

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.