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<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 the MORTGAGE PROCEDURE (F-2) 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 September 1, 2018.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Tracking Beneficial Ownership. The province has proposed the establishment of a new, publicly accessible registry outlining who owns real estate in British Columbia through draft legislation, the <i>Land Owner Transparency Act</i>. If established, it will be the first registry of its kind in Canada and is meant to improve transparency in the real estate market. The white paper can be found online at www.fin.gov.bc.ca/pld/fcsp/LOTA-white-paper-june-2018.pdf. • New property transfer tax disclosure requirements. Effective September 17, 2018, certain types of trusts and corporations that acquire property must identify all individuals with a significant interest in the corporation or trust on the property transfer tax return. For each individual identified, you must include their name, date of birth, citizenship information, contact details, and tax identifiers. The Property Transfer Tax Return (version 31) is available online from the Land Title and Survey Authority of British Columbia (LTSA) website. For more information, see www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/file/legal-professionals#trustees-corporate-interest-holders. • Additional property transfer tax on residential property transfers to foreign entities. Effective February 21, 2018, the Property Transfer Tax Regulation, B.C. Reg. 74/88, was amended to increase the additional property transfer tax on residential properties to “foreign entities” (see the <i>Property Transfer Tax Act</i>, R.S.B.C. 1996, ss. 2.01 to 2.04) from 15% to 20%. Further, the scope of the additional property transfer tax has been expanded to include properties located in the Greater Vancouver Regional District (the “GVRD”), Capital Regional District, Regional District of Central Okanagan, and Regional District of Nanaimo. The additional tax applies on all applicable transfers registered with the Land Title Office on or after February 21, 2018, regardless of when the contract of purchase and sale was made effective. An Additional Property Transfer Tax Return (FIN 532) must be filed at the time the transfer is registered. Further information, including the municipalities included in the GVRD, can be found at www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/additional-property-transfer-tax. • Creation of “speculation tax”. On February 20, 2018, the province introduced a 0.5% speculation tax targeting foreign and domestic homeowners who do not pay income tax in B.C. It applies to residential properties in the Metro Vancouver Regional District, the Capital Regional District, Kelowna-West Kelowna, Nanaimo-Lantzville, Abbotsford, Chilliwack, and Mission. Most islands are excluded. A full map of the affected regions can be found at news.gov.bc.ca/files/2018_SpeculationTax_Map.jpg. In subsequent years the tax rate will increase to up to 2%. In 2018, homes will need to be rented out for at least three months to qualify for an exemption. Starting in 2019, homes will need to be rented out for at least six months, in increments of 30 days or more to qualify for an exemption. For more information visit www2.gov.bc.ca/gov/content/taxes/property-taxes/speculation-and-vacancy-tax?keyword=speculation. 	

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<ul style="list-style-type: none"> • Land Title Forms. Form C—General Instrument—Charge (V23), Form C—General Instrument—Release (V22), Form 17—Charge, Notation or Filing (V13), and Form 17—Cancellation of Charge, Notation or Filing (V14) were retired as of May 7, 2018. A new Property Transfer Tax Return has been in effect since February 20, 2018. An up-to-date version of all forms can be found at ltsa.ca/practice-information/land-title-forms. <p>A Director’s Requirement outlining electronic land title documents (DR 03-11) was issued November 6, 2017. For the full guide, visit https://ltsa.ca/sites/default/files/Electronic-Land-Title-Forms-and-Supporting-Documents-DR-03-11.pdf.</p> • Law Society Rules <ul style="list-style-type: none"> • Juricert password. When using the electronic filing system of the Land Title Office, a lawyer must not disclose the lawyer’s password or permit any other person, including an employee, to use the password or affix the lawyer’s e-signature (Law Society Rule 3-96.1). • Temporary articulated student restrictions. Temporary articulated students are restricted from making certain appearances in Supreme Court, but not Provincial Court (Law Society Rule 2-71(2)). • Electronic transfer of trust funds. The Rules were amended in December 2017, effective July 1, 2018, to allow lawyers to electronically transfer trust funds using an online banking platform (Law Society Rules 3-64(4) and (6) to (8); 3-64.1; 3-64.2; 3-65(1), (1.1), and (2); and 3-66(2)). For questions, contact trustaccounting@lsbc.org or 604.697.5810. • Client identification and verification. The Federation of Law Societies of Canada has proposed amendments to its Model Rule on Client Identification and Verification Requirements. If the Federation’s Council approves the amendments, they will be forwarded to the law societies for adoption. Changes to the Law Society of BC’s rules would require the Benchers’ approval and, if approved, may affect the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist current to September 1, 2018. • The Law Society Rules are published at www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules. <p>Of note:</p> <ul style="list-style-type: none"> • Fraud prevention. Lawyers should maintain an awareness of the myriad scams that target lawyers, including the bad cheque scam and fraudulent changes in payment instructions, and must be vigilant about the client identification and no-cash rules. See the “Fraud Prevention” page, including the “Fraud Alerts” section, on the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention. • Searches of lawyers’ electronic devices at borders. In 2017, in response to the Law Society’s concerns about the searches of lawyers’ electronic devices by Canada Border Services Agency officers, the Minister of Public Safety advised that officers are instructed not to examine documents if they suspect they may be subject to privilege, if the documents are specifically marked with the assertion they are privileged, or if privilege is claimed by a lawyer with respect to the documents. View the Minister’s letter and Law Society’s response at www.lawsociety.bc.ca/our-initiatives/rule-of-law/issues-that-affect-the-rule-of-law. Lawyers are reminded to claim privilege where appropriate and to not disclose privileged information or the password to electronic devices containing privileged information without client consent or a court order. See also “Client Confidentiality—Think Twice before Taking Your Laptop or Smart Phone across Borders” in the Spring 2017 <i>Benchers’ Bulletin</i> and “Crossing the border into or out of the United States” in the Spring 2018 <i>Benchers’ Bulletin</i>. 	

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<p>• Additional resources. See the <i>Land Title Electronic Forms Guidebook</i>, 6th ed. (CLEBC, 2013) 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 Electronic Forms Guidebook</i>, and the <i>British Columbia Mortgages Practice Manual</i> (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. 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 <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 Borrower (consider Law Society Rules 3-98 to 3-109 on client identification and verification and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist). 3.2 Lender (consider Law Society Rules 3-98 to 3-109 on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist). 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). 4. DESCRIPTION OF PROPERTY <ol style="list-style-type: none"> 4.1 Legal description and civic address. 4.2 Interests included (if relevant, consider <i>Land Transfer Form Act</i>, s. 10). 	

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<p>5. GRANT OF MORTGAGE</p> <p>5.1 Consider the effect of <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 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).</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 lender 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 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.</p> <p>8. BORROWER’S REPRESENTATIONS AND COVENANTS</p> <p>8.1 Accuracy of representations.</p> <p>8.2 Borrower 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> <ol 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. .3 Lender’s costs in the event of default, including enforcement costs. <p>8.5 Title to the mortgaged property:</p> <ol style="list-style-type: none"> .1 Borrower has title and right to convey the land. .2 Borrower will defend title. <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 lender.</p>	

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<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 lender, and subject to standard mortgage clause.</p> <p>.2 To deliver policies to the lender.</p> <p>.3 To furnish proofs of loss to the lender, and to do all things necessary to enable the lender to obtain payment.</p> <p>8.11 To pay real property taxes or to pay tax money to the lender.</p> <p>8.12 To grant collateral security to the lender on request.</p> <p>8.13 To obey the law.</p> <p>8.14 To permit entry and inspection by the lender.</p> <p>8.15 To furnish specified information to the lender.</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. LENDER'S COVENANTS</p> <p>9.1 Borrower 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 borrower is not in default.</p> <p>9.3 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), www.fic.gov.bc.ca. 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 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.</p>	
<p>10. DEFAULT</p> <p>10.1 Effect (e.g., acceleration at the option of the lender).</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>	

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<p>.4 Non-payment of or default under a prior charge.</p> <p>.5 Insolvency.</p> <p>.6 Property sold or further encumbered.</p> <p>.7 Default under another mortgage or loan agreement with the lender or otherwise.</p> <p>.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).</p> <p>.9 If the borrower is a privately held corporation, change of control of the borrower.</p> <p>10.3 The lender 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 lender 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 borrower, but the lender in doing so will not be considered a lender 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 LENDER</p> <p>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.</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 borrower.</p> <p>12.3 To discharge any unregistered encumbrances having priority, of which the lender 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 To require the borrower to surrender any statutory right to require the insurance proceeds to be applied in any particular manner.</p> <p>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.</p>	

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<p>13. SECURITY PROVISIONS</p> <p>13.1 Security is additional to any other security held by the lender. No merger.</p> <p>13.2 Obligation to pay is not extinguished by a judgment.</p> <p>14. MISCELLANEOUS</p> <p>14.1 Lender has no obligation to advance monies.</p> <p>14.2 Conditions to be satisfied for redemption.</p> <p>14.3 Right to assign. Assignees 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 <i>Interest Act</i>, R.S.C. 1985, c. I-15, s. 10.</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, lender has no right to choose the 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>14.12 Consider form required for e-filing (electronic Form B).</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>	

