spouse or common-law partner may act as a witness.

**THE HOMESTEADS ACT
DONOR'S ACKNOWLEDGEMENT FOR POWER OF ATTORNEY**

I, _____, the donor named in the above Limited Power of Attorney appointing _____ as my attorney, acknowledge that:

1. I am executing this Limited Power of Attorney freely and voluntarily, without any compulsion on the part of my spouse or common-law partner;
2. I am aware of the nature and effect of this Limited Power of Attorney; and
3. I am executing this acknowledgement apart from my spouse or common-law partner.

(Name of Donor)

(Signature of Donor)

(Date)

(Name of Witness)

(Signature of Witness)

(Date)

A Commissioner for Oaths/
Notary Public in and for
the Province of Manitoba.
My Commission expires:

CANADA) I, _____, of
) the _____ of _____, in the
 PROVINCE OF MANITOBA) Province of Manitoba,
)
 TO WIT:)

make oath and say that:

1. I was personally present and did see the within Limited Power of Attorney and Acknowledgement duly signed, sealed and executed by the donor of the power, _____, at the _____ of _____, in the Province of Manitoba, on the _____ day of _____, 20__ and at the time of execution the donor was, in my opinion, of sound mind, memory and understanding.
2. I know the donor and he/she is, in my belief, eighteen (18) years of age or more.
3. I am a subscribing witness to the Limited Power of Attorney and Acknowledgement.
4. The Limited Power of Attorney and Acknowledgement was executed by the donor in my presence (or the donor acknowledged his or her signature in my presence), whereupon I did, in the presence of the donor, subscribe the Limited Power of Attorney and Acknowledgement as a witness.

{If the person signing the Limited Power of Attorney and Acknowledgement is a marksman or blind, complete the following paragraph.}

5. Prior to the execution of the within Limited Power of Attorney and Acknowledgement by the donor, it was read over to him/her by me and the donor at the time had knowledge of its contents and appeared perfectly to understand it.

SWORN BEFORE me at the _____ of)
 _____, in Manitoba, this)
 _____ day of _____, 20__.

)
)
 _____)
 A Commissioner for Oaths in and)
 for the Province of Manitoba)

My Commission Expires:

 Witness

NOTE: The provisions identified by asterisk and bold type (or comparable variations thereof) are to be included in every Declaration as to Possession delivered under the Protocol. The meaning of these declarations must be explained to, and affirmed by the maker before execution.

The Declaration as to Possession is to be made in duplicate and executed in accordance with section 72 of The Real Property Act.

There is no requirement to obtain a Declaration as to Possession from a Purchaser who is not financing the transaction through a new mortgage.

SCHEDULE V

SAMPLE DECLARATION AS TO POSSESSION

IN THE MATTER OF THE SALE/MORTGAGE OF: *(insert civic address of the Land)*

TO: *(insert name of Purchaser/Mortgagee)*

I, *(insert full legal name)*, and I, *(insert full legal name)*, (each) of the _____ of _____, in the Province of Manitoba, do (severally) solemnly declare that:

- *1. My full and correct legal name is as set out above.**
- *2. I am (one of) the registered owner(s) in fee simple in possession of the following lands and premises:**

(hereinafter the “Land”)
- *3. I am (one of) the vendor(s)/mortgagor(s) of the Land and I am of the full age of 18 years.**
- *4. I have never had a spouse or common-law partner.**

OR

My co-declarant is my spouse or common-law partner and has homestead rights in the Land.

OR

***(Insert full legal name)* is the full and correct legal name of my spouse or common-law partner who has homestead rights in the Land and who consents to the disposition of the homestead in the Land to be effected by this transaction.**

OR

I have no spouse or common-law partner, and no other person has acquired homestead rights in the Land during my ownership.

OR

The Land is not homestead property.

5. My lawyers, (*insert name of law firm or lawyer*), have my full authority to do all things required to complete this transaction, including the making of any necessary amendments to correct any document signed by me which is to be registered in the Land Titles Office.

*6. I am rightfully in actual personal peaceable possession and occupation of the whole of the Land and have been so continuously since I became the/a registered owner of the Land, and I have never been disturbed in my possession of the Land or any part thereof.

*7. The names of all persons in actual occupation of or residing on the Land or any portion thereof and the nature of such occupation and residence are as follows:

*8. I know of no registered or unregistered claim of any person, corporation, municipality, or government, to or affecting the Land, whether adverse to my title thereto or otherwise, for a lease, option to purchase, easement, right-of-way, order of attachment, judgment, order for the payment of money, execution, builder's lien, charge, mortgage, encumbrance, order under the *Bankruptcy and Insolvency Act (Canada)*, agreement for sale or other agreement affecting the Land, other than the agreement for sale of the Land to the purchaser(s) named above, except:

*9. There has been no work done, services provided, or materials supplied for the erection, renovation or repair of any building or other improvement on the Land within the preceding 40 days or, if such is not the case, there are no outstanding accounts for such work, services or materials, except:

10. The electrical system and equipment, heating system, hot water tank and heater, and all other fixtures, chattels, and equipment comprising the Land are fully paid for and are not affected by any chattel mortgage, rental agreement, conditional sales contract or other charge or encumbrance whatsoever.

*11. All taxes on the Land are paid to the 31st day of December, 20____ and, except for the water account for the current period, there are no outstanding accounts owing to the Municipality which are capable of forming a lien on the Land.

12. The water meter reading, as of _____, 20__, was _____, and all accounts for water supplied to the Land up to the Closing Date will be paid by me or on my behalf. [*It is recommended, but not required, that this declaration be obtained from Vendors.*]

13. The Land is not the subject of any loan under *The Homeowner's Tax and Insulation Assistance Act (Manitoba)* or, if any such loan is outstanding, the same will be paid off from the sale proceeds.

14. This sale is a sale of a used residential property and is an exempt supply pursuant to the Goods and Services Tax (“GST”) provisions under the *Excise Tax Act (Canada)*, and no GST is payable by the purchaser regarding this supply.

***15. I am not now and, as at the date of the completion of the sale of the Land, will not be a non-resident of Canada within the meaning of the *Income Tax Act (Canada)*.**

16. I have not received a notice of application, nor am I aware of any notice of application, with respect to the provisions of *The Safer Communities and Neighbourhoods and Consequential Amendments Act* for the subject property.

17. *[Insert any other representations made under the Agreement for Sale which are to survive the Closing.]*

AND I make this solemn declaration conscientiously, believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Evidence Act (Canada)*.

(SEVERALLY) DECLARED before me at)
the ___ of _____, in the Province of) _____
Manitoba, this _____ day of) _____
_____, 20____.) _____
_____) _____

A Notary Public/Commissioner for Oaths
in and for the Province of Manitoba
My Commission expires:
***[Insert name, office and
address of witness, as
required by the LTO.]***

AFFIDAVIT OF SUBSCRIBING WITNESS

I, _____, of the _____ of _____, in
Manitoba

make oath and say that:

1. I am a subscribing witness to the attached Declaration as to Possession and I was present and saw it executed at _____ by _____.
2. I verily believe that each person whose signature I witnessed is of the full age of majority and is the party of the same name referred to in the Declaration as to Possession.

SWORN before me at the _____)
_____, in _____)
this _____ day of _____, 20__)
_____)
_____)
A Commissioner for Oaths in and for the)
Province of Manitoba)
My Commission expires: _____)
_____)
_____)

SCHEDULE VI

ACKNOWLEDGEMENT

(SAMPLE ONE)

DATE:

BY: *(Name of Purchaser/Client)*

TO: *(Name and Address of Lawyer/Law Firm)* (my “Lawyers”)

AND TO: *(Name and Address of Mortgagee)* (the “Mortgagee”)

SUBJECT: Purchase of *(Civic Address)* (the “Property”)

I, *(Purchaser’s Name)* , hereby acknowledge and agree as follows:

1. I am (one of) the purchaser(s) of the Property.
2. I have applied to the Mortgagee for a loan on security of a mortgage of the Property.
3. My Lawyers have advised me that I am not required to provide either a current original building location certificate and sketch of the Property, as prepared by a qualified Manitoba Land Surveyor (a “Building Location Certificate”), or a zoning memorandum issued by the municipality in relation to the Property (a “Zoning Memorandum”) to the Mortgagee for its purposes.
4. My Lawyers have advised me further as to the importance and various benefits of obtaining a Building Location Certificate and a Zoning Memorandum, and in particular:
 - (i) that, without a Building Location Certificate and Zoning Memorandum, my Lawyers cannot certify that the buildings and structures purchased are located within the boundaries of the Property, that the Property is free from encroachments by buildings or structures on adjoining properties, or that the Property complies with applicable zoning regulations; and
 - (ii) that, after the closing of the purchase transaction, I cannot recover damages against the vendor should I later discover that the buildings and structures purchased are not located within the boundaries of the Property, that the Property is subject to encroachments by buildings or structures on adjoining properties, or that the Property does not comply with applicable zoning regulations.

My Lawyers have recommended that I obtain a Building Location Certificate and a Zoning Memorandum to protect my own legal, financial and other interests relating to the Property. I understand that advice of my Lawyers but, nonetheless, I have decided not to

obtain a Building Location Certificate or a Zoning Memorandum and I have so instructed my Lawyers.

5. My Lawyers are representing the interests of the Mortgagee in this transaction, as well as my own, and I consent to that multiple representation. It is my right and responsibility to obtain my own independent legal advice about obtaining a Building Location Certificate and a Zoning Memorandum to protect my legal and other interests in the Property, if I have any concerns about a potential conflict of interest arising from that multiple representation or any other matter.
6. On closing of the transaction of purchase and mortgage of the Property, the assurances to be given by my Lawyers to the Mortgagee may be broader than the assurances my Lawyers will give to me, and may address matters which could have been verified by me had I obtained a Building Location Certificate and a Zoning Memorandum.
7. None of my Lawyers, the Mortgagee, nor their respective insurers, are responsible or liable for any loss that I suffer because of my decision not to obtain a Building Location Certificate and a Zoning Memorandum for the Property.
8. Any insurance coverage that the Mortgagee may have, and any rights that the Mortgagee may have against my Lawyers or my Lawyers' insurers, to compensate the Mortgagee for any loss resulting from the absence of a Building Location Certificate and a Zoning Memorandum for the Property, protect only the Mortgagee's interest and do not cover or apply to any loss that I suffer because I have not obtained a Building Location Certificate and a Zoning Memorandum for the Property.
9. Any indemnity payment or other amount paid to the Mortgagee under insurance coverage carried by the Mortgagee or by my Lawyers does not release me from my indebtedness to the Mortgagee under the mortgage, and the insurer shall have full rights of subrogation as stipulated in its contract of insurance.
10. I have read over this document carefully before signing it, I completely understand its meaning, and I sign this document voluntarily.

DATED at _____, Manitoba this _____ day of _____, 20____

_____) _____
Witness) Signature of Purchaser

(SAMPLE TWO)

ACKNOWLEDGEMENT

I, _____, hereby acknowledge and agree as follows:

1. I am (one of) the purchaser(s) of the property commonly known as _____ (the "Property").
2. I have applied to _____ (the "Mortgagee") for a loan on security of a mortgage of the Property.
3. _____ ("my Lawyers") have advised me that I am not required to provide either a current original building location certificate and sketch of the Property, as prepared by a qualified Manitoba Land Surveyor (a "Building Location Certificate"), or a zoning memorandum issued by the municipality in relation to the Property (a "Zoning Memorandum") to the Mortgagee for its purposes.
4. Lawyers have advised me further as to the importance and various benefits of obtaining a Building Location Certificate and a Zoning Memorandum, and in particular:
 - (iii) that, without a Building Location Certificate and Zoning Memorandum, my Lawyers cannot certify that the buildings and structures purchased are located within the boundaries of the Property, that the Property is free from encroachments by buildings or structures on adjoining properties, or that the Property complies with applicable zoning regulations; and
 - (iv) that, after the closing of the purchase transaction, I cannot recover damages against the vendor should I later discover that the buildings and structures purchased are not located within the boundaries of the Property, that the Property is subject to encroachments by buildings or structures on adjoining properties, or that the Property does not comply with applicable zoning regulations.

My Lawyers have recommended that I obtain a Building Location Certificate and a Zoning Memorandum to protect my own legal, financial and other interests relating to the Property. I understand that advice of my Lawyers but, nonetheless, I have decided not to obtain a Building Location Certificate or a Zoning Memorandum and I have so instructed my Lawyers. My Lawyers are not responsible or liable for any loss that I suffer because of my decision not to obtain a Building Location Certificate and a Zoning Memorandum for the Property.

5. On closing of the transaction of purchase and mortgage of the Property, the assurances to be given by my Lawyers to the Mortgagee may be broader than the assurances my Lawyers will give to me, and may address matters which could have been verified by me had I obtained a Building Location Certificate and a Zoning Memorandum.

I have read over this document carefully before signing it, I understand its meaning, and I sign this document voluntarily.

DATED at _____, Manitoba this _____ day of _____, 20__

_____)
Witness

_____)
Signature of Purchaser