

PROVISIONS TO BE CONSIDERED	NOTES
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) and MORTGAGE PROCEDURE (F2) checklists. It relates primarily to a conventional first mortgage on residential property, where express mortgage terms are to be added to filed or prescribed standard mortgage terms, or where you are creating a set of standard mortgage terms to be filed. This checklist is not exhaustive, and must be considered in relation to the particular facts in the matter at hand and augmented or revised as appropriate. This checklist is current to March 1, 2010.</p> <p>Additional resources. See the <i>Land Title Forms Guidebook</i>, 4th ed. (Continuing Legal Education Society of British Columbia, 2008) for instructions on filing either express mortgage terms or a set of pre-filed standard mortgage terms. See also the prescribed standard mortgage terms in the <i>Land Title Forms Guidebook</i> and the <i>British Columbia Mortgages Practice Manual</i>, looseleaf and online (CLEBC, 1992).</p> <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Date 2. Introductory Clauses 3. Identification of Parties 4. Description of Property 5. Grant of Mortgage 6. Payment 7. Express Exclusion of Specified Land Transfer Form Act Clauses 8. Mortgagor's Representations and Covenants 9. Mortgagee's Covenants 10. Default 11. Enforcement 12. Other Rights of the Mortgagee 13. Security Provisions 14. Miscellaneous 15. Interpretation and General Provisions <p style="text-align: center;">CHECKLIST</p> <ol style="list-style-type: none"> 1. DATE 2. INTRODUCTORY CLAUSES <ol style="list-style-type: none"> 2.1 Whether made under the <i>Land Transfer Form Act</i>, R.S.B.C. 1996, c. 252 (if other than prescribed mortgage terms). 2.2 Recitals setting out the special features of the transaction. 2.3 Consideration clause. 3. IDENTIFICATION OF PARTIES <ol style="list-style-type: none"> 3.1 Mortgagor/borrower (consider Law Society of British Columbia Rules on client identification and verification and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) checklist). 	

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<p>3.2 Mortgagee/lender (consider Law Society of British Columbia Rules on client identification and verification and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) checklist).</p> <p>3.3 Guarantor or covenantor (presumably independent legal advice will be obtained, and the client identification and verification rules will apply to the lawyer retained for that purpose).</p>	
<p>4. DESCRIPTION OF PROPERTY</p> <p>4.1 Legal description and civic address.</p> <p>4.2 Interests included (if relevant, consider <i>Land Transfer Form Act</i>, s. 10).</p>	
<p>5. GRANT OF MORTGAGE</p> <p>5.1 Consider the effect of the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250, s. 231, and whether formal words of transfer and conveyance should be retained in the grant of mortgage.</p>	
<p>6. PAYMENT</p> <p>6.1 Mortgage to be void on payment of principal and interest, and costs and expenses described in mortgage.</p> <p>6.2 Calculation of interest and date of commencement (ensure compliance with the <i>Interest Act</i>, R.S.C. 1985, c. I-15, <i>Bank Act</i>, S.C. 1991, c. 46, and Part 5, <i>Business Practices and Consumer Protection Act</i>, S.B.C. 2004, c. 2, disclosure requirements; ensure there is no violation of <i>Criminal Code</i>, R.S.C. 1985, c. C-46, s. 347).</p> <p>6.3 Interest on overdue payments.</p> <p>6.4 When, where, and how payments are to be made.</p> <p>6.5 Acceleration clause (see item 10.1).</p> <p>6.6 Right to prepay part or all prior to maturity date; prepayment penalties.</p> <p>6.7 Right of mortgagee to deduct interest adjustment from the advance.</p> <p>6.8 Interest adjustment date and provisions.</p>	
<p>7. EXPRESS EXCLUSION OF SPECIFIED LAND TRANSFER FORM ACT CLAUSES</p> <p>7.1 If mortgage is made pursuant to <i>Land Transfer Form Act</i>, consider excepting out the provision in Clause 15, Column 2 of Schedule 6, which allows borrower automatic relief from acceleration upon repayment of arrears.</p>	
<p>8. MORTGAGOR'S REPRESENTATIONS AND COVENANTS</p> <p>8.1 Accuracy of representations.</p> <p>8.2 Mortgagor has done and will do nothing to transfer the land or encumber the land, except as specified.</p> <p>8.3 To pay the principal and interest when due.</p> <p>8.4 To pay all costs relating to:</p> <ul style="list-style-type: none"> .1 The creation, registration, and discharge of the mortgage. .2 An assignment under the <i>Law and Equity Act</i>, R.S.B.C. 1996, c. 253, s. 14. 	

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<p>.3 Mortgagee's costs in event of default, including enforcement costs.</p> <p>8.5 Title to the mortgaged property:</p> <p>.1 Mortgagor has title and right to convey the land.</p> <p>.2 Mortgagor will defend title.</p> <p>8.6 Release of all claims on the land subject to the payment proviso.</p> <p>8.7 To maintain the property and keep it in good repair, and to make all repairs reasonably required by the mortgagee.</p> <p>8.8 Not to abandon or leave the property unoccupied for more than 30 days.</p> <p>8.9 Not to do anything that will decrease the value of the land.</p> <p>8.10 Insurance:</p> <p>.1 To maintain insurance against fire and other risks, with loss payable to the mortgagee, and subject to standard mortgage clause.</p> <p>.2 To deliver policies to the mortgagee.</p> <p>.3 To furnish proofs of loss to the mortgagee, and to do all things necessary to enable the mortgagee to obtain payment.</p> <p>8.11 To pay real property taxes or to pay tax money to mortgagee.</p> <p>8.12 To grant collateral security to the mortgagee on request.</p> <p>8.13 To obey the law.</p> <p>8.14 To permit entry and inspection by the mortgagee.</p> <p>8.15 To furnish specified information to the mortgagee.</p> <p>8.16 Further assurances.</p> <p>8.17 To pay all sums due on any prior encumbrances and keep in good standing.</p> <p>9. MORTGAGEE'S COVENANTS</p> <p>9.1 Mortgagor to have quiet possession until default.</p> <p>9.2 To apply payments made on account of taxes in payment of taxes when due, as long as the mortgagor is not in default.</p> <p>9.3 To provide a discharge; mortgagor to pay costs.</p> <p>10. DEFAULT</p> <p>10.1 Effect (e.g., acceleration at the option of the mortgagee).</p> <p>10.2 Events of default:</p> <p>.1 Non-payment of the principal or interest when it becomes due and payable.</p> <p>.2 Breach of a provision of the mortgage.</p> <p>.3 A representation made to obtain the mortgage loan is found to be untrue.</p> <p>.4 Non-payment of or default under a prior charge.</p> <p>.5 Insolvency.</p> <p>.6 Property sold or further encumbered.</p>	

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<p>.7 Default under another mortgage or loan agreement with the mortgagee or otherwise.</p> <p>.8 Failure to discharge builders lien or judgment within 30 days of notification (or to give security and diligently defend and dispute builders lien claims).</p> <p>10.3 The mortgagee may waive any breach or default, but this does not affect the rights arising from subsequent breaches or defaults.</p>	
<p>11. ENFORCEMENT</p> <p>11.1 Specify circumstances in which the mortgagee may use the various measures set out in the mortgage.</p> <p>11.2 Power to enter, take possession of, and use the property, and to exclude the mortgagor, but mortgagee in doing so will not be considered a mortgagee in possession.</p> <p>11.3 Power to preserve, maintain, and repair the property.</p> <p>11.4 Power to lease or sell, with the proceeds of the sale being applied as set out in the mortgage.</p> <p>11.5 Power to have a receiver or receiver-manager appointed.</p>	
<p>12. OTHER RIGHTS OF THE MORTGAGEE</p> <p>12.1 To do anything the mortgagor is required to do, if the mortgagor fails to do so. Costs to be added to debt and bear interest and to be immediately payable by the mortgagor.</p> <p>12.2 To pay monies to preserve, protect, or repair the property. Costs to be added to the debt and bear interest and to be immediately payable by the mortgagor.</p> <p>12.3 To discharge any unregistered encumbrances having priority, of which the mortgagee is unaware upon making the advance.</p> <p>12.4 To deduct from advances, unpaid taxes, taxes to become due in that year, or interest to the adjustment date.</p> <p>12.5 To release one guarantor or covenantor without releasing the others or prejudicing the security.</p> <p>12.6 To apply insurance proceeds to the repair or reinstatement of the property or to monies owing.</p> <p>12.7 The borrower gives up any statutory right to require the insurance proceeds to be applied in any particular manner.</p> <p>12.8 Rights and remedies set out in the mortgage are cumulative and additional to any other remedies. The mortgagee may realize on all securities in any order.</p>	
<p>13. SECURITY PROVISIONS</p> <p>13.1 Security is additional to any other security held by the mortgagee. No merger.</p> <p>13.2 Obligation to pay is not extinguished by a judgment.</p>	

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<p>14. MISCELLANEOUS</p> <p>14.1 Mortgagee has no obligation to advance monies.</p> <p>14.2 Conditions to be satisfied for redemption.</p> <p>14.3 Right to assign. Assigns are bound by the provisions of this mortgage.</p> <p>14.4 Relationship between commitment letter and mortgage (e.g., non-merger of commitment letter, with mortgage prevailing in the event of inconsistency).</p> <p>14.5 Renewal provisions; for example:</p> <p style="padding-left: 20px;">.1 Contracting out of s. 10 of the <i>Interest Act</i>, R.S.C. 1985, c. I-15.</p> <p style="padding-left: 20px;">.2 Priority of any increased interest rate over the subsequent charges.</p> <p>14.6 Strata lot clauses (<i>Strata Property Act</i>, S.B.C. 1998, c. 43, s. 54).</p> <p>14.7 Subdivision clauses.</p> <p>14.8 In event of default, mortgagee has no right to choose registry in which to commence action (<i>Law and Equity Act</i>, s. 21).</p> <p>14.9 Doctrine of consolidation applies or is waived (<i>Property Law Act</i>, R.S.B.C. 1996, c. 377, s. 31(2)).</p> <p>14.10 Guarantor's or covenantor's clause.</p> <p>14.11 Assignment of rents clause.</p> <p>15. INTERPRETATION AND GENERAL PROVISIONS</p> <p>15.1 Definitions.</p> <p>15.2 Principles that govern the interpretation of the mortgage (e.g., use of the masculine form, insertion of headings for convenience only).</p> <p>15.3 Severability.</p> <p>15.4 Time of the essence.</p> <p>15.5 Notices.</p> <p>15.6 Enurement.</p> <p>15.7 Amendment.</p> <p>15.8 Appendices.</p> <p>15.9 Jurisdiction and governing law.</p>	

