

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.