

REAL ESTATE
February 2022 > May 2022

#			
21-Day Notice - written notice requiring builder's lien claimant to commence action and register CPL within 21 days	147 L 7	<ul style="list-style-type: none"> Land <u>occupied</u> by FN prior to British sovereignty If present occupation relied on as proof of above, must be <u>continuity</u> in occupation between present and pre-sovereignty At the time of sovereignty occupation <u>exclusive</u> 	6 R 1
60 Day Rule – must report another lawyer to LS if fails to provide registrable discharge of mortgage (as mortgagee) within 60 days of closing – must make report <u>within 5 business days</u> LSR 3-95 and 3-96	64 L 7 90 L 5 120 R 6	Sufficient “occupation” = occupation in the sense of regular and exclusive use of the land	
80% Loan to Value Ratio , restrictions on lenders – total indebtedness can't exceed 80% of value of P (418(1) <i>Bank Act</i>), with exceptions	115 R 3 [\$7.06]	AB Title cannot be registered in the LTO / pending/unresolved claims not found in a search – it “ <i>lacks the element of marketability necessary to establish a 'good safe holding and marketable title'</i> ” required under LTA	7 L 2
A		<ul style="list-style-type: none"> Buyer cannot search land title records for unresolved claims to AT 	7 L 2
Abatement (reduction of purchase price):		With the exception of the <i>Tsilhqot'in</i> parcel, AB Title to specific land has not been recognized by the courts in BC	7 L 3
<ul style="list-style-type: none"> <u>Sue for abatement</u> (or damages, not both) if failure to perform a commitment does not constitute fundamental breach 	15 R 6 - 16 L 1		
<ul style="list-style-type: none"> <u>Negotiate for abatement</u>, but must advise seller that buyer still intends to complete on existing agreement to prevent anticipatory breach 	16 L 3		
<ul style="list-style-type: none"> May <u>demand abatement</u> (alternative to termination) if seller cannot provide title free and clear s9 CPS 	19 R 4		
ABORIGINAL TITLE: common law interest in land that is held collectively by the members of the FN, right to exclusive use and occupation of land, reap benefits of land, use must be consistent with group nature of the interest and enjoyment of land by future generations, and can only be transferred to Federal Crown	5 R 2 [\$1.04]		
	6 L 3 6 R 4'		
	54 [4.09]		
Effect of Title (exclusive use, occupation, & to reap benefits of land, subject to restriction: use can't be inconsistent with group nature/ enjoyment of land for future generations)	6 R 4		
Can only be sold, surrendered or transferred to the Federal Crown			
Constitutional protections against unjustifiable extinguishment/ infringement by gov't (s.35 CA 1982)	6 R 5		
Duty to consult where Aboriginal Title is asserted but not yet established (<i>Tsilhqot'in</i>)			
Delgamuukw test to establish AB Title:	6 L 6		
		Land transactions on First Nations' Land	54 R 5 [\$4.09] 55 L 4
		<ul style="list-style-type: none"> Usually outside LTA, governed by different regimes, and interests are statutory, not CL Gov owes fiduciary duty in transactions involving reserve land (<i>Guerin</i>) 	55 L 5
		<u>Key differences</u> b/t reserve lands & other real estate <u>transactions</u>	8 L 6

REAL ESTATE
February 2022 > May 2022

Registry systems / Reserve lands gov'd by Indian Act & Indian Land Registry <ul style="list-style-type: none"> FN with reserve lands governed by <i>IA</i> don't have power to develop & manage reserve lands Locatee land (CP land): Member of FN has acquired lawful possession of res. land as ev'd by Cert of Possession per s. 20 <i>Indian Act</i> – confers similar rights to private owner but can only alienate to another member; Minister can lease for benefit of locatee) Band land: Reserve land not subject to the rights of individual member. May be leased if designated under 38(2) <i>Indian Act</i> Key Differences in Transactions involving reserve land: Provincial statutes, municipal zoning, taxes Reg. under ILR <u>does not</u> confer priority/confirm validity of transaction. It is based on <i>root of title</i> system (have to trace back to original Cert of Possession) 	7 L 5 (#2)	Action on Personal Covenant – see <i>Remedies</i>	128 R 3 (a)
	7 R 1	Remedy avail. to Lender on default of mortgage term	
	7 R 3	Action for Foreclosure – see <i>Remedies</i> SCCR 21-7 = Lender's summary remedy, borrower's equity of redemption extinguished	129 L 2 (#2)
		Activity Notifier Service (Reviewing Title)	44 R 4 (c)
		Addendum A – in a foreclosure, buyer accepts condition of property “as is” / overrides clause 8 warranty (property as viewed)	19 R 2
	7 R Last	Adjustment Date (clause 6 – often same as possession, allocation of costs) – the date used to prepare the statement of adjustment	19 L 2 (#7) 76 L [\$5.13]
	8 L 6	Adequacy of Tender in Closing	21 R 3 (#11)
	8 L 5	<ul style="list-style-type: none"> Background (<i>Norfolk v. Aikens</i>) Common Law Cases Clause 13 (buyer financing) & 14 (clearing title) included in CPS b/c <i>Norfolk</i> 	21 R 3 22 L 2 22 L 4
	55 L 4	Adjustments, Methodology for Statements of – see <i>Statements of Adjustments</i> for topics	77– 82 [\$5.16-5.17]
		Advances (Registration) - see <i>Registration</i>	119 L [\$7.13] 119 R 4
2. <i>FN Land Management Act</i>	8 R 3	<ul style="list-style-type: none"> Have power to develop & manage reserve lands under Framework Agreement 	
<ul style="list-style-type: none"> <i>Indian Act</i> provisions do not apply 	8 R 5		
3. Self-Governing Band-Adopted Reg. System		Affirm/Disaffirm the Contract (First Election) - Req by non-breaching party	105 L 4 (#1) [\$6.04]
<ul style="list-style-type: none"> Sechelt Westbank 	8 R 6 9 L 1	Agency Disclosure - element of CPS, Clause 21, - buyer and seller rel. to real estate agent	25 L 3 (#17)
4. Fee Simple by Treaty – refer to treaty		Agent's Commission – paid by seller, Clause 25, amount is in listing contract not CPS	25 L 5 (#18)
<ul style="list-style-type: none"> Nisga'a Tsawwassen Maa-nulth Tla'amin 	9 L 6 9 R 8 10 L 4 10 R 1	Agreement , purchase – see <i>Purchase Agreement</i> (executory) – Nature and Origin	11 L 1 (#1) [\$2.01]
		Amendments to CPS	12 L 3 (#2)
		Anticipatory Breach = Clear indication of intention not to complete = other party entitled to treat as default	105 L 2 (#4)
Acceleration Clause (mortgages) – see <i>Remedies</i> = makes outstanding principal due	128 R 4 (b)	<ul style="list-style-type: none"> <i>Repudiation</i> – stmt must be consistent w/repudiation only 	
		<ul style="list-style-type: none"> S who fails to notify B of acceptance of AB is bound to perform K obligations 	105 L 3
		<ul style="list-style-type: none"> Affirm or disaffirm K before commencing legal proceedings 	105 L 5
	128 R 4-5	<ul style="list-style-type: none"> Suggested amendment to K may be construed as anticipatory breach, if 	12 R 5
<ul style="list-style-type: none"> Relief to borrower on app under s. 25 of <i>Law and Equity Act</i> <u>OR</u> if mortgage made under <i>Land Transfer Act Form</i> and clause 15 schedule 6 has not been excluded 			

REAL ESTATE
February 2022 > May 2022

appears not willing to complete w/o amendment			
Appointment of a Receiver (foreclosure) – see <i>Remedies</i>	129 R 2 (#5(b))	Certainty of Terms	12 R (#3) 14 R (ii) 103 L 1 (a)
Archeological Site Inventory	54 R 5	<ul style="list-style-type: none"> Written (3 Ps); partial performance; reliance Uncertain Subject Clauses Courts make every effort to determine intention to enforce CPS 	
Assumption and Novation – see <i>Mortgages</i>	122 R #4	Certificate of Indefeasible Title	50 L 3
Assumption of Mortgage – see <i>SoA</i>	79 L (b)	Certificate of Pending Litigation - notice of litigation affecting title – see <i>Encumbrances</i>	46 R 2 (#3)
Authorized persons behind counter at LTO	43 L (3)	<ul style="list-style-type: none"> Not for aboriginal title, because not registrable (<i>Uukw v BC</i>) Mortgages/priorities 	47 L (#1) 120 R 5
B		Charges against Title (searches; obtaining particulars; encumbrances)	43 L #3 43 R (#5)(ii) 45 L [\$4.03] 46 L [\$4.06]
Bank Act (disclosure) – see <i>Mortgages</i>	123 R 8 (#7)	Checklist for Closing (Closing Procedures)	63 R (#8)
Bare offer = A purely subjective subject clause imposes no obligation on buyer until conditions are waived/fulfilled. Better to create an option to purchase exercisable by the buyer (consideration required)	15 L (iii)	Checklist for Interim Report Letter	85 L [\$5.19]
Builders Liens	136, Ch 8 47 R 2 (#2) 47 R 2 125 L 4	Checklists for Conveyance or Mortgage	116 R [\$7.07]
<ul style="list-style-type: none"> Investigating title Backdated to give priority, but mortgages registered before bldrs lien take priority to extent of advances Cannot be filed against Fed. Crown but can against Prov. Crown Notes on Statement of Adjustment <ul style="list-style-type: none"> Filing – <i>Strata Property Act</i> s. 88(1) Holdback by Developer – <i>Strata Property Act</i> s. 88(2) 	47 R 3 82 R 3/4	Checklist for Searching Title at LTO	43 R 3 (#5)
Business Corporations Act (BC)	115 L (#2) 115 L (#2) 115 R (#2)	Claiming Deposit (Seller's remedy) – see <i>Remedies</i>	106 L (#2(a))
<ul style="list-style-type: none"> S. 30 – company has capacity of indiv. S. 195 – written disclosure of financial assistance given to persons related to Co. Loans to prohibited individuals 		Clearance Certificate for Non-Resident Vendors (Holdbacks)	73 L [5.11]
Business Practices and Consumer Protection Act (disclosure requirements for lenders) Part 5	124 L (#9)	<ul style="list-style-type: none"> s. 116 <i>Income Tax Act</i> - buyer obliged to make reasonable inquiry of the seller's residency Clause 11A req seller to deliver declaration of residence If seller not resident - holdback until CRA clearance certificate 	20 R 6 37 R #16
Buyer	16 R 3 (#1(a)) 22 L 6 34 L #1 107 L (#3)	Clearing Title , Clause 14	22 R 1
<ul style="list-style-type: none"> Correctly describing Financing, Clause 13 CPS Buyer's Lawyer – see <i>Role of Lawyer</i> Buyer's Remedies – see <i>Remedies</i> 		Clearing Title , Lender	120 L4 [\$7.14]
Bylaw and Zoning Compliance – see <i>Mortgages</i>	117 R1 (#3)	Client Instructions	36 L 3 [\$3.03]
C		Topics to discuss with first time home buyer (fees; steps; insurance; improvements; municipal zoning bylaws; legality of suites; moving expenses; hydro etc. accounts; purchase price; ID buyer, if 2 buyers will it be TC or JT recent work on prop; marital difficulties seller; developer disc. statement; Funding of PP, PPT; non-resident seller; GST)	36 R 6 (#1-17)
Cash Balance, Reconciling - (SoA)	81 L (m)	"Loss Prevention" Summary	74 R (#1)
Caveats (temporary instrument file LTO; freeze title: 60 days) – see <i>Encumbrance</i>	46 R #4		
CBA Standard Undertakings – see <i>Undertakings</i>	11 R 19 21 R #11 90 L 4		

REAL ESTATE
February 2022 > May 2022

Client, Reporting to (Initial/Interim) Interim Report Letter Checklist	83 L [§5.18] 85 L [§5.19]	(b) K can be completed w/out fulfill, and (c) waiver before time stipulated for fulfilling, or within reasonable time	(s. 54 LEA)
Client (Lender), Reporting on results of searches	117 R 3 [§7.10]	Conflicts of Interest - see <i>Professional</i> ; see also summary at end of this index	38 L [§3.04]
Closing Procedures • Matters before closing • Checklist / Steps	20 R 3 (#10) 63 L (#6) 63 R (#8)	• Unless “simple conveyance”, lawyer should not act for both parties	38 R 1
Co-insurance	118 R (#2)	• Simple conveyance def’n (is and isn’t)	38 R 5
Commercial Lease Registration – <i>Property Law Act</i> S 5(2) • Landlord makes lease for 3+ years must deliver registrable instrument to tenant unless (as usual) prohibited under lease	4 L 5 [§1.03]	• If seller asks B’s L to pay out and discharge financial encumbrances	81 R (n)
Common Law Damages – see <i>Remedies</i>	108 L (c)	• If acting for borrower and lender	113 R [§7.02] 85 R (x)
Commission (real estate) • General rule: Seller pays • Statement of Adjustments (debit on seller, nothing on buyer) + GST o one or two cheque system • Failure to complete transaction – seller may still be payable (often triggered by execution of binding agreement)	25 L 5 (#18) 80 L (h) 80 R 2-3 18 R 2	Contaminated Site Registry Searches – make environmental inquiries	54 L [§4.08] 117 R (#4)
Commitment Letter/Instruction - see <i>Mortgages</i>	116 R 5 [§7.08]	Contract of Purchase and Sale – see <i>Purchase Agreement</i> (good and bad clauses see 7.1.5-7.1.10 in AP Manual)	11-26 [§2.01-2.04]
Company Searches – see <i>Mortgages</i>	117 L (#2)	Contractual Power of Sale (mortgages) – see <i>Remedies</i>	129 L (#4)
Completion • Common problems - <i>Norfolk</i> (a) buyer not having mortgage funds necessary to pay purchase price until after application for registration; and (b) seller being unable to clear title until after rec’ving PP from buyer • Completion Date (Clause 4 of the CPS)	21 R 3 (#11) 18 R 5 (#5)	CONVEYANCE (residential) steps & documents <u>Acting for Buyer: 3 basic steps:</u> 1. gather information - ID verification per Law Society Rules, Part 3 2. prepare and execute documents 3. receiving funds, tendering docs for reg, and paying out funds	60 L [§5.02]
Amendments • Solicitors departing from completion method in Interim Agreement must obtain (a) authority from client to complete by different method; and (b) agreement of other side to different method	12 R 2 22 L 1 (a) (b)	Initial Contact • CPS, instructions, conflicts, problems, etc	60 R (#1)
Conditions Precedent (subject to clauses) • Best efforts to fulfill, implied obligation • Removal of subject clauses • Subjective subject clauses • Uncertain subject clauses • Waiver, unilateral if: (a) solely for that party’s benefit,	13 L (b) 105 L 1 14 L (i) 15 L (iii) 14 R (ii) 104 R 6 (#3)	Client Interview • Confirm instructions, obtain info/partic.	60 R (#2)
		Title Search • Do initially, before registration, and before transferring funds	61 L (#3)
		Follow-up from Interview & Title Search • Interim report; copies of encumbrances, payout	61 R (#4)
		Document Prep (Buyer) Document Prep (Seller) Form C General Instrument (charges)	62 R (#5) 63 L 2 70 L [§5.07]
		Matters before closing	63 L (#6)
		Registration	63 R (#7)
		Closing	63 R (#8)
		LTO Electronic Filing (deemed original)	64 R (#9)
		Post-closing Procedures	67 L (#10)
		Corporations • Corporate Search of seller Co.	45 R [§4.05]

REAL ESTATE
February 2022 > May 2022

<ul style="list-style-type: none"> Co. struck from the registry for 2 years, land reverts to prov Crown Seal not required to deal with int. in land 	45 R 4 67 R 6	Disbursements (Legal Fees, SoA) - Buyer SOA + GST	81 L (i)
Corrections to title – see <i>Searches</i>	44 L 6	Disclosure requirements – see <i>Mortgages</i>	121 L [§7.16] 123 R (#6)
Costs – Clause 15 CPS	23 R (#12)	<ul style="list-style-type: none"> Mortgage Brokers Act – investor/lender information statement Bank Act – cost of credit (with exceptions) Property Law Act - Statement re: amt payable to discharge, balance payable, terms of dischr (s.33 <i>PLA</i>) Cost of credit (BC <i>BPCPA</i>) 	123 R (#7) 124 L (#8) 124 L (#9)
Covenant , personal (mortgages) – see <i>Remedies</i>	128 R (#1(a)) [§7.26]	Disclosure, Agency (cl. 20/21) – Must disclose nature of agency relationship	25 L (#17)
CP (certificate of possession) Lands / Locatee Lands – see <i>Aboriginal Title</i>	7 R 3	<ul style="list-style-type: none"> No assignment without consent of seller 	24 R (#16)
Credit , debit and – see <i>Statements of Adjustments</i>	76 L [§5.14]	Distress (seizure of goods and chattels of borrower who is in default) – see <i>Remedies</i>	129 R (#6)
Criminal Rate of Interest (Crim Code S. 347 – 60%+ per annum) – see <i>Mortgages</i>	123 L (#5) 116 R 2	Districts, land title – New West (Van, New West,); Kamloops (Kamloops and Nelson); Victoria (Vic, Prince George, Prince Rupert)	1 R 1 42 R 2
D		Division of Property (spouses)	4 R (#2)
Damages for breach of contract – see <i>Remedies</i>	107 R (#4)	<ul style="list-style-type: none"> <i>FLA</i> s 81 – division <i>FLA</i> s 99 - notice of agreement <i>FLA</i> s 103 – s 29 which protects innocent buyers also applies to spouse interest 	
<ul style="list-style-type: none"> Seller (1) claim deposit (2) specific performance or damages Buyer (1) claim return of deposit (2) specific performance or damages 	106 L (#2) 107 L (#3)	Doctrine of Illegality – see <i>Mortgages</i>	116 L (#3)
Damages in addition to Specific Performance	107 R (#4(a))	Doctrine of Merger (doesn't apply per Clause 18 of CPS = representations in K continue post-completion)	24 R 2
Damages in lieu of Specific Performance	107 R (#4(b))	Documents, in conveyance – see <i>Conveyance</i>	62 R (#5) 67 R [§5.04] 68 L [§5.05]
Debit & credit – see <i>Statement of Adjustments</i>	76 L [§5.14]	<ul style="list-style-type: none"> Form A Property Transfer Tax Return 	44 L bul. 2
Deemed Undertakings (Code Chapter 7)	88 R (#3)	Duplicate Certificate of Title (Duplicate Infeasible Title)	
Defect Notice (b/c/ document errors) Registrar discretion to allow withdraw	65 R 5 89 R (#5(a))	E	
Disbursement of Delivery of Funds	81 R (o)	Easements – see <i>Encumbrances</i>	46 L (#1) 51 R (#14)
Deposit	18 L (#4) 80 L (h)	<ul style="list-style-type: none"> Merging ownership of dominant and servient tenements does not extinguish easement or restrictive covenant Court orders re: <i>PLA</i> ss 34-36 	51 R 4
<ul style="list-style-type: none"> Statement of Adjustments – “credit” for buyer (not included in seller’s unless paid directly to seller - credit) One cheque system Two cheque system 2-stage deposit (when subject clause) Seller claiming deposit where buyer repudiates Buyer claiming return of deposit from seller 	80 L last 80 R last 18 L last 106 L (#2(a)) 107 L (#3(a))	Electricity and Gas – see <i>SoA</i>	79 R (d)
Description of the Parties	16 R (#1)	Electronic Filing of documents	64 R (#9)
Description of Property (LTO) (civic + legal)	17 L (#2) 42 R (#1)	Electronic Signatures	66 R (b)
Obtaining the Legal Description (PID)		Elements, Standard Form CPS	16 R [§2.03] 16 R #1 17 L #2 17 R #3 18 L #4 18 R #5 18 R #6

REAL ESTATE
February 2022 > May 2022

Adjustment Date	19 L #7	of essence; and (2) put new completion date in writing to comply w/LEA	
Included and Excluded Items, Viewing	19 L #8		
Title, free and clear	19 R #9		
Closing procedures	20 R #10	Exceptions to Title (s. 23(2) Land Title Act; clause 9 of standard CPS)	19 R (#9)
Completion	21 R #11	<ul style="list-style-type: none"> Restrictive covenants, statutory rights-of-way (utilities), surviving conditions from original grant from crown, mineral rights 	
Costs	23 R #12	Excise Tax Act see GST	38 L 2
Risks	23 R #13	<ul style="list-style-type: none"> Exceptions to seller collecting GST 	72 L 2
Reps and Warrs	24 L #14	<ul style="list-style-type: none"> If exception, buyer to get certificate 	72 L (#4)
Personal info	24 R #15	Executory Contract – see <i>Purchase Agreements</i>	11 L 1 (#1)
Restriction on Assignment	24 R #16		
Agency disclosure	25 L #17	Execution of land title instruments	67 L [§5.03]
Real Estate Commission	25 L #18	<ul style="list-style-type: none"> Seller must deliver a form A 	65 L 1
Information page	25 R #19	“Existing Chargeholder” Clause 8.2 CPS e.g., mortgage holder is person or private lender NOT institutional lender	22 R 4
Encroachment Agreement - see <i>Mortgages</i>	118 L 1 [§7.11]	Expropriation (s. 23(2)(f) Land Title Act)	50 R 2
	46 L [§4.06]	F	
ENCUMBRANCES		FAMILY LAW ACT	4 R (#2)
Caveat – expires within 60 days	46 R (#4)	<ul style="list-style-type: none"> “separation” – spouse undivided ½ interest in “family property” as TIC – S. 81 	4 R 6
Certificate of Pending Litigation – freezes title - challenge after 1 year except re: foreclosure or under <i>WESA</i>	46 R (#3)	<ul style="list-style-type: none"> s 29 LTA protects innocent buyers with notice except fraud, also applies to spouse interest under FLA (not strictly applied by courts - notice of interest could be problem for buyer) – S 103 	4 R 6-7
Easement	46 L (#1)	<ul style="list-style-type: none"> Notice of agreement in LTO as charge against title (s. 99) 	5 L 1
Statutory Right of Way	46 L (#2)	Mortgage – separated spouse attempts to get, -careful when acting for a lender	4 R 8
Title to be free & clear, except (Clause 9 CPS)	19 R (#9)	Investigating title	47 L [§4.07]
Enforceability of Purchase Agreement	102 R (#1)	Spouse of First Nation member – Some FNs have specific spousal arrangements	5 L 2
<ul style="list-style-type: none"> Certainty of terms 	103 L (a)	Fee Simple by Treaty (see <i>Aboriginal Title</i>)	9 L (#5)
<ul style="list-style-type: none"> Law and Equity Act, S 59 aka must be written/other evidence 	103 L (b)	Fees	
<ul style="list-style-type: none"> <i>REDMA</i> 	103 L (c)	Statement of Adjustment	81 L (i)
Enforce Personal Covenant after order absolute	129 L (c)	Interim Report	84 R (#5)
Environmental issues		Fire Insurance Policy – see <i>Insurance</i>	85 R (xii)
<ul style="list-style-type: none"> Site Registry – contaminated sites 	54 L [§4.08]	First Nations Land Management Act	86 L last
<ul style="list-style-type: none"> Environmental Enquiries 	117 R (#4)	First Nations Land Transactions	8 R (#3)
<ul style="list-style-type: none"> Environmental Management Act 	47 R (#3)	<ul style="list-style-type: none"> Spouses – Family Law Act 	54 R [§4.09]
Equity of redemption (borrower’s right to redeem property after mortgage is paid)	112 R last	First-time Homebuyers	5 L 2
“Errors and Omissions Excepted” (“E & OE”) SOA notes, excuses errors on SOA	82 L (d)	<ul style="list-style-type: none"> More responsibility on Lawyer to explain 	36 R 6-7
Escheats of property to Crown –			
Corporate	45 R 5 [§4.05]		
Person dies intestate with no heirs	50 R 3		
Essentiality of Time (time is of the essence)	103 R (#2)		
Clause 12	21 L last		
<ul style="list-style-type: none"> Failure to perform on time = breach 	21 R 2		
<ul style="list-style-type: none"> Both sides fail to perform = TOE ceases 	104 L 3		
<ul style="list-style-type: none"> Extension of time ≠ waiver 	21 R 2		
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Solicitor should (1) expressly state in writing time will remain 	104 R 4		

REAL ESTATE
February 2022 > May 2022

<ul style="list-style-type: none"> Exemption from prop transfer tax 	37 R (#15) 68 R 3	<ul style="list-style-type: none"> Builder constructs residential building and leases to tenants Business converts capital real ppty from commercial/non-res use to res use Partial increase/decrease in proportion of ppty used for commercial purposes GST input tax credits have been claimed by Seller. 	
Fixtures , CPS Clause 7 (Included Items)	19 L (#8)		
<ul style="list-style-type: none"> PPSA 	62 R (v)		
Foreclosure - see <i>Remedies</i>	129 L (#2)		
FORMS			
Signature is evidence that party (a) knows the contents of instrument and has signed it voluntarily and (b) has the legal capacity	67 R 3 (a)(b)		
Form A Freehold Transfer – fee simple – mandatory (example 7.3.3 in AP Manual)	67 R [\$5.04] 62 R (#5(a)) 65 L 1	GST not payable on:	71 L 2
Form B (mortgages) (e.g. 7.3.8 in AP Manual). In Conveyance Checklist 5 - Prepare Documents	62 R (#5(b)) 113 L (#3)	<ul style="list-style-type: none"> other taxes such as property tax property outside Canada “used” residential housing that is not substantially renovated 	
Form C (general instrument – e.g. easement, assignment of rents / of lease / terms of instrument / release / discharge)	70 L [\$5.07] 126 L [\$7.20]	GST Certificate	72 L (#4) 21 L 3
Form F (strata fees – certificate of pymt)	3 R 2 (s. 115) 45 L 2 (c) 61 L (#3(d))	<ul style="list-style-type: none"> If transaction exempt, seller to deliver cert to buyer If trans attracts GST, parties deliver certs to each other 	
Fraudulent Conveyance Act & LAWYER'S ETHICS	5 L (#3) 5 L 5	Deposit, GST on – pay even if deal collapses (if originally applicable)	18 R 2
<ul style="list-style-type: none"> BC Code 3.2-7: L must not engage in activity that L knows/ought to know encourages dishonesty, crime, fraud 		Rebates – may be avail to ind'l who renovates/builds home, purchases new home from builder, or purchases shares in co-op	72 L (#5)
Fraudulent Preference Act	5 L (#3)	Reps/warranties given by Seller as to whether GST payable & who will pay – put in CPS	71 L (#2)
Fundamental breach , failure to perform	15 R (c)	Real Estate Commission GST applies (seller)	80 L (h)
<ul style="list-style-type: none"> If S doesn't perform rep/war, B can only refuse to complete if fundamental breach 		Statements of Adjustments – see <i>SoA</i> – GST item on SOA, rebates as well	81 L (k)
G		Collection of GST	71 R (#3)
Gas and Electricity (SOA - no adjustment, read meter)	79 R (d)	<ul style="list-style-type: none"> Seller normally collects/remits <u>Buyer collects the tax when:</u> 	72 L 2
GST – Clause 11b normally Buyer pays	21 L 2 37 R (#17) 70 R [\$5.09]	<ul style="list-style-type: none"> (a) Seller is non-resident (b) Sale non-res ppty to B reg'd for GST purposes (c) Sale of res. P to Buyer reg'd for GST purposes who is not an indiv. 	
If GST not dealt with in CPS look for:	37 R (#17)	H	
<ul style="list-style-type: none"> Seller is builder/renovator Building is new Substantially renovated (def 70 R #1) Property not owned by seller as a residence or personal recreational ppty (e.g. rental) (Watch for ppty in resort) 		Heritage Conservation Act: may restrict changes to home if heritage property	49 L (#6)
GST is payable where:	70 R (#1)	Holdbacks (SoA)	81 L (L) 73 L [\$5.11] 63 R (#8(d)) 79 R (c)
<ul style="list-style-type: none"> Residence is new or substantially renovated (def 75 R #1) Converted commercial ppty 		<ul style="list-style-type: none"> Non-resident seller Builders Lien Other circumstances for holdbacks – utilities and licenses Amend CPS to add buyer right to holdback 	16 L 1-2

REAL ESTATE
February 2022 > May 2022

Home Owner Grant – reduction in ppty taxes	78 L 2	Lender will require that insurance is in place before advancing funds	118 L [§7.12]
<ul style="list-style-type: none"> Eliminated on homes \$1,764,000 or more (\$1,804,000 in rural/north) grant reduced by \$5 for every \$1000 over \$1,650,000 Max reduction \$570 in urban areas 		<ul style="list-style-type: none"> Standard Mortgage Clause (lenders will request that this goes into policy of insurance) Provides that coverage shall remain in force n/w/s negligence, etc., of mortgagor – allows lender to recover insurance proceeds even where mortgagor acted negligently, etc. 	118 L #1
I		Replacement Cost Endorsement	119 L #3
In/Out Analysis – simple financial dry run	73 L [§5.10]	Risk transfer clause in CPS (clause 16)	23 R #13
Included items and Viewed , elements of K, Clauses 7 and 8	19 L (#8)	<ul style="list-style-type: none"> B must ensure insurance in place by 12:01 a.m. on completion date Regardless of particular wording, insurance should be in place in B's name before S is paid 	
Indefeasible title – entitled to rely on Title Cert	1 R 5	Interest Act , ss 6, 8, 10	121 L [§7.16]
<ul style="list-style-type: none"> Exceptions to indefeasible title – S 23(2) 	50 L (#9)	Interim Reporting Letter	83 L [§5.18]
Indemnity , Replacement Cost Endorsement	119 L (#3)	Interest in Reserve Lands	8 L 3
Index Search (title not in electronic form)	44 R [§4.02]	Investigating Title, Statutes affecting title/use	47 L [§4.07]
Indian Act	7 L (#2) 54 R [§4.09]	<ul style="list-style-type: none"> Aboriginal Title <i>Builders Lien Act</i> <i>Environmental Management Act</i> <i>Mineral Tenure Act</i> <i>Family Law Act</i> <i>Heritage Conservation Act</i> <i>Land Act</i> <i>Land (Spouse Protection) Act</i> <i>Land Title Act</i> <i>Land Owner Transparency Act</i> <i>Land Transfer Form Act</i> <i>PPSA</i> <i>Power of Attorney Act</i> <i>Property Law Act</i> <i>Resort Municipality of Whistler Act</i> Miscellaneous Other Statutes 	47 L #1 47 R #2 47 R #3 48 R #4 49 L #5 49 L #6 49 R #7 49 R #8 50 L #9 50 R #10 50 R #11 50 R #12 51 L #13 51 R #14 51 R #15 52 L #16
Indian Land Registry	7 L (#2) 55 L 3	J	
Info/instructions to get from client (buyer) at outset	60 R #1-2	Joint Tenancy	
<ul style="list-style-type: none"> How do you rec instructions? First time buyer? Confirm w/ initial/interim report to client 	36 L [§3.03] 36 R last 83 L [§5.18]	<ul style="list-style-type: none"> Ask if buyer wants JT or tenancy in common Default is tenancy in common (ss. 11-12, PLA) Sever JT by transfer to self – s 18 <i>LTA</i> 	60 R #2(a) 4 R 1 4 R 2 60 R #2(a)
Information Page on front of Form , CPS	25 R #19		
<ul style="list-style-type: none"> Does not create legal rights, but informs parties about their transaction. 			
Initial Contact	60 R #1		
INITIAL / INTERIM REPORTS TO CLIENT – see <i>SoA</i>	83 L [§5.18]		
Instructions from client	83 R #1		
Title Opinion	83 R #2		
Parameters of Instructions	84 L #3		
Conflicts	85 R #4		
Fees	85 R #5		
Conclusion	85 R #6		
Interim Report Letter Checklist	85 L [§5.19]		
Instructions from Buyer	36 L [§3.03]		
Instructions from Lender – Commitment Letter, see <i>Mortgages</i>	116 R [§7.08]		
INSURANCE	86 L [§5.20]		
<ul style="list-style-type: none"> Insurance for securing Mortgage 	118 L [§7.12]		
Co-Insurance	118 R #2		
Fire Insurance Policy	86 R last		
Acting for lender, get “ insurance binder ”	133 L 3		
Insurance Premiums – see <i>SoA</i>	80 L (g)		

REAL ESTATE
February 2022 > May 2022

<ul style="list-style-type: none"> JTs will be treated as tenants in common (for estate purposes) if they die w/in 5 days of each other 		Legal Description , obtaining	42 R #1
Judicial Sale (mortgage) – see <i>Remedies</i>	129 L #3	Legal Fees and Disbursements – see <i>SoA</i>	81 L (i)
L		Lender Insurance [i.e. lender requiring insurance]	118 L [\$7.12]
Land Act	2 L #2	Lenders, Registration and Advances – see <i>Registration</i>	119 L [\$7.13]
<ul style="list-style-type: none"> Disposition of Crown land 	49 R #7	Lenders (Restrictions on)	115 R [\$7.06]
Land (Spouse Protection) Act	49 R #8	LIABILITY OF LAWYER	
Land Title Act	50 R #9	Conflict of Interest	38 L [\$3.04] 81 R (n) 113 R [\$7.02]
<ul style="list-style-type: none"> Significant provisions for conveyancing Exceptions to indefeasible title – S 23(2) Electronic filing in LTO Form A Withdrawing application to LTO for registration (s. 167) Mortgage form - must be 2 parts s. 231 expressly retains common law mortgage rights and remedies 	1 L #1 50 R #9 64 R #9 67 R [\$5.04] 89 R 1 113 L #3 112 L 2	Errors and omissions – E & OE	82 L (d)
Land Title and Survey Authority of BC	1 R 3	Report to client (initial/interim)	83 L [\$5.18]
Land Title Districts (New West, Victoria, Kamloops) (addresses)	42 R 2	Undertaking	87 R (c)
Land Title Electronic Filing System (“EFS”)	2 L 2; 64 R #9	Anticipatory breach - don’t say something that might constitute a repudiation of K	105 L #4
Land Title Office Search Checklist	43 R #5	If dispute develops, negotiate “w/o prejudice”	102 R (d)
Land Title Office Search	42 L [\$4.01] 42 R #2 117 L [\$7.09]	Liability of Municipalities – municipalities who adopt the <i>BC Building Code</i> are resp take steps to enforce all of it unless valid policy decision to limit – see <i>Remedies</i>	108 L (e)
Land Transactions on First Nations Land	54 R [\$4.09]	Liens, priority of [statutory]	124 R #10 47 R 2
Land Transfer Form Act	50 R #11 128 R (b)	Loans	
Law and Equity Act	133 L (ii) 12 R #3 / 103L(a) 12 R #3 / 103L(b) 13L(b) / 104 R #3	<ul style="list-style-type: none"> 80% loan-to-value ratio Loans to prohibited individuals 	115 R #1 [\$7.06] 115 L #2
Lawyer as Witness	102 L [\$6.02]	Local Improvement Charges (buyer usually pays from adj. date)	45 R 2
Lawyer, Role Of	34 L [\$3.01]	Locatee Land / CP Lands	7 R (a)
<ul style="list-style-type: none"> Buyer’s L. – deliver clear title; undertaking not to file title until funds given Seller’s L. – vet docs of buyer and pay out any financial encumbrances prior to paying net sale proceeds; undertaking to clear title 	34 R #1 35 R #2	Loss Payee Clause (Insurance) (standard mortgage clause, premiums)	80 L (g)
Leases, Registration of	4 L #1	M	
		Municipalities, Liability of – municipalities who adopt the <i>BC Building Code</i> are resp take steps to enforce all of it unless valid policy decision to limit – see <i>Remedies</i>	108 L (e)
		MORTGAGES	
		Acceleration Clause (+ buyer’s relief)	128 R (b)
		Advances – loan unsecured until funds advanced. Especially vendor take back.	119 R [\$7.13]
		Assumption and Novation	122 R #4
		Blended Mortgage Payments (Interest Act s. 6)	121 L #1
		Brokers Disclosure (<i>Mortgage Brokers Act</i>)	123 R #6
		Clearing Title : undertakings	120 L [\$7.14] 120 R # 1-2

<ul style="list-style-type: none"> Methods of clearing title if lender separately represented Law Society Rules 3-95; 3-96 	120 R 4	<ul style="list-style-type: none"> Replacement Cost Endorsement – choose cash or replacement 	119 L #3
Co-Insurance	118 R #2	Interest Rates	121 L #1-3 [§7.16]
Commitment Letter (To Lender by Lawyer)	116 L [§7.08]	Blended payments – interest not payable if ... s.6 <i>Interest Act</i>	121 L #1
Conflicts of Interest (e.g. acting for buyer and lender)	113 R [§7.02] 38 L [§3.04]	Must be consistent (i.e. cannot charge increased rate on arrears) s. 8 <i>Interest Act</i>	121 L #2
Contractual aspect (privity of K between lender and borrower even if B no longer owner)	112 R #1	Lawyer must provide proof of discharge (closing procedure) within 60 days of closing	64 L (f-g) & last
Conveyance & Security Aspect (M is charge, not transfer but if borrower fails to redeem, lender may foreclose)	112 R #2	Lawyer acting for lender	
Contents (2 Parts: Form B and all other terms)	113 L #3	<ul style="list-style-type: none"> Checklist Instructions/Commitment Letter Searches Report to Client re: search results File Form B Standard mortgage terms 	116 R [§7.07] 116 R [§7.08] 117 L [§7.09] 117 R [§7.10] 113 L #3 112 L [§7.01]
Criminal rate of interest (>60%/yr)	116 R 2	Novation – See <i>Mortgage, Assumption and Novation</i> , above	122 R #4
Definition of “MORTGAGE” (security a borrower gives to lender to secure loan made by lender to borrower; registered as charge on land)	112 L 1 [§7.01]	PAYMENTS AND INTEREST	
Discharges (Final steps)	121 L [§7.15]	<ul style="list-style-type: none"> S.6 <i>Interest Act</i>: blended principal + interest S. 8 <i>Interest Act</i>: interest on arrears can't be higher S. 10 <i>Interest Act</i>: right to repay after 5 years Criminal rate of interest (60%) 	121 L #1 [§7.16] 121 L #2 121 R #3 116 R 2
Disclosure req'd from lenders		Perfection of Security Interest (Registration)	119 L [§7.13]
<ul style="list-style-type: none"> <i>Bank Act</i>: bank must disclose cost of borrowing, right to repay, penalty of default If mortgage repayable by blended pymts, mortgage must have statement showing amount of principal and rate of interest (s. 6 <i>Interest Act</i>) <i>Property Law Act</i> <i>Business Practice & Consume Protection Act</i> 	123 L #7 121 R #1 124 L #8 124 L #9	Pre- & Post-registration searches	117 L [§7.09]
Disclosure req'd from brokers s.17.4 - Mortgage Brokers Act	123 L #6	PRIORITY	
Encumbrances, discharge of (clearing Title)	120 R [§7.14]	<ul style="list-style-type: none"> Priorities b/w reg'd mortgage holders do not arise simply on basis of time of reg Priority of Statutory Liens Employment Standards Act ss 87(1)&(5) 	119 L [§7.13] 124 R #10 124 R 2 52 R (e)
Environmental Enquiries	117 R #4	<ul style="list-style-type: none"> Workers Compensation Act s.265 	124 R 3 54 L (p)
Equity of Redemption	112Rlast;129L#2	<ul style="list-style-type: none"> Bankruptcy and Insolvency Act s.70 	124 R 4 52 L (c)
INSURANCE - lender will require adequate insurance before advancing funds	118 R [§7.12]	<ul style="list-style-type: none"> Corporation Capital Tax Act Strata corp has priority over other liens except builders liens & Crown liens s.116(5) 	124 R 5 125 L 1
<ul style="list-style-type: none"> Standard mortgage clause Co-Insurance - by inserting co-insurance clause, the insurance company encourages the insured to buy insurance up to a certain % of the full value of the property. If they don't, they have to bear a portion of the loss. 	118 L #1 118 R #2	Property Law Act	4 L #1 [§1.03] 51 R #14
		Registrar, refusal to register (s. 197 LTA)	

<ul style="list-style-type: none"> If title not established Charge claimed not registrable under LTA Lack of transparency reports 	120 L 2 69 R last	Non-resident Seller – Clearance Certificate, or deduct and remit withholding tax (25% for non-depreciable property/50% for depreciable property)	73 L [\$5.11]
Registration	119 L [\$7.13]	<i>Norfolk</i> (closing procedure, completion, undertakings)	21 R #11 86 R [\$5.21]
<ul style="list-style-type: none"> Reg essential to perfect lender's security Some subsequent applications to register charges could delay a prior app to reg mortgage or could affect priority 	119 R 1 (a-e)	Notes to Statements of Adjustments – see <i>SoA</i>	82 L [\$5.17]
REMEDIES FOR LENDER (SEE AP 7.3a for Summary)	128 R [\$7.26]	Novation , and Assumption – see <i>Mortgs: Assumption and Novation</i>	122 R #4
<ul style="list-style-type: none"> 1. Action on Personal Covenant 2. Action for Foreclosure 3. Judicial Sale 4. Contractual Power of Sale (rare) 5. Possession (mortgagee in possession has rights of owner) 6. Distress (seizure of goods/chattels) 	128 R #1 129 L #2 129 L #3 129 L #4 129 L #5 129 R #6	O	
RESTRICTIONS ON LENDERS	115 R [\$7.06]	Oil – see <i>SoA</i>	79 R (e)
<ul style="list-style-type: none"> Internal restriction: 80% loan-to-value of the property ratio (note exceptions) Cannot charge higher rate of interest on arrears than princ (s. 8 interest act) Loans regulated & often prohibited to certain individuals (directors, officers, employees, SHs, or related co) 	115 R #1 121 L #2 115 R #2	Opinion , on title	83 R #2
Searches (LTO; Company & NOA; Zoning & bylaw; Environment) - get payout statements from encumbrances	117 L [\$7.09]	Order Nisi	128 R #1
Survey Certificate (to check for encroachment). Lender will require this or may prefer Title Insurance.	70 L [\$5.08] 118 L [\$7.11]	P	
Undertakings	89 L #5	Particulars of charges – see <i>Searches</i>	43 L #3
N		Parties, Property, Price (necessary for K)	13 L 2
NEGLIGENCE by the lawyer, claims	74 L [\$5.12]	Payout statement (s 33 of the <i>PLA</i>)	77 R #3
Obligation to advise client to attempt to Negotiate – <i>Halliday</i>	83 L 1	Pending Registrations or Applications (searches)	42 R #2 61 RT (ii)
Receiving Instructions	83 R #1	Personal covenant (mortgage remedies) (release from covenant)	128 R #1
Title Opinion	83 R #2	Personal Information	24 R #15
Parameters of Instructions	84 L #3	Personal Property Security Act (PPSA) s. 37, 38, 49	50 R #12
Conflicts	84 R #4	Parcel Identifier Description (PID) – see <i>Searches</i>	42 R 1
Fees	84 R #5	Plans , obtaining – see <i>Searches</i>	43 L #4
Non-compliance on Security (illegality) – see <i>Mortgages</i>	116 L #3	Possession (mortgagees) – see <i>Remedies</i>	129 L #5
Non-lawyer , role of – see <i>Role of Non-Lawyer</i>	35 R [\$3.02]	Possession Date	18 R #6
		Post-closing Procedures , see <i>Conveyance</i>	67 L #10
		Post-registration search	
		<ul style="list-style-type: none"> Reliance of lenders to pay out mortgage funds – and pitfalls to this practice 	119 R [\$7.13]
		Power of Attorney Act	
		<ul style="list-style-type: none"> 3 YR limit unless enduring registered at LTO Executions under S 45, 46, <i>LTA</i> 	51 L #13 114 L #4
		Power of Sale , Contractual (mortgs) – see <i>Remedies</i>	129 L #4
		Price	17 R #3
		Principal residence exemption	68 R 3
		Priority between registered mortgage holders - Based on time, money secured/advanced	119 R (bolded)
		Priority of competing interests	1 R 1

REAL ESTATE
February 2022 > May 2022

Registered interests take priority according to registration date/time		• Mortgages – Payout statements 33 PLA	124 L #8
Priority of statutory liens – see <i>Mortgages</i>	124 R #10	Property taxes – see <i>Statement of Adjustments</i>	45 L [\$4.04] 78 L #4(a)
Private encumbrance (CPS)	20 L last	Obtain search information from tax authority	
PROFESSIONAL RESPONSIBILITY		Property Transfer Tax	68 L [\$5.05] 68 L #1
Conflict of Interest		• Tax 1% first \$200k, 2% on \$200k - \$2M, 3% on \$2M+ (+2% if residential)	
• Unless the transaction is a simple conveyance, lawyer shouldn't act for both buyer and seller. Only act for one.	38 L [\$3.04] 38 R 1	• If GST payable, PTT paid on net amt	68 L 6/LB
• Simple conveyance def/n	38 R 5	• <i>Exemption</i> : First time home buyer	68 R 3
• Mortgages: Acting for lender & buyer – L to confirm B's consent	39 R	• <i>Exemption</i> : Newly built home	
• B's lawyer asked to pay out Seller's mortgage	App 2 and 3	• Foreign buyers tax	68 R 4
• Get agreement in writing when lawyer acts for B and S or B and lender		• Lawyers can pay directly from trust account-LSR 3-64	68 R #2 69 L #3
• Conflict letters		PURCHASE AGREEMENTS (AKA CONTRACT OF PURCHASE AND SALE) (executory contract)	11 L 1 [\$2.01]
Fraudulent Conveyance (L must refuse to act)	5 L #3 102 L [\$6.02] 35 R 5 85 L [\$5.19] 120 R 4	Adjustment Date	19 L #7
• Lawyer as witness when deal falls through		Agency Disclosure , deliver brochure	25 L #17
• Legal Assistant – limit on functions		Amendments (may cause collapse or anticipatory breach)	12 L #2
• Interim Report - Checklist (see <i>Negligence</i>)		Anticipatory breach – beware of amendments	105 L #4 12 R 3
• Provide evidence of mtg discharge within 60 days		Binding , whether = offer and acceptance	12 L [\$2.02]
Undertakings - see <i>Undertakings</i>	86 R [\$5.21]	Certainty on Essential Terms (3 P's) = Parties; Price; Property; in writing + signed (<i>LEA</i>)	12 R #3 103 L (a)
Duty to report failure to provide evidence of discharge within 60 days, 5 days to report (<i>LS Rules</i> 3-95, 3-96)	64 L last 90 L 3 120 R 4	Clear title , limitations on “free and clear”	19 R #9
Problems/Pitfalls, Common (Mortgages)	121 L [\$7.16]	Completion (i.e. undertakings, tender)	21 R #11
Buyer financing and clearing title		Completion Date	18 R #5
Prohibited individuals, loans to – see <i>Mortgages</i>	115 R #2	Conditions Precedent (subject to clauses)	13 L (b)
Promises – see <i>Purchase Agreement</i>	11 L #1 [\$2.01]	• Best efforts to fulfill, implied obligation	105 L 1
Property Disclosure Statement	25 R [\$2.04]	• Removal of subject clauses	14 L (i)
• Mandatory with Multiple Listing services	25 R 4	• Subjective subject clauses	15 L (iii)
• Not part of contract unless specified in writing (Clause 18)	26 L 3	• Uncertain subject clauses	14 R (ii)
• Can be liable for breach of K	26 L 3	• Waiver, unilateral if:	
• Can be liable for misrep in disclosure statement	26 L 4	(a) solely for that party's benefit,	104 R #3
• Barring proof of fraud, “buyer beware”	26 L 5	(b) K can be completed w/out fulfill, and	(s. 54 LEA)
Property Law Act	4 L #1	(c) waiver before time stipulated for fulfilling, or within reasonable time	
• Persons who buy interest in land together deemed TIC unless state JT	4 R 1	Costs , buyer bears conveyance costs	23 R #12
• Transferring land to yourself (sever JT)	4 L 1	Deposit	18 L #4
		ELEMENTS OF CPS	16 R [\$2.03]
		Description of parties	16 R #1
		Description of property	17 L #2
		Price	17 R #3
		Deposit	18 L #4

REAL ESTATE
February 2022 > May 2022

Completion Date	18 R #5	Sellers: Joint owners - authorizing K, execution	17 L (b)
Possession Date	18 R #6	Tender, adequacy	108 R [\$6.05] 21 R 3 (#11)
Adjustment Date	19 L #7	Time is of the essence	12 L 1 103 R #2
Included and Excluded Items, Viewing	19 L #8	Undertakings	86 R [\$5.21]
Title, free and clear	19 R #9	Undisclosed Tenancy on possession date	18 R #6
Closing procedures	20 R #10	Writing Requirement – s. 59(3) LEA	103 L (b)
Completion	21 R #11	R	
Costs	23 R #12	“Ready Willing and Able” to complete (to tender)	108 R [\$6.05]
Risks	23 R #13	Real Estate Commission (Deposits)	80 L (h)
Reps and Warrs	24 L #14	• Clause 25 in purchase agreement	25 L #18
Personal info	24 R #15	Real Estate Development Marketing Act (enforceability of K– for “development ppty”, must provide disclosure stmt)	103 L (c)
Restriction on Assignment	24 R #16	Real Property Taxes (Searches)	45 L [\$4.04]
Agency disclosure	25 L #17	Receiver, appointment of – see <i>Remedies</i>	129 R (b)
Real Estate Commission	25 L #18	Reconciling Cash Balance – see <i>SoA</i>	81 L (m)
Information page	25 R #19	Refusal of registration, registrar (mortgage)	139 L 4
Enforceability of Purchase Agreement	12 L [\$2.02]	Registrar, discretion to withdraw application	89 R #5(a)
• Certainty of terms	102 R #1	Registrar, refuses mortgage registration	120 L 2 69 R last
• Law and Equity Act, S 59 aka must be written/other evidence	103 L (a) 103 L (b)	Registration, of residential conveyance – see <i>Conveyance</i>	63 R #7
• <i>REDMA</i>	103 L (c)	Registration and Advances	119 L [\$7.13]
Non-Resident Holdback	73 L [\$5.11]	Registry System Self-governing Band Adopted (AB)	8 R #4
GST payable on deposit even if transaction does not complete	18 R 2	REMEDIES (When deal collapses)	105 L [\$6.04]
Initial Review of Purchase Contract by Lawyer	11 R #2	Affirm/Disaffirm - if one party in breach, THEN other must affirm or disaffirm contract	105 L #1
Insurance, risk passing	23 L #13	BUYER’S REMEDIES	107 L #3
Offer and Acceptance	12 L #1	(a) Claim Return of Deposit – But this is disaffirmation of the K so B’s remedy may be confined to return of deposit.	107 L #3(a)
Parties, accuracy of description	16 R #1	(b) SP and/or Damages	107 L (b)
Possession Date (tenants remaining in building)	18 L #6	• SP & damages	
Price, accuracy of GST	21 L #3	• damages in lieu of SP	
Basic Promises (mutually dependent covenants)- buyer= pay; seller= deliver title free and clear	11 R #1	• common law damages	
Property Condition Disclosure Statement	25 R [\$2.04]	• file CPL if seeking SP	107 L 4
Property, description of	17 L #2	• must show prop unique to get SP	107 L 5
Real Estate Commission	25 L #18	SELLER’S REMEDIES	106 L #2
Representations and warranties	15 R (c)	(a) Claim Deposit	106 L #2(a)
• B cannot refuse to complete unless “fundamental breach”	16 L 1	• Accept B’s repudiation; treat K as at end; (i) return deposit or (ii) claim for deposit or (iii) claim for deposit + damages/SP	
• Remedy is to sue <u>after</u> completion for damages or abatement			
• Oral comments not binding on Seller (Clause 18)	24 R #14		
• GST – incl R&W on whether payable & by whom	77 R #2		
Rescission of Contract – Must affirm or disaffirm	105 L #1		

<ul style="list-style-type: none"> • Deposit may limit damages recoverable • If S chooses SP, deposit not forfeited to S on account of damages 	<p>106 L 4</p> <p>106 L 6</p>	<p>Buyer's Lawyer</p> <ul style="list-style-type: none"> • dlvr title free of charges/encumbrances • on receipt of registrable tfr, give undertaking to seller's lawyer not to transfer title until suf funds in trust 	<p>34 R #1</p> <p>34 R 1</p> <p>35 L 1</p>
<p>(b) SP and/or Damages</p> <ul style="list-style-type: none"> • SP & damages; • damages in lieu of SP; or • CL damages • Damages and SP are alternative remedies and S must elect b/w them 	<p>106 R (b)</p> <p>106 R 4</p>	<p>Seller's Lawyer</p> <ul style="list-style-type: none"> • pay net proceeds to S after S's financial encumbrances paid out • undertaking to clear title 	<p>35 L #2</p> <p>35 R L</p> <p>35 L 5</p>
DAMAGES, GENERALLY	107 R #4		
Assessed as of completion date	106 R 6		
(a) Damages in addition to SP (equitable; discretionary; ltd. circs; out-of-pocket expenses inc. b/c of D's delayed perf.)	107 R (a)		
(b) In lieu of SP if...	107 R (b)		
<ul style="list-style-type: none"> • P otherwise entitled to SP but cannot perform, or • (ii) damages more appropriate than SP 			
(c) CL damages	108 L (c)		
<ul style="list-style-type: none"> • (No dist. between CL and equitable) • (Date fixed at court's disc.) 			
(d) Statutory Damages	108 L (d)		
<ul style="list-style-type: none"> • (B recovers from S for failure to perform due to title defect) 			
(e) Liability of Municipalities	108 L (e)		
Removal, Subjects/Conditions	14 L (i)		
Removal of included item in clause 7	19 L #8		
Rents – see SoA	79 R (f)		
Replacement Cost Endorsement	119 L #3		
Representations and warranties - see <i>Purchase K</i>	16 L #1 24 L #14		
Repudiation – versus anticipatory breach	105 L #4		
Rescinding contract , under REDMA	103 L last		
Non-Resident Holdbacks	73 L [\$5.11]		
Residential Conveyance , steps – see Conveyance	60 L [\$5.02]		
Resort Municipality of Whistler Act	51 R #15		
Restrictions on Lenders – see <i>Mortgages: Restrictions on Lenders</i>	115 R [\$7.06]		
Restrictive Covenant – in easement instrument	46 L 6		
Review of purchase K by L.	65 R #1		
Right to Purchase - this is registered against title	11 R 1 127 R [\$7.24]		
Risk clause – Clause 16 - insurance, fire	23 R #13		
ROLE OF LAWYER	34 L [\$3.01]		
		Role of Non-Lawyer – BC Code	35 R [\$3.02]
		<ul style="list-style-type: none"> • Lawyer responsible for all business entrusted & must supervise delegation • Legal asst. may not give legal advice or act finally and w/out reference to lawyer in prof. legal judgment matters • Paralegal has expanded range of tasks • Lawyer must always sign undertaking, sign docs to be filed in LTO 	<p>35 R 5</p> <p>36 L 1</p> <p>36 L 2</p>
		S	
		Searches, Contaminated Site Registry- keeps track of decisions about sites that have been evaluated, whether or not they are clean or contaminated	54 L 8 [\$4.08]
		Searches, Mortgage (for lender) – see <i>Mortgages</i>	117 L [\$7.09]
		SEARCHES, TITLE	42 [\$4.01]
		Steps	42 - 55 42 R #1
		<ol style="list-style-type: none"> 1. Obtain legal description. Ensure property corresponds to civic address. Will include PID (Parcel Identifier Number) 2. do title search online with PID (note that charges NOT in priority- need to look at charging document to determine when registered) 3. get particulars of charges if requested get copy of survey plan of property 4. Obtain plans 5. Checklist & other checks 	<p>42 R #2</p> <p>43 L #3</p> <p>43 L #4 43 R #5</p>
		LTO Search Checklist & other checks	43 R #5
		Activity Notifier Service	44 R (c)
		Caveat – freezes title for 60 days	46 R #4
		Certificate of Pending Litigation – freezes title	46 R #3
		Corporate Searches – search Registrar of Companies – BC Online	45 R [\$4.05]

REAL ESTATE
February 2022 > May 2022

Corrections – may affect priority	44 L 4 th Bul.	<ul style="list-style-type: none"> Property agreement Land (Spouse Protection) Act If only one spouse/CL partner has signed the K where they are joint owners Separated vendor spouses - see <i>Family Law Act</i> 	49 L #5 49 R #8 17 L 4 4 R 6
Crown grant – ensure ROW, timber & minerals were not reserved to Cr if ppty being purchased for dvlpmnt, redvlpmt, or mineral/timber rights	43 L 6 50 L 5		
Duplicate Indefeasible Title	44 L 2 nd Bul		
Encumbrances – see <i>Encumbrances</i> – are easements, stat right of way, CPL, and caveat	46 L [\$4.06]	Standard Contract of Purchase and Sale , elements	16 R [\$2.03]
Index Search	44 R [\$4.02]	<ul style="list-style-type: none"> Description of Parties Description of Property by civic address + legal description Description of Price 	16 R #1 17 L #2 17 R #3
Legal Description (PID)	42 R #1	Standard Undertakings	86 R [\$5.21] 89 L #5
Miscellaneous notes – request separately	44 R (iii)	Real estate undertaking	
Particulars of charges , obtaining	43 L #3	State of Title Certificate - Req state of title certificate as a final step	121 L [\$7.15]
Pending Applications – do not always appear in order of priority, so must look at pending documents themselves to determine priority	42 R last 44 L 1 st Bul.	STATEMENTS OF ADJUSTMENTS – intro	76 L [\$5.13] 77 L [\$5.16]
Plans, obtaining – show location & dimensions	43 L (#4)	<ul style="list-style-type: none"> Methodology <i>see also notes at end of this document</i> 	
Real Property Taxes - follows property rather than owner, thus, need to know- if unpaid, constitute a “charge”	45 L [\$4.04]	Examples in AP	
Search Checklist (LTO)	43 R #5	<ul style="list-style-type: none"> Adjustments, specific 	78 L #4
Searching the title	42 R #2	<ul style="list-style-type: none"> Assumption of Mortgages (adjusted as of completion date unless pties agree otherwise) 	79 L (b)
Statutes that affect title	47 L [\$4.07]	<ul style="list-style-type: none"> Deposit (Credit on buyer’s SoA) 	80 L (h)
Statutory rights of way	46 L #2	<ul style="list-style-type: none"> Real Estate Commission (usually debit on Seller’s SoA; not adjusted on Buyer’s SoA; GST on commission; different on SoA if 2-cheque system) 	80 L (h)
Transfers	44 L 3 rd Bul	<ul style="list-style-type: none"> Electricity & Gas (usually meter rdg. on adj. date & bill sent to seller so no adj.) 	79 R (d)
Sechelt Indian Band	9 L a	<ul style="list-style-type: none"> GST 	81 L (k)
Security – granting on mortgage	112 R #2	<ul style="list-style-type: none"> Holdbacks <ul style="list-style-type: none"> Builders’ liens Strata Property – <i>SPA</i>, s. 88 	81 L (l) 142 R [8.09] 2 L 7
Self-Governing Band Adopted Registry System	8 R #4	<ul style="list-style-type: none"> Insurance Premiums – if B taking over S ins. 	80 L (g)
Seller – Correctly describing the seller	17 L (b)	<ul style="list-style-type: none"> Legal Fees & Disbursements – (incl’d on Buyer’s SoA, though not strictly an adjustment) 	81 L (i)
Seller’s Lawyer – see <i>Role of Lawyer</i>	35 L #2	<ul style="list-style-type: none"> Oil (oil tanks) 	79 R (e)
Seller’s Remedies – see <i>Remedies</i> – claiming deposit – damages &/or specific performance	106 L #2	<ul style="list-style-type: none"> Property Taxes <ul style="list-style-type: none"> Interest and penalties paid by seller Net amount after Home Owner Grant used for adjustment if both eligible 	78 L (a) 78 R 2 78 R 6
Separated Spouses (vendor) - see <i>FLA</i>	4 R 4		
Simple Conveyances, conflicts (BC Code Appendix C) –see <i>Prof Resp. Conflict of Intrst</i>	38 R 1		
Site Registry – Environmental Management Act	54 L [\$4.08]		
Solicitor as Witness (remedies)	102 L [\$6.02]		
Specific performance <ul style="list-style-type: none"> Seller Buyer P must show he was “ready, willing & able” to complete - Tender is good evidence 	106 R (b) 107 L (b) 108 R [\$6.05]		
Spouses & Triggering Events	4 R #2		

<ul style="list-style-type: none"> • Property Transfer Tax (include in Buyer's SoA and obtain before closing) 	81 L (j)	<ul style="list-style-type: none"> • <i>Property Condition Disclosure Statement</i> req under REDMA?– not part of K unless parties agree in writing 	26 L last 3 L last
<ul style="list-style-type: none"> • Rents (Buyer should not be debited for any arrears b/c not known if arrears can be collected) 	79 R (f)	<ul style="list-style-type: none"> • Buyer must <i>review strata meeting minutes</i>, despite contents of disclosure statement 	45 L [4.03] 43 L #4
<ul style="list-style-type: none"> • Utilities and Licenses (ensure you obtain stmts for all applicable charges) 	79 R (c)	<ul style="list-style-type: none"> • Obtaining Plans - Determining <i>owner's share</i> of common prop and assets as of date of dissolution of strata corp 	138 L 3
Calculation – which dates are included	77 R #2	<ul style="list-style-type: none"> • Strata mortgage lender has right to vote 	
Conflicts - asking B lawyer to discharge S's mtg/other encumbrances	81 R (n)	Subject clauses – see <i>Conditions Precedent</i>	
Debit & credit – def'n as applies to SOA	[\$5.13]	Survey Certificate	70 L [\$5.08]
Home Owner Grant	78 R 3	Surveys and Lending Transactions	118 L [\$7.11]
Initial/Interim Report to Client	83 L [\$5.18]	Protocol opinion – to allow a lawyer to advise institutional lender client in a residential mortg. transxn that the lender need not obtain an up-to-date survey before lender advances loan, provided no known building location defects exist.	134 L (e)
Local Improvement Charges	45 R 2	T	
Notes to SoA – brief, non-contentious only	82 L [\$5.16]	Take-back vendor mortgage (2nd mtg to Seller)	120 R last
Payout Statements	77 R #3	TAX	
Preparing Statements	82 L [\$5.15]	Clearance Certificate - <i>Income Tax Act</i> s 116 See <i>Clearance Certificate</i> above	73 L [\$5.11]
Purpose of SOA	81 L [\$5.13]	First Time Buyer's Exemption from PTT: FMV threshold for eligible prop. is \$500k	68 R 3
Reconcile Cash Balance – in/out stmt to ensure sufficient funds for closing	86 L (m)	Goods and Services Tax – see <i>GST or Forms</i>	70 R [\$5.09] 72 L #5
Statutes Affecting Title / Investigating Title	47 L [\$4.07]	<ul style="list-style-type: none"> • Rebates 	73 L [\$5.11] 74 L 2
Statutes governing Land Ownership in BC	3 L [\$1.03]	Income tax – seller is non-resident	
<ul style="list-style-type: none"> • <i>Family Law Act</i> • <i>Fraudulent Conveyances and Preferences Act</i> • <i>Land Act</i> • <i>Land Owner Transparency Act</i> • <i>Land Title Act</i> • <i>Property Law Act</i> • <i>Strata Property Act</i> 	6 L #2 6 R#3 4 L #2 4 R #5 3 R #1 6 L #1 4 L #3	<ul style="list-style-type: none"> • Tax treaty/conventions (ex: USA) 	
Statutory Damages – B seeking damages- <i>Remedies</i>	108 L (d)	Municipal (Taxes and Utilities)	44 L last [4.04] 45 R 2
Statutory Liens , priority – see <i>Mortgages</i>	124 R #10	Principal Residence Exemption – 1 st time buyers	68 R 3
Statutory Rights of Way – see <i>Encumbrances</i>	48 L #2	Property Taxes , adjustments	78 L #4(a)
Steps in residential conveyance	65 L [\$5.02]	Property Transfer Tax – see <i>Forms</i>	68 L [\$5.05]
Strata Property Act (if dealing w/ strata lots)	2 L #2	Real Property Taxes	45 L [\$4.04]
Need:	3 R 2 (s. 59) 2 L 1; 3 L 4 (s. 115) 45 L [\$4.03]	Who collects the GST tax – see <i>GST</i> – general rule is that seller collects and remits	71 R #3
<ul style="list-style-type: none"> • Information Certificate (Form B) – s. 59 • Certificate of Payment (Form F) current for 60 days – is required to complete sale • Searches req for strata lot • Holdback for builders liens – 7% - until time for filing Builders Lien expires or 55 days after closing 	3 R 7 (s.88(2)) 103 L (c) 29 L [\$2.04]	Tenants in Common = default unless JT specified	4 R 1
		Tenants remaining in building on possession date	18 R #6
		Tender	
		<ul style="list-style-type: none"> • Def'n & use as evidence of R, W & A • clauses 13 and 14 of K added to K after problems from <i>Norfolk</i> case 	108 R 1 [\$6.05] 21 R #11
		“Time is of the Essence”	113 R #2

<i>See Essentiality of Time</i>	21 L last	• Transparency provisions (to address Martin Wirick situation)	23 L 2;
• Extension vs waiver	21 R 2	• Undertakings re: discharging mortgages	
Failure to perform (one party)	21 R 2	Common types of undertakings	87 R (b)
Failure to perform (both parties)	104 L 3	Deemed Undertakings (BC Code)	88 R #3
TITLE		• when L. gives trust cheque, undertaking arises that it will be honored	#3 (a)
Certificate of Infeasible Title (evidence of fee simple – s 23(2))	1 R 5	• Buyer's L. accepts \$ & receives registrable conveyance = deemed undertaking to pay purchase \$ to Seller on completion of registration	#3(b)
Exceptions to infeasibility – s 23(2)(a)	50 L 4	Enforceability of undertaking	
Liens (tax) that may have priority but not registered – s 23(2)(b)	50 L 6	• Ingredients for Enforceable Undertaking:	86 R #2(a) (i)–(iv)
Clearing Title	120 L [§7.14]	1. Made by solicitor in professional capacity	
Title free & clear or else B may be entitled to accept seller's repudiation and terminate K	19 R #9	2. Clear on its face. No magic word	
Duplicate Certificate of Title	44 L 2 nd Bul	3. Made by solicitor as principal with understanding solicitor will be personally bound	
Investigating Title	47 L [§4.07]	4. If promise is conditional, conditions have been fulfilled	
Statutes affecting title	47 L 2	• Other principles of enforceability:	87 L 2
Searches – LTO	42 L [§4.01]	• No consideration needed for enforceable undertaking	
Title Opinion	83 R #2	• Not a defence that solicitor acted in good faith or w/o authority in giving undertaking	87 L 2
Torrens System , principles of and basic rules	1 R 4	• Almost always enforceable	87 L 3
Transfer to Self – s. 18 Property Law Act	4 R 1-2	• Subsequent client instructions do not override	87 L 4
Transfers of parcel of land on title search – see <i>Searches</i>	44 L 3 rd Bullet	• Takes precedence over any dispute between the lawyers' clients	87 L 4
Treaty , fee simple by	9 L #5	• Enforced against L. even if client dies/instructs L. not to perform/changes L.	88 L 1
Trust Cheques – deemed undertaking arises that trust cheque will be honoured	88 R #3(a)	Liability for breach of undertaking	87 R (c)
U		• Court may enforce U/T on summary application	
Uncertain subject clauses – see <i>Purchase Agreement</i>	14 R (ii)	• Injured party may bring civil action for damages	
UNDERTAKINGS	86 R [§5.21] 21 R #11 AP 7.3b sample	• Professional discipline proceedings	
Articled student can give/accept if supervising lawyer also signed/accepted undertaking	86 R #1, 3	Nature of Undertaking	86 R #2(a)
Breach of Undertaking		• Professional Responsibility – BC Code 7.2-11 to 7.2-13	88 L (d)
• Consequences	87 R (c)	o Basic rules (<i>Code 7.2-11</i>)	
• Reporting another lawyer's breach	88 L (d) 4	(a) L. must not give U/T that can't be fulfilled;	
• Delay in compliance may be breach	88 R 2	(b) L. must fulfill every U/T/ given;	
Code provisions on undertakings	88 L (d)		
CBA Standard Undertakings			
• Incorporated into Standard Contract of Purchase and Sale - Clauses 13 and 14 of standard contract	11 R 5		
• Problems with wording of standard undertakings	22 R 5		
	90 L 4		

(c) L. must honour every trust condition accepted		
Deemed Undertaking (<i>Code 7.2-12 & 7.2-13</i>)	88 R #3 88 L (d)	
Do's and Don'ts (commentary [1] to <i>Code 7.2-11</i>):	88 L (d) 4	
(i) confirm in writing		
(ii) unambiguous	86 R #1 3	
(iii) be clear if you don't intend to take personal responsibility		
<ul style="list-style-type: none"> Duty to report breach of another L.'s undertaking Who can give undertakings? (L.; notary; articling student if L. also signs or accepts U/T) 		
Real estate transactions, undertakings in	89 L #5	
<ul style="list-style-type: none"> Buyer's L undertakes <i>not</i> to file transfer until Buyer's L has enough funds in trust (when combined with mortgage proceeds) to complete transaction (and knows of no reason why Buyer will not get mortgage); Buyer's L. undertakes to pay purchase price to Seller's L upon lodging of transfer in LTO and upon advance of mortgage proceeds Seller's L undertakes to clear title by paying out financial encumbrances before paying Seller 		
Transparency rules (to prevent Martin Wirick situation)	90 L 4	
Sample undertaking letters	AP 7.3c (handouts)	
Tips for practitioners re undertakings	88 R #4	
Undisclosed Tenancy	18 R #6	
Unpaid Wages – priority of statutory lien	124 R #10	
Utilities and Licenses – see <i>SoA</i>	79 R (c)	
V		
Vacant land – locate all rights of way or easements	20 L last	
Vendors – separated see <i>Family Law Act</i>	4 R #2	
Vendor take-back mortgage (may have priority over first mortgage to institutional lender <i>unless</i> take-back mortgage contains clause giving priority to advances under first mortgage)	120 L 1	
Viewed Items (standard contract Clause 8 - included items will be in substantially the same condition on possession date as when viewed by buyer)	19 L #8	

W	
Warranties , and representations – see <i>Purchase Agreements</i>	16 L #1 24 L #14 71 L #2
Westbank First Nation	9 L (b)
Westbank First Nation Self-Government Act	8 R #4
Whistler – resort ppty subject to assessments; arrears of assessments will run with the land	51 R #15
Withdrawal from Trust - LS Rules let lawyers pay PTT directly from trust acct via electronic transfer rather than by trust cheq	69 L #3
Withholding tax – if seller is non-resident, buyer should either ensure seller got a clearance certificate OR retain holdback and remit tax to CRA (amount of holdback is 25% for non-depreciable prop; 50% for depreciable prop)	73 L [\$5.11]
Without Prejudice Communications statement repudiating a K is “w/o prej” is unlikely to cloak the statement with privilege	102 R (d); 105 L #4
Witness, solicitor as	102 L [\$6.02]
Workers Compensation Act lien – unpaid assessments = priority	124 R #10 2
Z	
Zoning and Bylaw compliance – see <i>Mortgages</i>	117 R #3

Real Estate Objectives:

- *May be notified to assist on conveyancing file by financial institution, real estate agent, etc. not always client*
- *When approached to complete a conveyance, first find out what closing date is prior to accepting*

CONSIDER: *Can I meet the deadlines? What info do I need to complete transaction? Will client be available?*

- **When given a Contract of Purchase & Sale (CPS):** Identify essential terms in K, state what they mean & describe significance; decide what other info you need from clients & other parties to complete transaction; decide what info to request from LTO for residential conveyance title search.
 - Analyze results of **title search** done for conveyance file
 - Explain purpose & content of **interim report letter**
 - Prepare **Statement of Adjustments** in residential conveyance
 - Explain BC Code provisions on **conflict of interest** in residential mortgage
 - Enumerate & describe contents of docs necessary to complete residential conveyance
 - Identify remedies available to lender in mortgage upon default by borrower
 - Enumerate steps which, after preparation of docs, are necessary to complete residential conveyance
 - Explain what lawyers mean by '**undertaking**' & indicate principles to follow when giving an undertaking
 - Determine undertakings necessary to protect interests of parties in real estate conveyance

Statement of Adjustments

- Calculate adjustments to purchase price – adjusted amount is actual amount to be paid/received by each party on adj date
- **Purpose:**
 - Allocate between buyer & seller responsibility for financial obligations related to acquiring and using property
 - Functions to reconcile receipt/payment of funds
- **Debit & credit amounts must match**
 - Who paid or will pay for item? That party is credited for period during which they will not have benefit
 - If an item appears on both SOAs, they will be mirror images – i.e. a debit to buyer will be a credit to seller; amount remains constant
- **Two SOAs, one each for the buyer and seller are usually prepared by Buyer's lawyer**

Seller SOA:

- Usually prepared first
- **Bottom line specifies net sale proceeds payable to the seller**
 - Sets out:
 - actual amount to be received (or already received) from the buyer on account of purchase price
 - amounts which seller has to pay as result of occupying/enjoying property until date agreed to with buyer (Adjustment Date)
 - expenses which the seller incurred in selling the property
- **Need 2 columns – debit (bad) / credit (good)**
 - **credit = \$ that seller is entitled to receive from buyer**
 - **debit = deductions from the purchase price;**
- **Debits can be:**
 - \$ that the seller/agent has already received towards the purchase price or
 - \$ still required to payout in satisfaction of seller's obligations or use of the property
- **Whatever amount reduces the total amount payable by the buyer is a DEBIT on Seller's SoA**
- **Accepted practice that Buyer carries the cost of the actual adjustment date**

Occupation and Enjoyment of Property:

- property taxes – common practice to determine the base figure for taxes for the previous year, inflated by 5%

- utilities – City of Vancouver includes most of the charges for the services it provides in the tax notice (see 84 R (c))

If Buyer pays property taxes:

# of days occupied by seller	X	Amount of property taxes	=	Amount Owed by Seller to Buyer (i.e. debit in Seller SoA)
365				

- Real estate commission – debit to seller; include GST
- Deposit – shown as credit on buyer's SOA – but not necessarily included in seller's SOA unless deposit paid directly to seller (see 80 L (h))
- If buyer is assuming seller's mortgage, the full amount of mortgage (principal + interest payable at completion date) is:
 - Credit – buyer
 - Debit – seller
- If buyer assumes mortgage, payments should be adjusted as at **the completion date**, not the adjustment date

Buyer's SOA:

- **Debit** = something buyer must pay for/buy at closing from seller or from someone else (e.g. purchase price, legal fees)
- **Credit** = \$ buyer has already paid to the seller (e.g. a deposit) or that the buyer has paid or will pay to a 3rd party on behalf of the seller (e.g. property taxes owed by seller but paid by buyer)
- **Debits:**
 - purchase price
 - financing charges
 - expenses buyer incurs in owning/occupying
 - fees/service costs – legal fees, Property Transfer Tax
 - amounts still to be paid by buyer
 - actual cost of conveyance
- **Credits:**
 - whatever amounts Buyer has already paid (e.g. the deposit)
 - mortgage funds obtained through financing

See 7.2a & 7.2b (handouts) for sample SOAs

In/Out Analysis (see 73 L [\$5.10])

- **trust account reconciliation**
- **money in must match \$ required for payout**

- the money IN is all the \$ coming into the Buyer's lawyer's trust account – the money OUT is all the \$ from the Buyer going out
 - i.e., In/out analysis – buyer's reconciliation

IN:

Excess deposit from realtor	\$
Amount required to complete	\$
Amount advanced through mortgage	\$
TOTAL	\$

OUT:

Legal fees & disbursements	\$
Property Transfer Tax	\$
Amount due to Seller	\$
TOTAL	\$ [same amount as total in "IN" section]

See 7.2a & 7.2b (handouts) for sample Buyer's Reconciliation

Conflicts of Interest – Acting for Buyer and Lender – BC Code

3.4-1 – L must not act or continue to act if conflict

- Commentary 0.1 – in real estate transaction, L may only act for parties w/ conflicting interests if meets App C

3.4-2 – **informed client consent**: express or implied (comm 6 – implied consent is exceptional cases only – see comm 6 for requirements)

3.4-2 – before acting in matter where there is conflict of interest:

- (a) L must get **informed client consent**.
 - disclosure essential pre-req to consent (see comm [1])
 - consent can be express or implied (comm [6] – implied consent in exceptional cases only)
- (b) L must reasonably believe conflict will have no material adverse effect on representation of/loyalty to client (see also comm [7]).

App C (s.2) – L CAN'T act for more than one party w/ different interests in conveyancing, UNLESS:

- Remote location (impractical for parties to be separately represented)
- Simple conveyance (see below) OR
- Unrepresented party who only wants lawyer to remove encumbrances (lawyer can act for those purposes only)

App C (s.5) – if L CAN act for 2 parties, then must:

- advise both parties – no confidential information b/w them & if conflict can't act for either
- obtain written consent
- explain legal effect of issues relevant to each party
- If info provided orally, must confirm advice in writing, obtain written consent prior to completion (Commentary 1)
- [Similar to the general joint retainer rules in BCC 3.4-5, but slightly stricter]

App C (s. 6) – **can't act in foreclosure** for either buyer or lender **if represented both in the mortgage transaction** (some exceptions)

Defining a Simple Conveyance (Appendix C – BCC)

Consider App C (s.4):

- value of property or amount of money involved,
- existence of non-financial charges, and
- existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Examples of Simple Conveyances – App C (s.4) Comm 1:

- the payment of all cash for clear title,
- the discharge of one or more encumbrances and payment of the balance, if any, in cash,
- the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,
- mortgage that doesn't contain any commercial element, given by mortgagor to institutional lender to be registered against the mortgagor's residence, including a mortgage that is
 - a revolving mortgage that can be advanced and re-advanced,
 - to be advanced in stages, or
 - given to secure a line of credit.
- transfer of a leasehold interest if there are **no changes** to the terms of the lease,
- the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired (para (f)), or
- any combination of the foregoing.

Examples of NOT Simple Conveyances: App C (s.4) Comm 2:

- transaction in which any commercial element, such as:**

- o a conveyance included in sale and purchase of business,
- o transaction involving a building containing more than 3 residential units, or
- o a transaction for a commercial purpose involving either revolving mortgage that can be advanced and re-advanced or mortgage given to secure a line of credit,
- o (A transaction is NOT considered to have a commercial element merely b/c 1 of the parties is a corporation: App C (s.4) Comm 3)
- a lease or transfer of lease where **changes** to the lease;
- a transaction in which there is a mortgage back from the purchaser to the vendor,
- an agreement for sale,
- transaction in which lawyer's client is a vendor who:
 - advertises/makes sales reps that registered transfer or other legal services included in purchase price of property, or
 - is or was the developer of property being sold, unless it is a residential development and the statutory lien period has expired;
- A conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage; or
- the drafting of a contract of purchase and sale

App C (s.8)—**where L simply witness to execution of docs then do not need consent of parties**

App C (s.9)—**where unrepresented party wants L to remove party's existing encumbrances**, L may act for that purpose only, and may act as witness in execution of docs, IF L advises in writing:

- the limits of L's engagement, and
- that if a conflict arises, L will be unable to continue to act

CAN act for two parties (buyer and seller) in a conveyance WHEN/IF:

1. "simple conveyance" (per definition in commentary)
2. you advise each party in writing that no information can be treated as confidential between them
3. you get written consent of both parties
4. you explain legal issues relevant to matter to each party

Unrepresented Parties in Conveyancing (BCC App C)

App C (s.7) – **L can act as witness for execution of docs of unrepresented party, IF L advises in writing that:**

- Party entitled to independent legal advice, chose not to get it,
- L doesn't act for that party in transaction, AND
- L hasn't advised party re transaction, only attended to attestation & execution of docs