Unified SCP Trust Conditions for Title-Insured or Western Protocol Closings Under the New Offer

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Once the new statutory Offer to Purchase forms for single family residential houses and condominium units come into effect **on November 1, 2025**, the full purchase price will have to be paid to the seller on or within 7 days of closing. This means that buyers' lawyers will need to arrange to have their clients' mortgages funded before registration, relying on the gap registration protections of either title insurance or the Western Law Societies Conveyancing Protocol (the "Protocol").

Trust Conditions Must Change

Until now, most lawyers have been using what were known as the "NCP" trust conditions for title-insured transactions or the precedent trust letters and Memorandum of Trust Conditions prescribed under the Protocol.

Trust conditions will now need to change, to reflect both the earlier flow of funds and other changes under the new Offer.

New Unified Standard Trust Conditions

In recent months, a small group of real estate lawyers, known as the Conveyancing Practices Working Group, has been working to develop revised trust conditions for use under the new Offer. The Conveyancing Practices Working Group, chaired by Bob Tyler and Jeff Shypit, included representation from large and small firms in Winnipeg, Steinbach and Brandon, as well as from the Law Society of Manitoba. It has developed a set of unified trust letters which are appropriate for use under either closing method, whether title-insured or Protocol. The new recommended Standard Conveyancing Practice ("SCP") trust conditions, Declaration as to Possession, and Undertakings are available on the Law Society's Education Centre website.

Trust Conditions for Protocol Closings

If you are familiar with the Protocol closing procedure, you may be operating under the misconception that the Protocol carved in stone the precise trust conditions which must be used. That's not the case. The sample trust letters at Schedule III of the Protocol, and the Memorandum of Trust Conditions, LSM 2009–1 which can be incorporated by reference, are not prescribed forms. They were offered and have always been intended as illustrations of the manner in which the Memorandum of Trust Conditions could be incorporated into trust letters, to simplify the process of settling conditions and documents between lawyers. As the Protocol introduction indicates, though, those documents are sample precedents only, and have always needed to be customized to suit the circumstances of the transaction and changing practice standards.

The Protocol reflected the best practices of its day but it has not been amended since 2009. There have been changes in the real estate conveyancing landscape which lawyers need to address in their Protocol closing trust conditions, particularly now under the new Offer. What the Protocol requires is that the closing trust conditions – in substance, whatever the form – conform to the essence of the Protocol and meet its minimum requirements.

SCP Trust Conditions are Law Society-Approved for Protocol Closings

The new SCP trust conditions, with supporting Declaration as to Possession and Undertakings, accomplish this. The trust conditions conform to the essence of the Protocol conveyancing practices while also adopting a number of new provisions to reflect the terms of the new Offer and current practice standards. Among other enhancements, the SCP conditions contain the recommended new trust condition to address the s. 116 *Income Tax Act* holdback and remittance requirements for non-resident sellers.

The Standard Conveyancing Practice ("SCP") trust conditions have been approved by the Law Society for use on Protocol closings. But as with the existing Protocol trust letters and Memorandum of Trust Conditions, they can and should be modified to meet the broader duties of care defined by the standards of prudent practice, the instructions of the client, and the circumstances of the particular transaction.

The SCP trust conditions do not replace the Protocol. The full Protocol document, together with a free, on-demand, explanatory eCourse, is still available on the Law Society's Education Centre website. It continues to provide important guidance on pre-closing investigations and preparation of closing documents. It outlines the advice buyers still need about the benefits of obtaining a new building location certificate and zoning memorandum when title insurance is not being obtained. When acting for a mortgage lender, you'll still need to follow the steps for issuing the prescribed Solicitor's Opinion to cause the lender to advance mortgage proceeds on closing. But the SCP trust conditions should now generally be used in place of the sample trust letters in the Protocol. While use of the Protocol sample trust letters and Memorandum of Trust Conditions might still be appropriate on some simple transactions, use of the SCP trust conditions will typically be the more prudent practice.

Jeff Shypit and Lindsay Hyman will present an overview of the new SCP trust conditions in a 1.5-hour Law Society CPD Webinar on October 23, 2025. Register online.