



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

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## **PART A: PURPOSE AND APPLICATION OF THE PROTOCOL**

The Western Law Societies' Conveyancing Protocol is an initiative of the law societies of Alberta, British Columbia, Saskatchewan and Manitoba. The project was initiated to respond to the many changes in the residential real estate and conveyancing 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 registration system in Western Canada.

Each Law Society has developed a real estate conveyancing protocol which is tailored for use in that Province. In Alberta, the Protocol was developed by a committee of the Law Society, the Alberta Conveyancing Advisory Committee, that is comprised of practitioner members from across the province.<sup>1</sup> The Protocols reflect minor jurisdictional distinctions 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 Buyers, Sellers and Lenders;
2. to encourage the continued exercise of due diligence by Buyers in matters of survey and zoning;
3. to enable lawyers to satisfy the unique security requirements of Lenders without the expense of obtaining a Real Property Report unless there is a known defect; and
4. to provide a short form Solicitor's Opinion to Lenders.

The Protocol prescribes enhanced standards of conveyancing practice, which will result in better service for clients. The Law Society's professional liability insurance program provides insurance coverage for all Alberta lawyers in private practice. The mandatory policy limits are \$1,000,000 per occurrence/\$2,000,000 annual aggregate (higher insurance limits are available through the Alberta Lawyers' Insurance Association). If a claim is made against a lawyer arising from application of the Protocol:

- a) resulting in actual loss to a Buyer due to an intervening Registration which impairs the Buyers's Title; and

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<sup>1</sup> The Alberta Conveyancing Advisory Committee members are: Jack Dunphy, Q.C., Chair; Don Homer, Co-Chair; Sonny Mirth, Q.C.; Phyllis Smith, Q.C.; Cheryl Gottselig, Q.C.; Randall Thiessen; Steve Raby; Christopher Warren, Q.C.; Heather Bonnycastle, Q.C.; Steven Shavers; Linda Wright; Louise Eccelston; Garry Kaskiw; Patrick Bishop; Lyndon Irwin, Q.C.; Peter Freeman, Q.C.; Don Thompson; Susan Billington.

- b) resulting in actual loss to a Lender
  - 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 Real Property Report with a Compliance Stamp

then the insurance program will accept liability on the part of the lawyer and move quickly to quantify damages. Where one of these claims is made against a Lawyer, the levy surcharge of that insured Lawyer will be waived, provided the Lawyer has adhered to the practices prescribed under the Protocol.

The Protocol applies to real estate transactions involving existing single family residential property having 4 or fewer units, including existing condominiums. It does not apply to multi-family dwellings or commercial property transactions. It does not apply to construction mortgages. 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 Buyer's mortgage or the requirements of the Lender may simply be disregarded. Also, the Protocol procedure may be used on mortgage refinancings, in which case, only those provisions relating to the mortgage or the Lender's requirements apply. The intention of the Protocol is to streamline conveyancing practice to facilitate the full release of funds on the closing date. The Protocol prescribes the conditions precedent to the issuance of a Solicitor's Opinion to the Lender. The Protocol does not change the contractual obligations of the Buyer and Seller under the real estate purchase contract.

The focus of the Protocol is on practice and procedure, rather than on substantive law. When using the Protocol, ensure that you have obtained the most current revision, which will be available on the member sign-in section of the Law Society of Alberta website at [www.lawsocietyalberta.com](http://www.lawsocietyalberta.com). The Protocol 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 required to meet current conveyancing practice standards must still be taken. All standards of the prudent real estate practitioner still must be met.** The requirements of prudent practice, including special practices regarding multiple representations, transactions involving divorce/matrimonial property, leasehold properties, revenue properties and condominiums still must be followed. For guidelines on prudent practice in real estate transactions refer to the Residential Conveyancing Guide (Legal Education Society of Alberta) and the Law Society's Practice Guide.

## **PART B: STRUCTURE OF THE PROTOCOL**

The essential substance of this Protocol is contained in Part D and Part E, which detail the steps to be taken by each of the Seller's Lawyer and the Buyer's Lawyer, respectively, in the context of a Closing under the Protocol.

Parts D and E prescribe the minimum standards of conveyancing practice for transactions which are to involve the issuance of the Solicitor's Opinion under the Protocol. Again, those sections are not exhaustive accounts of a conveyancing Lawyer's duties to a Seller, a Buyer, Lender or a Mortgagor. The Lawyer still owes the broader duties of care required by prudent practice, the scope of the retainer and the instructions of the client.

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

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

Schedule I -	Solicitor's Opinion
Schedule II -	Memorandum of Trust Conditions
Schedule III -	Sample Trust Letters
Schedule IV -	Sample Waiver of Real Property Report and Certificate of Compliance

Schedule I is the form of Solicitor's Opinion to the Lender. This is a prescribed form and must not be modified, except as contemplated within the Solicitor's Opinion. It is anticipated that specific Lender requirements may be added as necessary to the Solicitor's Opinion to comply with the Lender's reporting requirements.

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 gives an illustration of the manner in which the Memorandum of Trust Conditions may be incorporated into a trust letter.

As indicated, these documents are samples only, precedents are to be customized to suit the circumstances of the transaction. Note, though, that variations from these scheduled forms must still conform to the meaning of the documents contemplated by 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 Seller and the Buyer in relation to the Land;
- b) "Buyer" means the person(s) who has(ve) agreed to purchase the Land from the Seller pursuant to the Agreement;

- c) “Certificate of Compliance” means a Certificate of Compliance issued by the Municipality in relation to the Land;
- d) “Claims Fund” means the Professional Liability Claims Fund of the Alberta Lawyers’ Insurance Association;
- e) “Closing” means the consummation of the transaction of purchase and sale in accordance with the terms of the Agreement;
- f) “Discharge” means a discharge of Registration in the form prescribed by *The Land Titles Act*;
- g) “Document Registration Request” means the prescribed form of application to be submitted with documents which are to be registered in the Land Titles Office;
- h) “Land” means all of the land and premises agreed to be sold by the Seller to the Buyer pursuant to the Agreement;
- i) “Land Titles Act” means the Land Titles Act of Alberta;
- j) “Land Titles Office” means the Land Titles Office pursuant to section 4 of the Land Titles Act;
- k) “Lawyer” means a member of The Law Society of Alberta who is entitled to practice as a barrister and solicitor in Alberta;
- l) “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;
- m) “Municipality” means the local government of the city, town or other municipal designation of the community in which the Land is situate;
- n) “Non-Permitted Registration” means a Registration on Title to the Land which, by the terms of the Agreement, the Seller is obligated to discharge from Title;
- o) “Order to Pay” means an irrevocable written authorization and direction to the Lawyer, detailing the manner in which funds are to be disbursed.
- p) “Permitted Registration” means a Registration on Title to the Land which, by the terms of the Agreement, the Buyer has agreed to accept or assume;

- q) “Real Property Report” means a real property report prepared by a qualified Alberta Land Surveyor in relation to the Land;
- r) “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;
- s) “Seller” means the person(s) who has(ve) agreed to sell the Land to the Buyer pursuant to the Agreement;
- t) “Solicitor’s Opinion” means the opinion on the Mortgage , in the form attached as Schedule I to this Protocol, issued by the Buyer’s Lawyer to the Lender upon Closing;
- u) “Statement of Adjustments” means a statement of the adjustments to and the manner of payment of the purchase price, as prescribed by the Agreement;
- v) “Title” means title to the Land, as registered in the Land Titles Office;
- w) “Transfer” means a transfer of the Land in the form prescribed by *The Land Titles Act*;

#### **PART D: DUTIES OF THE SELLER’S LAWYER**

Following are the essential steps to be taken, and conditions to be satisfied, by the Seller’s Lawyer in a transaction involving the issuance of a Solicitor’s Opinion.

Before proceeding on a Protocol Closing, be sure the Buyer and the Seller have accepted the use of a Protocol Closing.

#### **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 Seller. If there is any issue as to whether the Title encompasses the Land, conduct further investigations which may include review of registered plans and a Real Property Report, through discussions with the Seller and, if necessary, consultation with an Alberta Land Surveyor.
- b) Obtain a copy of any Registration on title which is not, from the description on title, clearly either a Permitted Registration or a Non-Permitted Registration.

- c) 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; or
  - ii) a Non-Permitted Registration which must be discharged on or before Closing.
- b) Confirm with the Buyer’s Lawyer the Registrations that will remain on title (Permitted) and those that will be discharged (Non-permitted).
3. Settle the Terms of Discharge for all Non-Permitted Registrations
- a) Before Closing, obtain a registerable Discharge (on satisfactory conditions) of each non-financial Non-Permitted Registration.
- b) For each financial Non-Permitted Registration to be paid-out on or before Closing, obtain a pay-out commitment 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 Seller the excess funds necessary to obtain all required Discharges.
- c) Where encumbrancers are Lenders, ensure pay-out commitments are:
- i) current;
  - ii) in writing;
  - iii) clear; and
  - iv) received from the Lender by the Lawyer who will be relying on them.
- d) Where encumbrancers are other than Lenders, arrange where possible:
- 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; or
  - ii) for the Seller to obtain interim financing to pay-out and obtain a Discharge before Closing.



#### 4. Other Investigations

- a) Property Taxes - Confirm the status of property taxes. Ensure that sufficient sale proceeds or other funds will be available to satisfy all outstanding arrears and penalties, as well as the Seller's share of current taxes not yet due.
- b) Identity and Marital Status - Inquire as to the full legal name and, if the Dower Act applies, marital status of each Seller. Verify that the Seller is named as the registered owner of the Land.
- c) Corporate Status - If the Seller is a corporation, confirm that the Seller, if an Alberta corporation, is registered in Alberta and has the required capacity.
- d) Identification of property - Ensure that the client correctly identifies the property to be conveyed.
- e) Review of such other documents as are appropriate in accordance with prudent practice for the conveyance of condominiums or other types of special properties or circumstances;
- f) Where the Buyer is assuming a financial encumbrance, obtain an assumption statement.

#### 5. Prepare Closing Documents

- a) Statement of Adjustments.
- b) Transfer:
  - i) Ensure that the information inserted in the Transfer conforms precisely with the Title particulars. To minimize the possibility of rejection of the Document Registration Request by the Land Titles Office, ensure that the information on the Transfer is exact. Ensure the Dower Act has been complied with.
  - ii) Where the current name of the Seller 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 on or with the Transfer and that the necessary attachments are provided.
  - iii) Ensure the declaration of residency pursuant to section 116 of the Income Tax Act is completed on the transfer or other document, and if residency does not apply, the appropriate steps for withholding have been taken or clearance obtained.
- c) the Seller's Order to Pay, authorizing (among other payments) the pay-out of all Non-Permitted Registrations, all property tax arrears and penalties and all other encumbrances as agreed to by the Buyer and Seller under the Agreement;

d) Certificate of Exempt Supply (as applicable);

e) such other documents as are appropriate for the property and sale involved, in accordance with prudent practice.

6. Review all Documents

Prior to Closing, to minimize the possibility of the rejection of the documentation at the Land Titles Office, carefully review all documents to ensure that:

a) all required information 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 initialed;

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: The Closing shall be in accordance with this Protocol unless otherwise agreed to in a timely manner by the parties and their respective lawyers.**

**In some circumstances, a party may initially commit to a Protocol Closing, but later be 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, as soon as possible, that the Closing cannot occur on the basis of the Protocol.**

## 7. Exchange Documents and Funds

7.1 The Seller's Lawyer shall have the obligation and give an undertaking to do the following: (or variations of the following which convey the same meaning):

- a) That, before the Closing, the Seller's Lawyer will deliver to the Buyer's Lawyer:
  - i) a properly completed and executed Transfer which, to the best of the Seller's Lawyer's knowledge, will be sufficient, when completed by the Buyer and submitted for registration in the Land Titles Office, to cause Title to the Land to issue to the Buyer, free and clear of Registrations other than the Permitted Registrations, the Non-Permitted Registrations, and any Registrations arising by, through or against the Buyer; and
  - ii) the Statement of Adjustments.
- b) That the Seller's Lawyer will instruct the Seller that:
  - i) possession of the Land is to be given to the Buyer on or before the date of Closing, in accordance with the Agreement;
  - ii) all accounts for utilities supplied to the Land are to be paid in full to the closing date;
  - iii) all attached and unattached goods included in the Agreement are to remain on the Land, free and clear of all encumbrances.
- c) That the Buyer's Lawyer will hold all sale proceeds before closing and will forward funds to the Seller's Lawyer on the Seller's Lawyer's undertakings that:
  - i) all Non-Permitted Registrations will be paid forthwith and, within a reasonable period, the Seller's Lawyer will obtain and deliver to the Buyer's Lawyer a Certificate of Title free and clear of all Non-permitted Registrations;
  - ii) all property tax arrears and penalties affecting the Land to the Closing Date will be paid forthwith or credit otherwise adjusted;
  - iii) all agreed holdbacks will be handled in accordance with the Agreement or by the terms agreed to between the Seller's Lawyer and the Buyer's Lawyer;
- d) That, if the Transfer and Mortgage documents are rejected by the Land Titles Office due to a defect in the Transfer which is remediable by the Seller's Lawyer using all reasonable efforts, to attend forthwith at the Land Titles Office or to take such other

steps as may be prescribed by the Land Titles Office in order to remedy such defect and to return the documents to the Buyer's Lawyer for re-submission for registration.

**Note: The undertakings of the Seller'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 Seller's Lawyer has expressly agreed to withhold a certain sum from the sale proceeds from which to pay a specific debt of the Seller which is to be quantified after Closing, it is inappropriate to attempt to impose on the Seller'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 Buyer's Lawyer shall require (or variations of the following which have the same meaning):

- a) That, on or before the Closing, the Buyer's Lawyer will have the Buyer's full balance due on Closing, as shown on the Statement of Adjustments held in trust;
- b) That on or before Closing, the Buyer's Lawyer will pay the full balance due on closing to the Seller's Lawyer;
- c) That the Buyer's Lawyer will register the transfer in accordance with the Protocol.

### **Post-Closing**

8. Disburse the Sale Proceeds

- a) Confirm satisfaction of all the undertakings imposed on the Seller'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 property tax arrears and penalties, and otherwise in accordance with the Seller's Lawyer's undertakings and the Seller's Order to Pay including commissions to real estate broker.
- c) Obtain and deliver to the Buyer's Lawyer, in due course, an updated Certificate of Title to confirm the discharge of all Non-Permitted Registrations.

9. Report to Client (Seller)

- a) provide a copy of the Statement of Adjustments;
- b) provide copies of all relevant documents (eg: mortgage payout or assumption statements, copies of letters disbursing funds);
- c) provide a reconciliation of trust funds received and disbursed;
- d) provide a statement of account;
- e) deliver the net sale proceeds;
- f) advise client of the payment of the balance of the real estate commission.

## **E: DUTIES OF THE BUYER'S LAWYER**

Following are the essential steps to be taken, and conditions to be satisfied by the Buyer's Lawyer in a transaction involving the issuance of a Solicitor's Opinion.

Before proceeding on a Protocol Closing, be sure the Mortgagee, Seller and Buyer have all accepted the use of a Protocol Closing.

### **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 the Land, conduct further investigations which may include review of registered plans and a Real Property Report, discussions with the Seller's Lawyer and, if necessary, consultation with an Alberta Land Surveyor.
- b) Obtain a copy of all Registrations which may constitute Permitted Registrations.
- c) Confirm that the Transfer will not require subdivision approval (i.e. that the Land 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.
- d) Obtain a copy of the registered condominium plan and condominium additional document sheet if the purchase relates to a condominium.

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

- a) Classify each Registration as either:
  - i) a Permitted Registration; or
  - ii) a Non-Permitted Registration which must be discharged on or before Closing.
- b) Confirm with the Seller’s Lawyer the Registrations that will remain on title (Permitted) and those Registrations that will be discharged (Non-permitted).

3. Other Investigations

- a) Property taxes - Confirm the status of property taxes.
- b) Identity and Marital Status - Inquire as to the full legal name and marital status of each Buyer/Mortgagor.
- c) Corporate Status - If the Buyer is a corporation, confirm that the Buyer, if an Alberta corporation, is registered in Alberta.
- d) Identification of Property - Ensure the Buyer identifies the property to be conveyed. With respect to condominiums, ensure the Buyer identifies the residential condominium unit and any parking unit with reference to the registered condominium plan;
- e) Foreign Ownership - confirm whether it applies to the transaction;
- f) Such other investigation and searches that are appropriate in accordance with prudent practice.

4. Real Property Report

- a) A Real Property Report and Certificate of Compliance is not required for a Lender under this Protocol unless there is a known defect. In the event a known defect comes to your attention, advise the Lender and obtain instructions from the Lender.
- b) Advise the Buyer of the benefits and importance of obtaining a new Real Property Report with Certificate of Compliance, and request instructions to obtain the same.

- c) Compare the legal description in the Real Property Report with that in the Title to verify that the Title encompasses the Land and verify the location of improvements relative to easements and similar registrations.
- d) If the Buyer declines to obtain a new Real Property Report and Certificate of Compliance, advise the client of other available options and obtain from the Buyer a written acknowledgment of that advice and a waiver of the requirement to obtain a new Real Property Report with Certificate of Compliance and/or title insurance.

5. Pre-arrange Funding of Purchase Monies

- a) Review the Lender's Instructions to Solicitor, to ensure that all conditions (other than registration of the Mortgage and the Discharges of the Non-Permitted Registrations) will be satisfied on or before Closing.
- b) Confirm with the Lender that they will advance mortgage proceeds to the Buyer's Lawyer upon issuance of the Solicitor's Opinion;
- c) Arrange for receipt of the Buyer's cash to mortgage prior to Closing.

6. Prepare Closing Documents

- a) To minimize the possibility of rejection of documents by the Land Title Office, ensure that the Document Registration Request and all attachments are accurately prepared. Prepare:
  - i) the Document Registration Request, 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;
  - ii) the Mortgage, ensuring that the description of the Mortgagors conforms precisely with the description of the transferees as communicated to the Seller's Lawyer;
  - iii) the Waiver of Real Property Report and Certificate of Compliance, if applicable;
  - iv) the Order to Pay;
  - v) the Solicitor's Opinion;
  - vi) review confirmation of insurance coverage; and
  - vii) Foreign Ownership Declaration if applicable.

7. 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) Arrange for completion of any incomplete portions of the Transfer that the Buyer is required to complete;
- e) 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 initialed;
  - iii) the documents are completely and properly executed, dated and witnessed including the Dower Act requirements;
  - 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; and
- f) Ensure that all documents required by the Lender, including evidence of insurance, are in hand and conform to the Lender's instructions.

**On Closing**

**Note: The Closing shall be in accordance with this Protocol unless otherwise agreed to in a timely manner by the parties and their respective lawyers.**

**In some circumstances, a party may initially commit to a Protocol Closing, but later be 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, as soon as possible, that the Closing cannot occur on the basis of the Protocol.**



## Exchange Documents and Funds - Closing Procedure

- 8.1 Obligations imposed upon the Buyer's Lawyer shall include the following (or variations of the following which have the same meaning):
- a) Before use of the transfer documents and on or before Closing the Buyer's Lawyer;
    - i) will have the Buyer's cash to mortgage held in trust;
    - ii) will have the Buyer's mortgage (and any other required documents, if any) properly executed and in registerable form, and will have all other documents required by the Lender in hand;
    - iii) will obtain written confirmation of receipt of a Title search (whether in electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than those agreed to by the Parties, and any Registrations arising by, through or against the Buyer (including the Transfer and the Buyer's Mortgage, if then entered on the Seller's Title);
  - b) forthwith after satisfaction of each of the above conditions the Buyer's Lawyer:
    - i) will be in a position to issue the Solicitor's Opinion by fax or e-mail and by regular mail to the Lender in the manner required;
    - ii) will obtain the Buyer's mortgage funds from the Lender (if not already received from Lender);
    - iii) will pay the Seller's Lawyer the full balance due on closing as shown on the statement of adjustments subject to the Seller's Lawyer's undertakings; and
    - iv) forthwith thereafter (and within 2 business days), will forward to the Land Titles Office the Transfer and the Mortgage (accompanied by the Document Registration Request and the related fees or the authority to charge the fees to an approved account) for registration in series in the Land Titles Office;
  - c) 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 or other documents which is remediable by the Buyer's Lawyer using all reasonable efforts, to forthwith attend at the Land Titles Office or to take such other steps as may be prescribed by the Land Titles Office in order to remedy such defect and to re-submit the documents for registration.

8.2 Undertakings imposed upon the Seller's Lawyer include those undertakings set out in Part D, clause 7.1 of this Protocol.

Post-Closing and Report to Client

9. a) provide a report to the Client (Buyer) giving a title opinion
- b) report encumbrances and enclose copies
- c) reconcile trust account and report to client on receipts and disbursements
- d) enclose the statement of account.
- e) after registration of the discharges by the Seller's Lawyer, provide client with a copy of title showing discharge of Non-Permitted Registrations. If required, provide copy to the Lender and such other documents as the Lender may require.

## SCHEDULE I

### *Western Law Societies' 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 of Mortgagors)**

**Guarantor(s) (Name and Address of Guarantors)**

**The Property:**

**Civic Address**

**Legal Description**

I have complied with the Western Law Societies' Conveyancing Protocol (Alberta) in the conduct of this transaction and 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:**

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**Barrister and Solicitor  
Member of the Law Society of Alberta**

**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 for the issuance of a Solicitor's Opinion in Alberta (the "Protocol"). The capitalized terms in this Memorandum of Trust Conditions have the same meaning as those definitions in the Protocol, except as varied by the agreement of the Seller's Lawyer and the Buyer's Lawyer.

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

**A. Undertakings Binding the Seller's Lawyer**

1. That, on or before the Closing, the Seller's Lawyer will deliver to the Buyer's Lawyer:
  - a) a properly completed and executed Transfer which, to the best of the Seller's Lawyer's knowledge, will be sufficient, when completed by the Buyer and submitted for registration in the Land Titles Office, to cause Title to the Land to issue to the Buyer, free and clear of Registrations other than the Permitted Registrations, the Non-Permitted Registrations, and any Registrations arising by, through or against the Buyer;
  - b) the Statement of Adjustments;
  - c) the Real Property Report with the Compliance Certificate from the relevant municipality (if required under the terms of the Agreement); and
  - d) a Certificate of Exempt Supply (as applicable).
2. That the Seller's Lawyer will instruct the Seller that:
  - a) vacant possession of the Land is to be given to the Buyer on or before the date of Closing, in accordance with the Agreement;
  - b) all accounts for utilities supplied to the Land are to be paid in full up to the Closing date; and
  - c) all attached and unattached goods as described in the Agreement are to remain on the Land, free and clear of all encumbrances.
3. That the Seller's Lawyer will hold all sale proceeds until satisfaction of each of the foregoing Conditions and, thereafter, the Seller's Lawyer:

a) will forthwith pay-out all Non-Permitted Registrations and, within a reasonable period, will obtain and forward to the Buyer's Lawyer a Certificate of Title confirming the discharge of all Non-Permitted Registrations;

b) will forthwith pay-out all realty tax arrears and penalties affecting the Land, not otherwise adjusted, to the Closing Date and will obtain and forward to the Buyer's Lawyer confirmation of such payment; and

4. 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 Seller's Lawyer using all reasonable efforts, to take such steps as may be prescribed by the Land Titles Office in order to remedy such defect, and to return the documents to the Buyer's Lawyer for re-submission of registration. In the alternative, the Seller's lawyer may authorize the Buyer's Lawyer to correct if appropriate under the circumstances.

#### **B. Trust Conditions Binding the Buyer's Lawyer**

1. That, on or before the Closing, the Buyer's Lawyer:

a) will provide the Seller's Lawyer with the balance due on Closing, as shown on the Statement of Adjustments;

b) will have on hand the Buyer's mortgage, in registrable form; and

c) will obtain confirmation that the Buyer has arranged satisfactory insurance coverage.

2. That the Buyer's Lawyer will obtain written confirmation of receipt of a Title search (whether in electronic or paper form), effective as of the Closing date, which evidences that the Title is subject to no Registrations other than those agreed to by the Parties and any Registrations arising by, through or against the Buyer (including the Transfer and the Buyer's mortgage);

3. That, forthwith after satisfaction of each of the foregoing Conditions, the Buyer's Lawyer:

a) will issue the Solicitor's Opinion as contemplated under the Protocol to the Lender in the manner required; and

b) will arrange for completion of any incomplete sections of the Transfer and then will forward forthwith to the Land Titles Office the Transfer and the mortgage (accompanied by the Document Registration Request and the related fees or the authority to charge the fees to an approved account) 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 Buyer's Lawyer using all reasonable

efforts to take such steps as may be prescribed by the Land Titles Office in order to remedy such defect, and to re-submit the documents for registration. In the alternative, the Buyer's Lawyer may authorize the Seller's Lawyer to correct if appropriate under the circumstances.

**SCHEDULE III**  
**SAMPLE TRUST LETTERS**

**1 Sample of Trust Letter to Buyer's Lawyer:**

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

We enclose the following:

1. Transfer of Land endorsed with Certificate of Residency;
2. Statement of Adjustments;
3. Real Property Report with Compliance Certificate;
4. Certificate of Exempt Supply.

The enclosed documents are sent to you on the following express trust conditions:

1. That, on or before the Date of Closing, you shall:
  - (a) deliver to our office the balance due on Closing, as shown on the Statement of Adjustments, by way of solicitor's trust cheque or certified funds;
  - (b) have on hand the Buyer's Mortgage, in registrable form;
  - (c) satisfy yourself that property insurance in accordance with the Lender's requirements has been placed on the property to be effective the Date of Closing or the possession date, whichever is earlier; and
  - (d) satisfy yourself that all other lender requirements have been met.
2. That, effective as of the Date of Closing, you shall obtain written confirmation of receipt of a Title search (whether in electronic or paper form) which evidences that the Title is subject to no Registrations other than those agreed to by the Parties and any Registrations arising by, through or against the Buyer (including the Transfer and the Buyer's Mortgage);
3. That, forthwith after satisfaction of each of the foregoing Conditions, you shall:
  - a) issue the Solicitor's Opinion as contemplated under the Protocol to the Buyer's Mortgagee and the Buyer, as the case may be, in the manner required; and

b) arrange for completion of any incomplete sections of the Transfer and then will forward forthwith the Transfer and the Mortgage to the Land Titles Office for registration in the following order, without intervening registrations:

(i) the Transfer; and

(ii) the Buyer's Mortgage; and

(c) pay to us the balance due on Closing;

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 you using all reasonable efforts, you shall take such steps as may be prescribed by the Land Titles Office in order to remedy such defect, and to re-submit the documents for registration.

5. That, *(insert any additional conditions)*

We confirm that the following defined terms shall have the corresponding meanings set forth:

(a) "Date of Closing" means \_\_\_\_\_, 200\_;

(b) "Non-Permitted Registrations" means:

(i) Mortgage No. \_\_\_\_\_; and

(ii) *insert as applicable*

(c) "Permitted Registrations" means:

(i) Caveat No. \_\_\_\_\_; and

(ii) *insert as applicable*

In the event that you are unable or unwilling to comply with any of the trust conditions described above, please contact our office to confirm any amendment, failing which the enclosed documents are to be returned to our offices immediately upon demand.

Provided that you accept and have met these trust conditions, upon receipt of the balance due on Closing we undertake to:



(a) forthwith pay-out all Non-Permitted Registrations and, within a reasonable period thereafter, obtain and forward to your office an updated Certificate of Title confirming the discharge of all Non-Permitted Registrations; and

(b) forthwith pay-out all realty taxes and arrears affecting the Land, not otherwise adjusted, to the Date of Closing and, within a reasonable period thereafter, obtain and forward to your office confirmation of such payment; and

(c) forthwith (*insert any additional undertakings*)

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 our office using all reasonable efforts, we undertake to take such steps as may be prescribed by the Land Titles Office in order to remedy such defect, and to return the documents to your office for re-submission of registration. In the alternative, our office may authorize your office to correct such defect if appropriate under the circumstances.

We will instruct that the keys shall be released to your client, on the agreed date of possession, once we have received the balance due on Closing.

I look forward to working with you to complete this transaction.

Yours truly,

**2. Sample Letter to Seller'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 pursuant to your Undertakings outlined in your trust letter dated \_\_\_\_\_, as follows:

(a) to forthwith pay-out all Non-Permitted Registrations and, within a reasonable period thereafter, obtain and forward to our office an updated Certificate of Title confirming the discharge of all Non-Permitted Registrations; and

(b) to forthwith pay-out all realty taxes and arrears affecting the Land, not otherwise adjusted, to the Date of Closing and, within a reasonable period thereafter, obtain and forward to our office confirmation of such payment;

(c) in the event the registration of the Transfer is rejected by the Land Titles Office, to forthwith take such steps as may be prescribed by the Land Titles Office in order to remedy any defect in the Transfer which is remediable by your office using all reasonable efforts and then to return the documents to our office for re-submission of registration or alternatively, to authorize our office to correct such defect if appropriate; and

(d) to forthwith (*insert any additional undertakings, for example regarding Municipal compliance on the Real Property Report*)

Please authorize release of keys to our client.

I look forward to receipt of the documentation to satisfy your undertakings.

Yours truly,

**SCHEDULE IV**

**SAMPLE ACKNOWLEDGEMENT AND WAIVER**

DATE:

BY:                    (*Name of Buyer/Client*)

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

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

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

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

1. I am (one of) the Buyer(s) of the Property.
2. I have applied to the Lender for a loan on the security of a mortgage of the Property.
3. My Lawyers have advised me that I am not required to provide either a current original Real Property Report , as prepared by a qualified Alberta Land Surveyor or a Certificate of Compliance issued by the Municipality in relation to the Property, to the Lender for its purposes.
4. My Lawyers have advised me further as to the importance and various benefits of obtaining a Real Property Report and Certificate of Compliance, and in particular that, without a Real Property Report and Certificate of Compliance, it cannot be ascertained whether 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, easements or on rights of way, or that the Property complies with applicable zoning regulations.
5. My Lawyers have recommended that I obtain a Real Property Report and Certificate of Compliance or title insurance to protect my own legal, financial and other interests relating to the Property. I understand that advice and recommendation of my Lawyers but, nonetheless, I have decided not to obtain a Real Property Report and Certificate of Compliance or title insurance. None of my Lawyers, the Lender, nor their respective insurers, are responsible or liable for any loss that I suffer because of my decision not to obtain a Real Property Report and Certificate of Compliance for the Property or title insurance.

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

DATED at \_\_\_\_\_, Alberta this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Witness

)  
)

\_\_\_\_\_  
Signature of Buyer