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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), 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. This checklist is current to September 1, 2023.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Remote witnessing of affidavits. 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 will be retired effective September 30, 2023. See https://ltsa.ca/retirement-of-covid-measures-effective-september-30/. Although the blanket authorization due to COVID medical concerns will be retired, s. 49 of the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250 remains available if the circumstances warrant use of an affidavit of execution in lieu of officer certification. 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, S.C. 2022, c. 10 (“PPRPNCA”). The PPRPNCA came into force January 1, 2023. It will prohibit the purchase of residential property by non-Canadians until January 1, 2025. 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 (<i>Strata Property Act</i>, S.B.C. 1998, c. 43). • Land Owner Transparency Act. The <i>Land Owner Transparency Act</i>, 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 <i>Land Title Act</i>. The LOTR will be 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 Land Owner Transparency Registry website, and also the course presentation and materials by R. Danakody, “Introducing the Land Owner Transparency Registry”, in <i>Residential Real Estate Conference 2019</i> (CLEBC, 2019), and by R. Danakody and T. Norman, “Land Owner Transparency Registry (LOTR)” in <i>Real Estate Development Update 2021</i> (CLEBC, 2021), available through CLEBC Courses on Demand. See also “How to Create the Transparency Register” and “Filing Requirements and Ongoing Obligations”. • LTSA web filing. Effective September 12, 2021, PDF versions of the following were retired: Form A Freehold Transfer; Form B Mortgage; Form C Release; and Form C Charge. These forms must now be submitted using Web Filing in myLTSA. PDF versions of these retired land title forms will only be accepted if 	

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<p>they were executed or e-signed before September 12, 2021. The LTSA publishes and maintains Web Filing Form Practice Guides that provide detailed instructions for filling out each Web Filing form. These are updated regularly and should be considered a primary resource when completing a Web Filing form. See help.ltsa.ca/myltsa-enterprise/land-title-web-filing-form-practice-guides.</p> <ul style="list-style-type: none"> • LTSA fee increase. Most LTSA fees increased slightly on April 1, 2023. • Exemptions on additional property transfer tax on foreign entities. The Property Transfer Tax Regulation, B.C. Reg. 74/88, provides for relief, in certain circumstances, from the additional 20% PTT on transfers of residential property to “foreign entities” in the Metro Vancouver Regional District, Capital Regional District, Regional District of Central Okanagan, Fraser Valley Regional District, and Regional District of Nanaimo. Effective June 20, 2020, see s. 22 for the “Exemption for general partner or bare trustee of limited partnership”. See also ss. 17.1 to 20 for the exemption for a foreign national who has confirmation as a worker under the Provincial Nominee Program, and s. 21 regarding the refund of the extra tax paid by a transferee who became a Canadian citizen or permanent resident within one year of the registration date. • 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 2021, OSFI confirmed that the minimum qualifying rate would remain the greater of the mortgage contract rate plus 2% or 5.25%. • BC Financial Services Authority is now the regulator of real estate and financial institutions. In the summer of 2021, the Real Estate Council of British Columbia, Office of the Superintendent of Real Estate, and BC Financial Services Authority amalgamated under the umbrella of the BCFSA. The BCFSA now regulates real estate licensees, credit unions, trust companies, pension funds, insurance companies, and mortgage brokers. <p>Of note:</p> <ul style="list-style-type: none"> • 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 <i>Framework Agreement on First Nation Land Management Act</i>, 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: <ul style="list-style-type: none"> • 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; <ul style="list-style-type: none"> ○ the Nisga’a Nation created their own land title system based on the Torrens system; 	

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<ul style="list-style-type: none"> • Land Title Survey Authority of British Columbia; <ul style="list-style-type: none"> ○ 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 <i>Land Title Act</i> 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 <i>Indian Act</i>, R.S.C. 1985, c. I-5; <ul style="list-style-type: none"> ○ 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 <i>Indian Act</i>). <p>If a leasehold interest in First Nations lands subject to the <i>Indian Act</i> 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 (<i>Indian Act</i>, 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.</p> <ul style="list-style-type: none"> • Money laundering, fraud, and real estate. The prevalence of money laundering in British Columbia (particularly in the area of real estate) continues to be a concern. The provincial government established the Commission of Inquiry into Money Laundering in British Columbia, which was led by Austin Cullen J. as the commissioner. The Cullen Commission’s final report was publicly released on June 15, 2022. For more information on the Cullen Commission, and the link to the full report, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). <p>As a means of laundering money, 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 (<i>BC Code</i>, rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109 and 3-110). See the resources on the Law Society’s Client ID & Verification resources webpage such as the Source of Money FAQs, Risk Assessment Case Studies for the Legal Profession in the context of real estate, trusts and companies and the Red Flags Quick Reference Guide. Also see the Risk Advisories for the Legal Profession regarding real estate, shell corporations, private lending, trusts, and litigation; Real Estate Transactions - Know Your Client Primer (<i>Benchers’ Bulletin</i>, Summer 2021), and the Discipline Advisories including country/geographic risk, and private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for guidance about the applicable <i>BC Code</i> rules and Law Society Rules.</p> <p>Due to recent fraud activity, any instructions regarding the transfer of funds should be verified by a phone call or meeting with your client in person. See www.lif.ca/about-us/news/notices-to-lawyers/2022/don%e2%80%99t-bankrupt-your-firm,-part-ii/ for guidance.</p>	

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<p>Any time you are transferring trust funds, by any means, in any kind of legal matter, you are at risk and must verify emailed instructions through direct phone or in-person contact. You must initiate the phone contact with your client, the bank, or another lawyer or notary in person or by using the original phone number in the file or from a reliable directory.</p> <ul style="list-style-type: none"> • Mortgage fraud update. Recently, an individual has posed as a private mortgage broker to place fraudulent mortgages on homes without the owner's knowledge. Ensure that you are carefully verifying your client's identity. Consider checking www.bcfsa.ca/public-resources/mortgage-brokers/find-mortgage-broker if a mortgage broker is involved to confirm that they are registered under the <i>Mortgage Brokers Act</i>, R.S.B.C. 1996, c. 313. • Additional resources. See the prescribed standard mortgage terms in the <i>British Columbia Mortgages Practice Manual</i> (CLEBC, 1992-). • 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). <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 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 <p style="text-align: center;">CHECKLIST</p> <ol style="list-style-type: none"> 1. PRELIMINARY MATTERS <ol style="list-style-type: none"> 1.1 Complete the CLIENT FILE OPENING AND CLOSING (A-2) and MORTGAGE PROCEDURE (F-2) checklists. 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, 	

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<p>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.</p> <p>2. DATE AND INTRODUCTORY CLAUSES</p> <p>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).</p> <p>2.2 Recitals setting out the special features of the transaction.</p> <p>2.3 Consideration clause.</p> <p>3. IDENTIFICATION OF PARTIES</p> <p>3.1 Borrower.</p> <p>3.2 Lender.</p> <p>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.</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 <i>Land Title Act</i>, 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, unless the mortgage is intended to cover future advances.</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 regarding criminal interest rate).</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>	

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<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 ar-rears.</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 property or encumber the property, 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. .3 Lender's costs in the event of default, including enforcement costs. <p>8.5 Title to the mortgaged property:</p> <ul style="list-style-type: none"> .1 Borrower has title and right to convey the property. .2 Borrower will defend title. <p>8.6 Release of all claims on the property 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> <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 property.</p> <p>8.10 Insurance:</p> <ul style="list-style-type: none"> .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. <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>	

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<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)). 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>	
<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>	

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<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>	
<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>, 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>	

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<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>, 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>	

