

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<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 (A-1) and SECURITY AGREEMENT DRAFTING (B-13) checklists. It is designed for counsel representing a lender or other party taking a security interest in personal property from a debtor. Consider whether a collateral mortgage on land is required. This checklist is current to September 1, 2016.</p> <p>New developments:</p> <ul style="list-style-type: none"> • New Societies Act. The new <i>Societies Act</i>, S.B.C. 2015, c. 18 will come into force on November 28, 2016, pursuant to B.C. Reg. 216/2015. It will repeal and replace the <i>Society Act</i>, R.S.B.C. 1996, c. 433. Section 34 of the new Act provides for a society’s ability to borrow funds and issue evidence of debt obligations. • Law Society Rules. On July 1, 2015, revised and consolidated Law Society Rules came into effect. See www.lawsociety.bc.ca/page.cfm?cid=4089&t=Law-Society-Rules-2015. • Articled students permitted to act as commissioners for taking affidavits. Effective September 1, 2015, articled students and temporary articled students are prescribed as persons who are commissioners for taking affidavits in British Columbia (B.C. Reg. 142/2015, pursuant to s. 60(1) of the <i>Evidence Act</i>, R.S.B.C. 1996, c. 124). Principals remain responsible for students’ actions and will need to ensure that students understand the effect of acting as commissioner. • Code of Professional Conduct for British Columbia (the “BC Code”). In July 2015, rule 3.7-9 of the <i>BC Code</i> was amended to require that a lawyer promptly notify the client, other counsel, and the court or tribunal of the lawyer’s withdrawal from a file. Rule 3.6-3, commentary [1] was amended in June 2015 regarding the duty of candour owed to clients respecting fees and other charges for which a client is billed. <p>Of note:</p> <ul style="list-style-type: none"> • Use of debenture. Where a debenture is being used (e.g., in certain multi-jurisdictional transactions) instead of a general security agreement, the items marked “(DEB)” should be considered. For the most part, a debenture and a general security agreement are not markedly different, except that a general security agreement charges only personal property and may include a floating charge on land, whereas a debenture may charge both personal and real property by way of fixed and floating charges. A debenture contains a promise to pay, whereas a general security agreement usually does not. • Aboriginal law. Security agreements that pertain to Indian reserve lands (band or individual Indian land holdings) or the personal property of a band or an “Indian” (as defined by the <i>Indian Act</i>, R.S.C. 1985, c. I-5) on reserve lands must be considered in light of the <i>Indian Act</i>. Restrictions are placed on the ability of a band or an Indian to grant interests in reserve lands to others: see ss. 20, 28, and 58. As well, ss. 89 and 90 of the <i>Indian Act</i> protect the real and personal property of an Indian or a band if it is situated on reserve lands. Typically, it is not subject to a charge, pledge, mortgage, attachment, levy, seizure, distress, or execution in favour of any person other than an Indian or a band. Note that a leasehold interest in designated land is an exception, as is personal property sold under conditional sales agreements: see s. 89(1.1) and (2). 					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>In addition to <i>Indian Act</i> considerations, some Indian bands or First Nation entities have entered into treaties or self-government agreements or have special land-tenure agreements in place that may affect the legal force and effect of security agreements. Also, there may be special agreements in place for individual Indians to opt out of treaties or reserve tenures (for example, in the Treaty 8 area).</p> <p>If a security agreement involves reserve lands or personal property situated on an Indian reserve or on lands subject to a treaty, consider seeking advice from a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page of the “Practice Points” section of the Continuing Legal Education Society of British Columbia website www.cle.bc.ca and in other CLEBC publications.</p> <ul style="list-style-type: none"> • Additional resources. For more information about security agreements, see <i>British Columbia Personal Property Security Act Practice Manual</i> (especially the SECURED TRANSACTION checklist), looseleaf and online (CLEBC, 1995); <i>Due Diligence Deskbook</i>, looseleaf and online (CLEBC, 1994); <i>Real Estate Financing: Annotated Precedents</i>, looseleaf and online (CLEBC, 1994); <i>Priorities—2013</i>, course materials (CLEBC, 2013); <i>Priorities—2009</i>, course materials (CLEBC, 2009); <i>Advising BC Businesses</i>, looseleaf and online (CLEBC, 2006); and <i>BC Creditors’ Remedies—An Annotated Guide</i>, looseleaf and online (CLEBC, 2001). <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Initial Interview 3. After the Initial Interview 4. Preparing the Documents 5. Drafting the Security Agreement 6. Closing the Transaction 7. Closing the File <p style="text-align: center;">CHECKLIST</p> <ol style="list-style-type: none"> 1. INITIAL CONTACT <ol style="list-style-type: none"> 1.1 Arrange for an interview. 1.2 Ask the client to bring to the interview all relevant information (e.g., a copy of the commitment letter, internal memoranda, etc.). 1.3 Confirm the scope of your instructions. 1.4 Find out the full names and addresses of the creditor, debtor, guarantors, and their solicitors. Check for trade names, business names, and previous names. 1.5 Ensure that there is no conflict of interest. Comply with the <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), which addresses conflicts in s. 3.4. 1.6 Consider Law Society Rules 3-98 to 3-109 regarding client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. 					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>1.7 Consider Law Society Rule 3-59, which prohibits lawyers from accepting \$7,500 or more in cash from clients, subject to certain exceptions, and Rule 3-70 with respect to records of cash transactions.</p>					
<p>2. INITIAL INTERVIEW</p> <p>2.1 Advise the client regarding calculation of your account, method and timing of payment, and conditions upon which you will act (see <i>BC Code</i>, s. 3.6). Determine whether the debtor is responsible for reimbursing the client for your account and, if so, whether the debtor requires this information. If your retainer is limited in scope (e.g., confidential drafting), note that <i>BC Code</i> rule 3.2-1.1 requires that, before undertaking a “limited scope retainer” (a defined term under rule 1.1-1), you must advise the client about the nature, extent, and scope of the services that you can provide and must confirm in writing as soon as practicable what services will be provided. Note that rule 3.2-1.1 regarding “limited scope retainers” does not apply to situations in which you are providing summary advice or to an initial consultation that may result in the client retaining you as lawyer. Also be aware of the obligations in <i>BC Code</i> rules 3.1-2, 7.2-6, and 7.2-6.1.</p> <p>2.2 Obtain a retainer and instructions defining the extent of your authority. In the case of a new corporate client, consider obtaining a directors’ resolution confirming the conditions of the retainer and setting out who will give instructions and to whom you will report.</p> <p>2.3 Discuss the client’s objectives, the anticipated closing date, and the background of the transaction.</p> <p>2.4 Discuss whether perfection will be by registration or by possession in respect of personal property forming collateral subject to the security. Perfection by registration is desirable even if there is also perfection by possession.</p> <p>2.5 Collect information and discuss the provisions of the security agreement, referring to the SECURITY AGREEMENT DRAFTING (B-13) checklist. Include:</p> <p>.1 Description and location of the collateral and location of the places of (residence or) business and chief executive office of the debtors:</p> <p>(a) Description and location of personal property, including make and serial numbers of motor vehicles and other serial-numbered goods (see Personal Property Security Regulation, B.C. Reg. 227/2002).</p> <p>(b) Identify property not subject to intended security interests or the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359 (the “PPSA”) (see <i>PPSA</i>, s. 4).</p> <p>(c) Identify property that may not be personal property governed by <i>PPSA</i>, s. 4 (e.g., intellectual property and life-insurance policies).</p> <p>(d) If the collateral includes land, recommend a registered mortgage instead of a floating charge.</p> <p>(e) If the collateral includes aircraft objects within the meaning of the <i>Convention on International Interests in Mobile Equipment</i>, signed in Cape Town on November 16, 2001, and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>, consider the application of that <i>Convention</i>. The <i>Convention</i> and <i>Protocol</i> have the force of law in British Columbia under the <i>International Interests in Mobile Equipment (Aircraft Equipment) Act</i>, S.B.C. 2011, c. 12.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(f) If the collateral includes consumer goods (see <i>PPSA</i>, s. 1(1)), consider the effect of <i>PPSA</i>, s. 67. Generally avoid having the debtor grant security over consumer goods and other collateral as security for the same indebtedness.</p> <p>.2 Amount of loan: revolving, non-revolving.</p> <p>.3 Interest rate: fixed, fluctuating, method of calculation, and compliance with the <i>Interest Act</i>, R.S.C. 1985, c. I-15. It is usually prudent to insert a provision addressing recent case law respecting <i>Criminal Code</i>, R.S.C. 1985, c. C-46, s. 347, and the criminal rate of interest.</p> <p>.4 Repayment terms.</p> <p>.5 Guarantors (limited or unlimited, joint and several, several, rateable).</p> <p>.6 Special covenants.</p> <p>.7 Loan disbursement date.</p> <p>.8 Financial statements.</p> <p>.9 Purpose of loan.</p> <p>.10 Whether the security agreement is also to secure indirect obligations of the debtor to the client, e.g., as a guarantor.</p> <p>.11 Consider or obtain:</p> <p>(a) Legal description of and interests in real property.</p> <p>(b) Names of vessels (registered or licensed); whether a marine mortgage is required.</p> <p>(c) Descriptions of other assets (e.g., timber interests, water rights, aircraft, assignments of contracts; if crops—when planted and when “growing”).</p> <p>.12 Whether collateral will be commingled.</p> <p>.13 Accessions.</p> <p>2.6 Determine the most appropriate type of security agreement (e.g., general, specific, site-specific, inventory, receivables).</p> <p>(DEB) Determine whether a debenture is a more appropriate form of security agreement than a general security agreement. (Note that an unsecured debenture is not a security agreement.)</p> <p>2.7 Ensure that statutory restrictions on providing financial assistance do not apply, or if they do, they are satisfied; identify any officers’ certificates or other evidence you rely on in reaching this conclusion, and any required legal opinions. Under <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the “<i>BCA</i>”), s. 195, British Columbia companies may provide financial assistance to any person for any purpose, subject to the directors satisfying their obligations under the common-law business judgment rule, but will be required to notify their shareholders of the financial assistance in some circumstances. Resolutions of directors of B.C. companies providing financial assistance should evidence the reasons why giving financial assistance is in the best interests of the company—a simple recital of best interests may not be adequate.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(DEB) 2.8 If the debtor is a society, s. 35(3) of the <i>Society Act</i>, R.S.B.C. 1996, c. 433 requires that the debenture be approved by a special resolution of the members of the debtor. Even if the security document is not in the usual form of a debenture, consider whether it is a “debenture” under s. 35(3). The <i>Society Act</i> uses the <i>BCA</i> definition of “debenture” (see <i>BCA</i>, s. 1(1)). (Note: this requirement will be removed under s. 34 of the new <i>Societies Act</i>, S.B.C. 2015, c. 18, in force on November 28, 2016.)</p> <p>2.9 Consider and obtain instructions:</p> <ul style="list-style-type: none"> .1 Should any registrations be performed before security is executed? If not, obtain clear instructions as to when to register. Registration under the <i>PPSA</i> is generally made in advance of closing, once the general form of the security agreements has been settled. Registration under the <i>PPSA</i> (except for filing fixtures notices in the land title office (“LTO”)) may be made before the security agreement is executed. .2 Is the lender entitled to any purchase money security interests (“PMSIs”)? If so, ensure that all necessary steps are taken to obtain the “super priority” conferred by PMSI status (see <i>PPSA</i>, s. 34). .3 Is a carrier or other person in possession of the collateral an agent of the debtor? Particular caution must be taken if the client wishes to establish a PMSI. .4 Are there any prior unregistered interests? .5 Is the owner of the property also the beneficial owner? <p>2.10 If a lender is taking security on personal property that is or could become fixtures or crops, consider whether a <i>PPSA</i> fixtures notice should be obtained and registered under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250 (see <i>PPSA</i>, ss. 36 and 37).</p> <p>2.11 Determine whether there are any consents or priority or other agreements required for the charges contemplated. Such consents and agreements often involve persons who would otherwise have prior rights to the collateral absent contractual agreement. Consents of third parties to assignments of material contracts or licences may also be required. Review the terms and conditions of licences that are being encumbered to ensure that they do not limit the secured party’s right to dispose of them.</p> <p>2.12 Determine where the collateral is located and whether the collateral has been in British Columbia for 60 days (see <i>PPSA</i>, s. 5(3)).</p> <p>2.13 If any of the collateral, residence, business locations, or the chief executive office of the debtor are outside British Columbia, review <i>PPSA</i>, ss. 5 to 8.1.</p> <p>2.14 Determine whether the debtor or the secured party is subject to any statutory or regulatory requirements that affect its ability to lend, borrow, or take or hold security.</p>					
<p>3. AFTER THE INITIAL INTERVIEW</p> <p>3.1 Send a letter to your client, confirming the retainer and instructions, setting out the manner in which you will determine your fee for services, stating the conditions upon which you will act, and summarizing the points discussed (see item 2.1). Note the duty of candour owed to clients respecting fees and other charges for which a client is billed under <i>BC Code</i> rule 3.6-3, commentary [1].</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>3.2 Open the file: place this checklist in the file and make entries in diary and “bring forward” systems (possibly including commitment expiry date). Confirm compliance with Law Society Rules 3-98 to 3-109 on client identification and verification (see item 1.6).</p> <p>3.3 Send a letter or email, or telephone counsel for the debtor, advising that you are acting for the secured party. If the debtor has not retained counsel, send a letter urging him or her to do so (<i>BC Code</i> rule 7.2-9).</p> <p>3.4 Conduct relevant searches (and obtain and review copies of relevant documents), such as:</p> <p>.1 Company search on corporate parties: debtor, guarantor and, where necessary, secured party. Include:</p> <p>(a) Registered and records office.</p> <p>(b) Annual report.</p> <p>(c) Directors and officers.</p> <p>(d) Notice of articles, articles, and amendments.</p> <p>(e) Good standing, including whether the company has been struck off and subsequently restored. Consider obtaining a certificate of good standing.</p> <p>(f) Powers, the manner in which they are to be exercised, and whether they are to be exercised by shareholders or directors, including:</p> <p>(i) Debtor’s power to borrow; check on terms and conditions of prior security interests (e.g., whether there is any charge or security interest restricting the right to grant a fixed charge. If the debtor is a society, s. 35(3) of the <i>Society Act</i> requires that a debenture be approved by a special resolution of the members of the debtor. Note that this requirement will be removed under s. 34 of the new <i>Societies Act</i>, in force November 28, 2016, although under the new s. 34(2), the bylaws of a society may restrict or prohibit the society’s ability to borrow money or to issue bonds, debentures, etc. Even if the security document is not in the usual form of a debenture, consider whether it is a “debenture” within the meaning of s. 35(3) of the <i>Society Act</i>).</p> <p>(ii) Power to provide financial assistance, if applicable. Under <i>BCA</i>, s.195, B.C. corporations have the power to provide financial assistance to any person for any purpose, subject to the directors satisfying their obligations under the common-law business judgment rule (see item 2.7), but will be required to notify their shareholders of the financial assistance if and when required under the <i>BCA</i>.</p> <p>(iii) Who can perform the acts contemplated on behalf of the debtor and guarantor? (e.g., directors or shareholders, from whom authorizing resolutions should be obtained.)</p> <p>(iv) Lender’s power to lend. Under <i>BCA</i>, s. 195, B.C. companies have the power to provide financial assistance, including loans, but will be required to notify their shareholders of the financial assistance if and when required under the <i>BCA</i>. Also consider any limitations such as the loan-to-property value ratio, or any prohibitions on lending to directors, shareholders, etc., or the aggregate value of loans (which may be contained in legislation governing the lender, e.g., <i>Bank Act</i>, S.C. 1991, c. 46;</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p><i>Insurance Companies Act</i>, S.C. 1991, c. 47; <i>Trust and Loan Companies Act</i>, S.C. 1991, c. 45; and <i>Financial Institutions Act</i>, R.S.B.C. 1996, c. 141).</p> <p>(v) Disclosure requirements applicable to the lender.</p> <p>(vi) Manner of executing documents (signing authority, use of seal).</p> <p>2 Personal Property Registry for security agreements registered.</p> <p>(a) Search for the debtor and guarantors under their full current names, any business names, aliases, former names, predecessor names, and similar names. Search under the serial number for each serial-numbered good (see the Personal Property Security Regulation, s. 1, for the definition of “serial numbered goods,” and s. 10 for the definition of “serial number”).</p> <p>(b) Consider obtaining copies of registered security agreements from relevant secured parties (<i>PPSA</i>, s. 18 demand).</p> <p>(i) If your client is not an appropriate party, obtain execution of an s. 18 demand by the debtor or guarantor, or</p> <p>(ii) Get certified copies of security agreements from the lawyer for the debtor or guarantor.</p> <p>Note that subordination agreements may be required even if the current security agreement does not extend to all of the collateral described in the registration.</p> <p>3 Office of the Superintendent of Bankruptcy (Industry Canada).</p> <p>4 Sheriff’s offices for executions.</p> <p>5 Canadian Securities Registration Systems for security under <i>Bank Act</i>, s. 427.</p> <p>6 Court registries in the regions in which the debtor does business.</p> <p>7 Copies of birth certificates, passports, driver’s licences, and certificates of Canadian citizenship to prove individual debtor names. Be sure to get the full legal name or consider multiple searches in cases where there may be more than one name.</p> <p>8 Vehicle Records Department of ICBC.</p> <p>9 Transport Canada Ships Registry.</p> <p>10 Canada Revenue Agency (“CRA”).</p> <p>(a) Taxation re corporate tax, payroll, source deductions, etc.</p> <p>(b) Customs and Excise re GST, confirm registration, registration number, and status of payments.</p> <p>11 WorkSafeBC.</p> <p>12 Corporation capital tax (contact Ministry of Finance). Corporation capital tax is no longer applicable but liability for outstanding tax can still exist.</p> <p>13 Ministry of Forest, Lands and Natural Resource Operations.</p> <p>14 Aboriginal Affairs and Northern Development Canada (“AANDC”).</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.15 Environmental agencies (e.g., see chapters 13 to 15 of CLEBC’s <i>Due Diligence Deskbook</i>). Also recommend that the secured party obtain an environmental report from a qualified environmental consultant.</p> <p>.16 Manufactured Home Registry.</p> <p>.17 Transport Canada (for aircraft).</p> <p>.18 International Registry under the Cape Town Convention (for aircraft objects within the meaning of the <i>Convention on International Interests in Mobile Equipment</i> and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>).</p> <p>.19 Federal intellectual property offices (if the collateral includes trademarks, patents, or copyrights).</p> <p>.20 Searches outside British Columbia (if collateral, residence, place of business, or chief executive office of the debtor is outside British Columbia or the debtor is incorporated outside British Columbia).</p> <p>.21 Corporations Canada (for rolling stock, see <i>Canada Transportation Act</i>, S.C. 1996, c. 10, ss. 104 and 105).</p> <p>(DEB) Also consider searching:</p> <ul style="list-style-type: none"> • LTO (including copies of all charges, leases, etc.). • Municipal and provincial offices regarding property taxes, zoning, permits and licences, waste management, elevators, etc. • Water rights branches. <p>3.5 Some of these searches require the prior written consent of the entity being searched (e.g., tax searches) and can take four weeks or more to be produced (e.g., CRA and some environmental and municipal searches). Discuss with the client the purpose, cost, and timing of production of search results to determine which of the above are appropriate to your client.</p> <p>3.6 Discuss results of searches with the client, and finalize instructions as to, e.g.:</p> <ol style="list-style-type: none"> .1 Any discrepancies in descriptions. .2 Disposition of existing charges. .3 Modification of security requirements. .4 Priority agreements required, and their availability. .5 Consents and notices required (especially from government authorities and prior secured parties). .6 Other security documents required (land mortgage, ship’s mortgage, documents required for property that is not or may not be covered by <i>PPSA</i>, etc.) (see <i>PPSA</i>, s. 4). <p>3.7 Make arrangements for funding the loan (where not handled by the lender), purchase payout, and discharge of prior encumbrances on appropriate undertakings, if necessary.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>4. PREPARING THE DOCUMENTS</p> <p>4.1 Obtain or prepare any required supplementary documents, such as:</p> <p>.1 For corporate parties:</p> <p>(a) Opinion letters from the debtor’s and guarantor’s lawyers, to include matters such as: corporate status; capacity and power; good standing; incumbency; authorization for borrowing of money or giving of guarantee; authorization, execution, and delivery of the commitment letter, security agreement, and any other security documents being provided.</p> <p>(b) Directors’ resolutions and shareholders’ resolution, if required.</p> <p>(c) If financial assistance is being provided by the debtor and for the guarantor, which are British Columbia companies, a certificate or other evidence to the effect that the granting of the security interest is in the best interests of the debtor and the reasons for that conclusion (see item 2.7), and that the debtor is not, and will not be rendered, insolvent (this is good practice even though the former <i>Company Act</i> restrictions on giving financial assistance are no longer in effect). Under <i>BCA</i>, s. 195, B.C. corporations have the power to provide financial assistance to any person for any purpose, but are required to notify their shareholders of the financial assistance if and when required under the <i>BCA</i>. However, s. 195 does not exclude the common-law business judgment rule requirements, and evidence should be obtained and set out in the directors’ resolution authorizing the financial assistance.</p> <p>.2 Certificate of officer or statutory declaration as to the location of the assets, existence of any other charges on the assets, any negative covenants or restrictions on capacity, nature of the business, the place where the business is carried out, and other factual matters.</p> <p>.3 Certificate of insurance together with a certified copy of the insurance policy showing the loss payable to the lender, if the lender so requires.</p> <p>.4 Consents (e.g., from the lessor, prior secured parties or other holders of prior charges, AANDC, the government holding any accounts). Coordinate any required consents with the debtor’s lawyers. If government debts are part of the collateral, review and comply with the applicable statutory provisions governing assignment of Crown debts.</p> <p>.5 Priority agreements.</p> <p>.6 Discharges.</p> <p>.7 Building and development permits, confirmation of zoning, outstanding work orders (if land is involved).</p> <p>.8 Obtain additional supplementary documents, such as:</p> <p>(a) If the standard mortgage clause is requested, review it carefully for its applicability to the transaction.</p> <p>(b) Agreement from the landlord, prior secured parties, or the vendor under an agreement for sale, agreeing that notice of default will be given to the holder and that the holder may rectify the default during the period of notice.</p> <p>(c) Surveyor’s certificate.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(d) Tax certificate.</p> <p>4.2 Prepare required documents, such as:</p> <ol style="list-style-type: none"> .1 Security agreements. .2 Guarantees and postponements of claim (note that they may contain security interests that should be registered), or consider registrations against guarantor as debtor within the meaning of the term in the <i>PPSA</i>. .3 <i>Bank Act</i>, s. 427 security. Forward notice of intention to grant security for execution. Ensure that the notice of intention is dated and filed at the appropriate Canadian Securities Registration Systems office before the date on which s. 427 security is executed. .4 Promissory note. .5 Loan agreement. .6 <i>PPSA</i> financing statement(s). Refer to the Personal Property Security Regulation, and the BC OnLine User Guides at www.bconline.gov.bc.ca. .7 LTO notices for fixtures or crops (see <i>PPSA</i>, s. 49). .8 Consider registrations outside British Columbia (e.g., if assets, or the residence, or a place of business, or the chief executive office of the debtor are located elsewhere). .9 Assignment of insurance policies, as required. .10 Mortgages of land, ship’s mortgages, etc. (to be duly registered). .11 Assignment of accounts (general or specific, to secure all indebtedness or a specific sum). .12 Pledge or hypothecation of shares. Generally, such pledge is also accompanied by a power of attorney to transfer the shares and actual delivery of share certificates. If the shares are in a private company, a directors’ resolution authorizing the transfer of the shares to the secured party or a purchaser of the shares should be obtained. Share certificates, issued in the name of the secured party, constitute the best security. Relative bargaining power and the amount of the loan will affect whether the certificates remain in the name of the debtor or the secured party. .13 Control agreement over investment property (which includes shares, whether certificated or uncertificated, security entitlements, securities accounts, futures contracts, or futures accounts). See the <i>Securities Transfer Act</i> (the “<i>STA</i>”), S.B.C. 2007, c. 10, and the numerous amendments made by it to the <i>PPSA</i>. <p>(DEB) Prepare additional required documents, such as:</p> <ul style="list-style-type: none"> • Instrument of pledge of the debenture, if required. • Land Title Form B, if the debenture creates a fixed charge on land. (Floating charges on land—registration in the Personal Property Registry constitutes registration under the <i>Land Title Act</i>, but does not give the same level of priority protection.) 					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>5. DRAFTING THE SECURITY AGREEMENT</p> <p>5.1 Prepare an outline of the security agreement, or of the express clauses to be added to the standard form of security agreement (see the SECURITY AGREEMENT DRAFTING (B-13) checklist).</p> <p>5.2 Prepare the first draft.</p> <p>5.3 Review the first draft, checking each segment to ensure that it achieves the client’s objectives, and checking the document as a whole to ensure that it is internally consistent. Make necessary corrections and prepare the second draft.</p> <p>5.4 Go over the second draft with the client, or send it to the client with a request that the client review it and note any questions or changes. Discuss any changes with the client.</p> <p>5.5 Make any changes required to the second draft and send copies to the debtor’s lawyer for comment. Review any changes with the client.</p> <p>5.6 Prepare the final agreement and arrange for signing.</p> <p>(DEB) If the debenture charges land, use a filed standard form of debenture/mortgage, identified by registration number, if available and appropriate.</p> <ul style="list-style-type: none"> • If standard mortgage terms need modification, or none exist, prepare the express terms. • If the debenture charges land, ensure that Form B is prepared (note: e-filing is now mandatory; see the MORTGAGE PROCEDURE (F-2) checklist). If the debenture or security agreement includes a mortgage or floating charge over land, ensure that documents are executed in dark ink and in the form required by the LTO. 					
<p>6. CLOSING THE TRANSACTION</p> <p>6.1 Register the financing statement(s) electronically in accordance with <i>PPSA</i> regulations, if not already done (when in doubt, register against all known names of, or used by, the debtor).</p> <p>6.2 Register international interest in an aircraft object at the International Registry under the Cape Town Convention in accordance with the <i>Convention on International Interests in Mobile Equipment</i> and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>, as required.</p> <p>6.3 Ensure proper execution of all documents.</p> <p>(DEB) Ensure proper execution of debenture:</p> <ul style="list-style-type: none"> • Authorized signatory and proof of execution, if appropriate. • Comply with LTO execution requirements, if applicable (e.g., dark ink and solicitor certification). <p>6.4 Check opinion letters.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>6.5 Determine whether there is a priority agreement or postponement that creates a security interest (<i>PPSA</i>, s. 40). Registration is required and not merely optional where a security interest is created. Registration by way of a financing change statement amending the subordinating creditor’s financing statement is optional but recommended where the subordinating creditor holds a <i>PPSA</i> registration (obtain authorization from that creditor before changing its registration).</p> <p>6.6 Send a copy of the printed document evidencing the registration to each debtor within 20 days after registration (<i>PPSA</i>, s. 43(15)), unless the debtor has waived, in writing, the right to receive a statement.</p> <p>6.7 Ensure the debtor receives a copy of the security agreement within 10 days after execution (<i>PPSA</i>, s. 11).</p> <p>6.8 Review the <i>PPSA</i> closely as to PMSI procedure and take all necessary steps to perfect PMSIs (<i>PPSA</i>, s. 34).</p> <p>6.9 Conduct all necessary post-registration searches.</p> <p>6.10 Prepare an opinion letter to the client. (In respect of personal property, do not express opinions on title, perfection, or priority. Do not express priority opinions on floating charges on land. Obtain and review copies of the opinion letters prepared by the <i>PPSA</i> Subcommittee of the Solicitors’ Legal Opinions Committee of the British Columbia Bar; see <i>CLEBC’s Advising BC Businesses</i>.)</p> <p>6.11 Handle, or advise the client regarding, disbursement of funds on the loan disbursement date.</p> <p>(DEB) File documents as soon as possible:</p> <ul style="list-style-type: none"> • Where the debenture includes a fixed charge against land, register Form B in the appropriate LTO (note: e-filing is now mandatory; see the MORTGAGE PROCEDURE (F-2) checklist) with the debenture as express mortgage terms (unless Form B refers to filed standard mortgage terms). • Where the debenture includes a charge against personal property or a floating charge on land, register a financing statement with the appropriate collateral description in the Personal Property Registry. Ensure serial-numbered goods are properly described in the registration, in compliance with the <i>PPSA</i>. • Consider and make any other registrations required (e.g., <i>PPSA</i>, fixtures notice in the LTO, priority agreement, financing statements in respect of guarantee containing assignment of claims) in the LTO, Personal Property Registry, or the International Registry under the Cape Town Convention in accordance with the <i>Convention on International Interests in Mobile Equipment</i> and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>, as required. • Conduct all necessary post-registration searches. Order a state of title certificate respecting real property, if applicable. 					
<p>7. CLOSING THE FILE</p> <p>7.1 Send a reporting letter and statement of account to the client. Include copies of relevant documents, details of registration, and details regarding your searches. Draw the client’s attention to:</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.1 Expiry of registration under the <i>PPSA</i>. Confirm who will make a diary entry regarding expiry of registrations. Generally, the client should take responsibility for any renewal of registrations.</p> <p>.2 Necessity to file financing change statements if:</p> <p style="padding-left: 20px;">(a) The debtor changes its name, transfers all or part of the collateral, or transfers its interest, although the <i>PPSA</i> does not require this to be done.</p> <p style="padding-left: 20px;">(b) Registration marks or serial numbers are changed, or serial-numbered goods are added to the collateral.</p> <p style="padding-left: 20px;">(c) Collateral described as inventory in the registration ceases to be used as inventory.</p> <p>.3 Fact that certain parties may demand information regarding the transaction and the security agreement, the secured party’s obligation to respond to such demands, and the consequences of failing to respond (<i>PPSA</i>, s. 18).</p> <p>.4 Fact that the client must perfect as to proceeds of a different kind and with serial numbers.</p> <p>.5 Need to re-register promptly if registration is discharged without authority.</p> <p>7.2 Send copies of relevant documents, including document prints, verifying <i>PPSA</i> registrations and final search to the debtor’s lawyer.</p> <p>(DEB) When the state of title certificate is received from the relevant LTO, send a final opinion letter to the client.</p> <p>7.3 Close the file. Consider storage and destruction requirements. See <i>Closed Files—Retention and Disposition</i>, July 2015, Appendix B at www.lawsociety.bc.ca/docs/practice/resources/ClosedFiles.pdf.</p>					