

INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1), the CLIENT FILE OPENING AND CLOSING (A-2), and the MORTGAGE PROCEDURE (F-2) checklists. This checklist 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. The checklist is current to September 4, 2024.

LEGEND



Checkbox



Important Reminder



Deadline or Limitation Date

NEW DEVELOPMENTS

- **Reduction of the criminal interest rate.** Effective January 1, 2025, Bill C-47—*Budget Implementation Act, 2023, No. 1*, will lower the current criminal interest rate under s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46 from a 60% effective annual rate to a 35% annual percentage rate (“APR”). The revised criminal interest rate will apply to all lending arrangements in Canada, with exemptions for non-predatory loans including certain payday loans (capped at \$14 per \$100 borrowed), tax rebate advances, pawn loans with an APR below 48%, and commercial loans about \$10,000. Commercial loans ranging from \$10,000 to \$500,000 are exempt from the criminal interest rate if the APR remains below 48%, and commercial loans above \$500,000 will not be subject to any interest rate cap.
- **Remote witnessing of affidavits.** Effective September 30, 2023, the temporary measures authorized by the Registrar in Practice Bulletin 01-20 to permit the remote witnessing of affidavits as a result of the COVID-19 pandemic were rescinded. See <https://ltsa.ca/retirement-of-covid-measures-effective-september-30/>. If the circumstances warrant use of an affidavit of execution in lieu of officer certification, s. 49 of the *Land Title Act*, R.S.B.C. 1996, c. 250 remains available. Any request for remote witnessing of affidavits must be made directly to the LTSA.
- **Prohibition on the Purchase of Residential Property by Non-Canadians Act.** The *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, S.C. 2022, c. 10 came into force January 1, 2023 and prohibits the purchase of residential property by non-Canadians. The prohibition was originally scheduled to expire on January 1, 2025 but has been extended to January 1, 2027. There are limited exceptions for certain non-Canadians and certain residential properties.
- **Prohibition on rental restriction bylaws.** Effective November 24, 2022, strata corporations may no longer pass bylaws restricting rentals and current bylaws restricting rentals are no longer enforceable (*Strata Property Act*, S.B.C. 1998, c. 43).
- **Land Owner Transparency Act.** The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the “LOTA”) requires a transparency declaration to be filed in the new Land Owner Transparency Registry (the “LOTR”) any time an application is made to register or transfer an interest in land under the *Land Title Act*. The LOTR is administered by the LTSA. Reporting bodies under the LOTA—which includes most corporations, trusts, and partnerships, subject to limited

exemptions—will have to file a transparency report any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. As of April 1, 2023, the registry database is publicly accessible through the myLTSA at a cost of \$10.31 per search. A search may be conducted either by the name of a person or by the parcel identifier of the property in question. For further information, see the www.landtransparency.ca and the course presentation and materials by R. Danakody, “Introducing the Land Owner Transparency Registry”, in *Residential Real Estate Conference 2019* (CLEBC, 2019), and by R. Danakody and T. Norman, “Land Owner Transparency Registry (LOTR)” in *Real Estate Development Update 2021* (CLEBC, 2021), available through CLEBC Courses on Demand. See also “[How to Create the Transparency Register](#)” and “[Filing Requirements and Ongoing Obligations](#)”.

- **LTSA fee increase.** Most LTSA fees increased on April 1, 2024.
- **Standard undertakings.** Standard CBA undertakings have been updated to facilitate electronic transfer of funds; see www.cbabc.org/Publications-and-Resources/Resources/Standard-Forms/Standard-Undertakings-Real-Property (CBA member login required).
- **New mortgage stress test.** As of June 1, 2021, with a down payment of 20% or more, the minimum qualifying rate for insured and uninsured residential mortgages is either the contracted rate plus two percentage points or 5.25%, whichever is higher. The Office of the Superintendent of Financial Institutions (the “OSFI”) said it would review and communicate the qualifying rate at least once a year, every December. In December 2023, OSFI confirmed that the minimum qualifying rate would remain the greater of the mortgage contract rate, plus 2% or 5.25%.

OF NOTE

- **Aboriginal law.** Special considerations apply to First Nations lands. If a mortgage or foreclosure involves First Nations lands, consider seeking the advice of a lawyer with experience in Aboriginal law matters. The Framework Agreement on First Nation Land Management (the “Framework Agreement”) was ratified as the central authority by the *Framework Agreement on First Nation Land Management Act*, S.C. 2022, c. 19, s. 121, which came into force on December 15, 2022. The Framework Agreement recognizes First Nations’ inherent right to govern their lands, and signatory First Nations assume the administration and law-making authority over their lands. Consider the following searches when ascertaining interests and priorities in First Nations lands:
 - First Nations Land Management Resource Centre (www.labrc.com) for First Nation signatories operating under a land code and maintaining their own register of interests in their lands;
 - Self-Governing First Nations Land Register for First Nations operating under the terms of self-government agreements;
 - the Nisga’a Nation created their own land title system based on the Torrens system;
 - Land Title Survey Authority of British Columbia;
 - the Tsawwassen First Nation negotiated to have their lands registered under the provincial land title system as part of their treaty, though special sections of the *Land Title Act* apply to these lands;
 - Indian Land Registry System (“ILRS”) for records on interests in reserve and surrendered lands, pursuant to and as defined under the *Indian Act*, R.S.C. 1985, c. I-5;
 - the Crown-Indigenous Relations and Northern Affairs Canada supports some First Nations in British Columbia in managing their lands and through maintaining the ILRS, although the ILRS is an information system only and does not create priority (except in the case of a registered assignment having priority over an unregistered assignment by s. 55(4) of the *Indian Act*).

If a leasehold interest in First Nations lands subject to the *Indian Act* will be mortgaged, note that a lease on First Nations lands to a First Nations person can only be mortgaged and seized if the land is designated (*Indian Act*, s. 89(1.1)). A lease to a First Nations person on lands that are held by a First Nations person under a certificate of possession does not have the same exemption from the protective effect of s. 89(1) of the Act. Further information on Aboriginal law issues is available on the “Aboriginal Law” page in the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.

- **Money laundering, fraud, and real estate.** Money laundering and fraud in real estate and mortgage transactions are a concern.

Criminals use ordinary legal instruments, (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property: the beneficial owners. These efforts can be hard to detect. As such, lawyers must assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags, and if a lawyer has doubts or suspicions about whether they could be assisting in any dishonesty, crime or fraud, they should make enough inquiries to determine whether it is appropriate to act and make a record of the results of their inquiries (*BC Code*, rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109 and 3-110).

See the anti-money laundering and fraud resources on the “[Law Society’s “Client ID & Verification” resources webpage](#)”, including: “[Real Estate Transactions—Know Your Client Primer](#)”; “Source of Money FAQs”; “Fraud 101 for Lawyers”; “Risk Assessment Case Studies for the Legal Profession”; “Red Flags Quick Reference Guide”; “Risk Advisories for the Legal Profession”; “Canadian Sanctions Related to Russia and Belarus: Implications for the Profession”; and free online Law Society and Federation of Law Societies of Canada courses.

See the Lawyers Indemnity Fund (“LIF”) [webpage](#) regarding real estate fraud and risk management. The transfer of funds instructions should be verified by telephone or meeting with a client in person. See LIF’s [Funds Transfer Instructions Verification Checklist](#).

Also see the [Discipline Advisories](#), which include topics such as Client ID & Verification, Country/geographic risk, and Private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable *BC Code* rules and Law Society Rules and obtain guidance.

- **Private mortgage broker fraud.** An individual posed as a private mortgage broker to place fraudulent mortgages on homes without the owner’s knowledge. In addition to verifying you client’s identity, if a mortgage broker is involved, consider checking the BC Financial Service Authority’s list of mortgage brokers and submortgage brokers registered under the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313.
- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).
- **Additional resources.** See the prescribed standard mortgage terms in the *British Columbia Mortgages Practice Manual* (CLEBC, 1992-).

CONTENTS

1. Preliminary Matters
2. Date and 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. Borrower's Representations and Covenants
9. Lender's Covenants
10. Default
11. Enforcement
12. Other Rights of the Lender
13. Security Provisions
14. Miscellaneous
15. Interpretation and General Provisions

1.	PRELIMINARY MATTERS	
1.1	Complete the CLIENT FILE OPENING AND CLOSING (A-2) and MORTGAGE PROCEDURE (F-2) checklists.	<input type="checkbox"/>
1.2	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110). If the client is a company or other organization, note the rules about verifying an organization's identity and the individual(s) instructing you on the organization's behalf as well as identifying shareholders, directors and owners and obtaining information about the organization's ownership, control and structure. Criminals use ordinary legal instruments to launder money, including private mortgages, shell and numbered companies, bare trusts, and nominees, attempting to disguise the true owners of real property, the beneficial owners. See "Money laundering, fraud, and real estate" in the "Of note" section at the beginning of this checklist for more information, including the Discipline Advisory of April 2, 2019—Private lending. Be alert to red flags.	<input type="checkbox"/>

2.	DATE AND INTRODUCTORY CLAUSES	
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).	<input type="checkbox"/>
2.2	Recitals setting out the special features of the transaction.	<input type="checkbox"/>
2.3	Consideration clause.	<input type="checkbox"/>

3.	IDENTIFICATION OF PARTIES	
3.1	Borrower.	<input type="checkbox"/>
3.2	Lender.	<input type="checkbox"/>
3.3	Guarantor or covenantor (presumably independent legal advice will be obtained, and the client identification and verification rules will be applied by the lawyer retained for that purpose). Ensure that terminology (guarantor vs. covenantor) matches the mortgage terms.	<input type="checkbox"/>

4.	DESCRIPTION OF PROPERTY	
4.1	Legal description and civic address.	<input type="checkbox"/>
4.2	Interests included (if relevant, consider <i>Land Transfer Form Act</i> , s. 10).	<input type="checkbox"/>

5.	GRANT OF MORTGAGE	
5.1	Consider the effect of <i>Land Title Act</i> , s. 231, and whether formal words of transfer and conveyance should be retained in the grant of mortgage.	<input type="checkbox"/>

6.	PAYMENT	
6.1	Mortgage to be void on payment of principal and interest, and costs and expenses described in mortgage, unless the mortgage is intended to cover future advances.	<input type="checkbox"/>
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 of the <i>Business Practices and Consumer Protection Act</i> , S.B.C. 2004, c. 2 (the “BPCPA”), disclosure requirements; ensure there is no violation of <i>Criminal Code</i> , R.S.C. 1985, c. C-46, s. 347 regarding criminal interest rate).	<input type="checkbox"/>
6.3	Interest on overdue payments.	<input type="checkbox"/>

6.4	When, where, and how payments are to be made.	<input type="checkbox"/>
6.5	Acceleration clause (see item 10.1).	<input type="checkbox"/>
6.6	Right to prepay part or all prior to maturity date; prepayment penalties.	<input type="checkbox"/>
6.7	Right of lender to deduct interest adjustment from the advance.	<input type="checkbox"/>
6.8	Interest adjustment date and provisions.	<input type="checkbox"/>

7.	EXPRESS EXCLUSION OF SPECIFIED LAND TRANSFER FORM ACT CLAUSES	
7.1	If the mortgage is made pursuant to the <i>Land Transfer Form Act</i> , consider excepting out the provision in Clause 15, Column 2 of Schedule 6, which allows the borrower automatic relief from acceleration upon repayment of arrears.	<input type="checkbox"/>

8.	BORROWER'S REPRESENTATIONS AND COVENANTS	
8.1	Accuracy of representations.	<input type="checkbox"/>
8.2	Borrower has done and will do nothing to transfer the property or encumber the property, except as specified.	<input type="checkbox"/>
8.3	To pay the principal and interest when due.	<input type="checkbox"/>
8.4	To pay all costs relating to:	<input type="checkbox"/>
	.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.	
	.3 Lender's costs in the event of default, including enforcement costs.	
8.5	Title to the mortgaged property:	<input type="checkbox"/>
	.1 Borrower has title and right to convey the property.	
	.2 Borrower will defend title.	
8.6	Release of all claims on the property subject to the payment proviso.	<input type="checkbox"/>
8.7	To maintain the property and keep it in good repair, and to make all repairs reasonably required by the lender.	<input type="checkbox"/>
8.8	Not to abandon or leave the property unoccupied for more than 30 days.	<input type="checkbox"/>

8.9	Not to do anything that will decrease the value of the property.	<input type="checkbox"/>
8.10	Insurance:	<input type="checkbox"/>
	.1 To maintain insurance against fire and other risks, with loss payable to the lender, and subject to standard mortgage clause.	
	.2 To add lender as loss payee in priority of mortgage.	
	.3 To deliver policies to the lender.	
	.4 To furnish proofs of loss to the lender, and to do all things necessary to enable the lender to obtain payment.	
8.11	To pay real property taxes or to pay tax money to the lender.	<input type="checkbox"/>
8.12	To grant collateral security to the lender on request.	<input type="checkbox"/>
8.13	To obey the law.	<input type="checkbox"/>
8.14	To permit entry and inspection by the lender.	<input type="checkbox"/>
8.15	To furnish specified information to the lender.	<input type="checkbox"/>
8.16	Further assurances.	<input type="checkbox"/>
8.17	To pay all sums due on any prior encumbrances and keep in good standing.	<input type="checkbox"/>

9.	LENDER'S COVENANTS	
9.1	Borrower to have quiet possession until default.	<input type="checkbox"/>
9.2	To apply payments made on account of taxes in payment of taxes when due, as long as the borrower is not in default.	<input type="checkbox"/>
9.3	<p>To provide a discharge; borrower to pay costs.</p> <p>Note that s. 72(3) of the <i>BPCPA</i> stipulates that a credit grantor/lender must not accept any amount for the provision of a mortgage discharge to a borrower that exceeds the maximum amount prescribed, which is currently \$75 (Disclosure of the Cost of Consumer Credit Regulation, B.C. Reg. 273/2004, s. 16). The B.C. Financial Institutions Commission's interpretation of s. 72 of the <i>BPCPA</i> is that other costs can be charged over and above the \$75 discharge fee so long as they are itemized (Information Bulletin MB 07-003 (January 31, 2007)). It is common practice for private lenders to add the legal costs they incur for the preparation and execution of the discharge. Separate charges for preparation of the payout statement are unusual because they are usually prepared in-house; arguably, if a lender requires the services of an accountant or other professional</p>	<input type="checkbox"/>

	to prepare the payout statement, this cost could be added. The lawyer should advise the borrower to review the payout statement to confirm whether the additional costs are legitimate costs incurred by the lender to provide the discharge.	
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10. DEFAULT		
10.1	Effect (e.g., acceleration at the option of the lender).	<input type="checkbox"/>
10.2	Events of default:	<input type="checkbox"/>
	.1 Non-payment of the principal or interest when it becomes due and payable.	
	.2 Breach of a provision of the mortgage.	
	.3 A representation made to obtain the mortgage loan is found to be untrue.	
	.4 Non-payment of or default under a prior charge.	
	.5 Insolvency.	
	.6 Property sold or further encumbered.	
	.7 Default under another mortgage or loan agreement with the lender or otherwise.	
	.8 Failure to discharge a builders lien or judgment within 30 days of notification (or to give security and diligently defend and dispute builders lien claims).	
	.9 If the borrower is a privately held corporation, change of control of the borrower.	
10.3	The lender may waive any breach or default, but this does not affect the rights arising from subsequent breaches or defaults.	<input type="checkbox"/>

11. ENFORCEMENT		
11.1	Specify circumstances in which the lender may use the various measures set out in the mortgage.	<input type="checkbox"/>
11.2	Power to enter, take possession of, and use the property, and to exclude the borrower, but the lender in doing so will not be considered a lender in possession.	<input type="checkbox"/>
11.3	Power to preserve, maintain, and repair the property.	<input type="checkbox"/>
11.4	Power to lease or sell, with the proceeds of the sale being applied as set out in the mortgage.	<input type="checkbox"/>
11.5	Power to have a receiver or receiver-manager appointed.	<input type="checkbox"/>

12.	OTHER RIGHTS OF THE LENDER	
12.1	To do anything the borrower is required to do, if the borrower fails to do so. Costs to be added to debt and bear interest and to be immediately payable by the borrower.	<input type="checkbox"/>
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 borrower.	<input type="checkbox"/>
12.3	To discharge any unregistered encumbrances having priority, of which the lender is unaware upon making the advance.	<input type="checkbox"/>
12.4	To deduct from advances, unpaid taxes, taxes to become due in that year, or interest to the adjustment date.	<input type="checkbox"/>
12.5	To release one guarantor or covenantor without releasing the others or prejudicing the security.	<input type="checkbox"/>
12.6	To apply insurance proceeds to the repair or reinstatement of the property or to monies owing.	<input type="checkbox"/>
12.7	To require the borrower to surrender any statutory right to require the insurance proceeds to be applied in any particular manner.	<input type="checkbox"/>
12.8	To realize on all securities in any order. Rights and remedies set out in the mortgage are cumulative and additional to any other remedies.	<input type="checkbox"/>

13.	SECURITY PROVISIONS	
13.1	Security is additional to any other security held by the lender. No merger.	<input type="checkbox"/>
13.2	Obligation to pay is not extinguished by a judgment.	<input type="checkbox"/>

14.	MISCELLANEOUS	
14.1	Lender has no obligation to advance monies.	<input type="checkbox"/>
14.2	Conditions to be satisfied for redemption.	<input type="checkbox"/>
14.3	Right to assign. Assignees are bound by the provisions of this mortgage.	<input type="checkbox"/>
14.4	Relationship between commitment letter and mortgage (e.g., non-merger of commitment letter, with mortgage prevailing in the event of inconsistency).	<input type="checkbox"/>
14.5	Renewal provisions; for example:	<input type="checkbox"/>
	.1 Contracting out of <i>Interest Act</i> , s. 10.	
	.2 Priority of any increased interest rate over the subsequent charges.	

14.6	Strata lot clauses (<i>Strata Property Act</i> , S.B.C. 1998, c. 43, s. 54).	<input type="checkbox"/>
14.7	Subdivision clauses.	<input type="checkbox"/>
14.8	In event of default, lender has no right to choose the registry in which to commence action (<i>Law and Equity Act</i> , s. 21).	<input type="checkbox"/>
14.9	Doctrine of consolidation applies or is waived (<i>Property Law Act</i> , s. 31(2)).	<input type="checkbox"/>
14.10	Guarantor's or covenantor's clause.	<input type="checkbox"/>
14.11	Assignment of rents clause.	<input type="checkbox"/>
14.12	Consider form required for e-filing (electronic Form B).	<input type="checkbox"/>

15.	INTERPRETATION AND GENERAL PROVISIONS	
15.1	Definitions.	<input type="checkbox"/>
15.2	Principles that govern the interpretation of the mortgage (e.g., use of the masculine form, insertion of headings for convenience only).	<input type="checkbox"/>
15.3	Severability.	<input type="checkbox"/>
15.4	Time of the essence.	<input type="checkbox"/>
15.5	Notices.	<input type="checkbox"/>
15.6	Enurement.	<input type="checkbox"/>
15.7	Amendment.	<input type="checkbox"/>
15.8	Appendices.	<input type="checkbox"/>
15.9	Jurisdiction and governing law.	<input type="checkbox"/>