



Residential Purchases & Sales

ACTION	NA	DATE DUE	DATE DONE	Notes
1. General Information The starting point for a residential conveyance is the offer to purchase. The offer to purchase is usually sent to the lawyer's office by the seller's real estate office once all conditions have been removed and the sale is final. The real estate company's cover letter will generally provide client contact information, the commission, including GST and PST, and the amount of deposit being held in trust by the real estate company.				
<ul style="list-style-type: none"> The lawyer should ensure the following information, if relevant, is placed on the file: <ul style="list-style-type: none"> Type of transaction: cash/mortgage/assume mortgage/agreement for sale 				
<ul style="list-style-type: none"> Civic address 				
<ul style="list-style-type: none"> Possession and adjustment date 				
<ul style="list-style-type: none"> Sale price 				
<ul style="list-style-type: none"> Deposit 				
<ul style="list-style-type: none"> Seller: <ul style="list-style-type: none"> New address 				
<ul style="list-style-type: none"> Old address 				
<ul style="list-style-type: none"> Telephone numbers: residence, business and cell 				
<ul style="list-style-type: none"> Fax number 				
<ul style="list-style-type: none"> Email address 				
<ul style="list-style-type: none"> Purchaser: <ul style="list-style-type: none"> Address 				
<ul style="list-style-type: none"> Telephone numbers: residence, business and cell 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
○ Fax number				
○ Email address				
• Joint tenants, tenants-in-common, or single				
• Public school supporter or separate school supporter				
• Listing company				
• Listing agent:				
○ Telephone and cell number				
○ Fax number				
○ Email address				
• Selling company				
• Selling agent:				
○ Telephone and cell number				
○ Fax number				
○ Email address				
• Real estate commissions:				
○ Balance to be paid				
○ Excess of deposit over commission payable				
• Lender for purchaser:				
○ Address				
○ Telephone number				
○ Fax number				
○ Email address				
• Commitment expiry date				
• Mortgage broker:				
○ Address				

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ACTION	NA	DATE DUE	DATE DONE	Notes
○ Telephone and cell number				
○ Fax number				
○ Email address				
• Lender for seller:				
○ Address				
○ Telephone and cell number				
○ Fax number				
○ Email address				
• Funds assigned to:				
○ Address				
○ Telephone and cell number				
○ Fax number				
○ Email address				
• Lawyer for seller:				
○ Telephone and cell number				
○ Fax number				
○ Email address				
• Lawyer for purchaser:				
○ Telephone and cell number				
○ Fax number				
○ Email address				
• Municipal tax office:				
○ Address				
○ Telephone and cell number				
○ Fax number				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> ○ Email address 				
<ul style="list-style-type: none"> • Condominium association: <ul style="list-style-type: none"> ○ Contact person 				
<ul style="list-style-type: none"> ○ Address 				
<ul style="list-style-type: none"> ○ Telephone and cell number 				
<ul style="list-style-type: none"> ○ Fax number 				
<ul style="list-style-type: none"> ○ Email address 				
2. Review Contract of Purchase and Sale and Mortgage Instructions <ul style="list-style-type: none"> • The real estate agents usually prepare the offer to purchase. In a private sale, the offer to purchase may be prepared by the parties or by the lawyer for one of the parties. The offer to purchase will consist of the offer, the Acceptance, the removal of conditions and possibly various schedules, including a property condition disclosure statement. The <i>Statute of Frauds</i> requires a contract for the sale and purchase of real property to be in writing. The contract must contain the following basic elements: <ul style="list-style-type: none"> • Parties to the contract. 				
<ul style="list-style-type: none"> • Description of the property. 				
<ul style="list-style-type: none"> • Price to be paid. 				
<ul style="list-style-type: none"> • Possession date. 				
<ul style="list-style-type: none"> • How price is to be paid. 				
<ul style="list-style-type: none"> • The contract may contain the following: <ul style="list-style-type: none"> • Conditions as to obligations of parties to complete such as inspections, mortgage financing, sale of another property and repairs to be completed by the seller prior to possession date. 				
<ul style="list-style-type: none"> • Various warranties on the part of the seller. 				

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<ul style="list-style-type: none"> List of chattels remaining with property. 				
<ul style="list-style-type: none"> The purchaser is entitled only to those articles that have become affixed to the property unless specifically excluded by the contract. For a description of the difference between a fixture and a chattel, see <i>Ground Engineering Ltd v Agra Industries Ltd</i>, 1977 CanLII 1498 (SK QB). In the absence of an express agreement to the contrary, the purchaser must pay interest to the seller where the purchaser takes possession and purchase funds are outstanding from the date of taking of possession (<i>International Railway v Niagara Parks Commission</i>, 1941 CanLII 282 (UK JCPC). Interest is generally included as a contractual term. For a discussion of the form of acceptance, see <i>Humble Investments Ltd. v NM Skalbania Ltd.</i>, 1983 CanLII 2563 (SK CA). In certain circumstances acceptance by way of fax is acceptable (<i>Rolling v Willann Investments Ltd.</i>, 1989 CanLII 4344 [ON CA]). 				
<ul style="list-style-type: none"> On receipt of the offer to purchase, the lawyer should: <ul style="list-style-type: none"> Acknowledge receipt of real estate instructions to the client's real estate agent. 				
<ul style="list-style-type: none"> Acknowledge receipt of mortgage instructions to the client's lender. 				
<ul style="list-style-type: none"> Check whether the offer to purchase has been signed by all of the registered owners and the purchasers. Check and clarify any ambiguities and conditions in real estate instructions and/or mortgage instructions. Make certain any conditions in the offer to purchase have been or will be met. Check if the property disclosure statement (if required in the offer) was prepared and included with copy of offer and acceptance. Any changes to your instructions must be confirmed in writing. 				

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<ul style="list-style-type: none"> Check the mortgage instructions and review any special conditions. Note the form of mortgage to be used. Become familiar with the lender's method of providing mortgage documents. The lender may make the applicable documents available to download online on their website, use an Internet site such as Assyst® or fax completed documents to the lawyer. It is the lawyer's responsibility to ensure the documents specified by the lender are used in preparing the mortgage. 				
<ul style="list-style-type: none"> If the client is both buying and selling a house, check the possession dates to determine whether interim financing may be required. Advise the client about the need for interim financing. 				
<ul style="list-style-type: none"> Double-check mortgage interest rate commitment date to ensure it does not expire before funds are requisitioned. 				
3. Searches <ul style="list-style-type: none"> Do tax search and obtain either a tax statement or tax certificate showing present status of taxes. Confirm the address on tax information matches the address as shown on real estate instructions. 				
<ul style="list-style-type: none"> Do an Information Services Corporation (ISC) search of the property and confirm the legal description from your search matches the legal description shown on the tax information and real estate instructions and that the seller is in fact the registered owner shown on the title. Print copies of the search results and of all the title(s) to the property being sold. Look to see if the title is tied to other titles. If so, are all the titles tied together being transferred? If not, check with ISC to determine whether the titles may be untied. Check to see whether the title is locked. (A locked title cannot be transferred until it is unlocked by ISC.) 				

ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> If you are acting for the seller and an estate is selling the property, insure the title has been transferred into the name of the personal representative of the estate and check whether the title is locked pending a Certificate of No Infants Interested being filed. If infants are interested in the estate, obtain consent to the sale from the Public Trustee. 				
<ul style="list-style-type: none"> If you are acting for the purchaser, do a writ search in the names of the purchasers. A writ or maintenance order may automatically attach to the title when it is transferred into the purchaser's name. Determine how such a writ will be satisfied or discharged. If the writ is against a person with a similar name to the purchaser, prepare an affidavit of identity for summary discharge. 				
<ul style="list-style-type: none"> Review the searches. Are there any interests to be discharged such as a tax lien, builders' lien, mortgages or encumbrances? What is required to discharge the interest? Are there any encumbrances to be assumed? 				
<ul style="list-style-type: none"> Obtain copies of all encumbrances that will remain on title, such an assumed mortgage, easements or acceptable interests for your records and records of your client. 				
<ul style="list-style-type: none"> Is a Saskatchewan Personal Property Registry (SPPR) search required pursuant to <i>The Personal Property Security Act, 1993</i>, SS 1993, c P-6.2? This search should be completed if the property being sold is a mobile home. Obtain make, model and serial number of mobile home from your client and/or your client's real estate agent. Search both by the seller's name and by serial number. 				
<ul style="list-style-type: none"> If acting for the purchaser, order a tax certificate if taxes are not in arrears. 				

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<ul style="list-style-type: none"> Check to see whether the taxes for current year paid in full, paid in part, unpaid, levied or not levied for current year. Note the following information: <ul style="list-style-type: none"> Tax arrears are: \$ Interest or penalties on tax arrears are: \$ Tax credits are: \$ 				
<ul style="list-style-type: none"> Is the property on the TIPPS (Tax Installment Payment Plan) program? 				
<ul style="list-style-type: none"> If a transaction involves a condominium and you are acting for the purchaser: <ul style="list-style-type: none"> Note: Usually the purchaser's realtor provides a copy of the estoppel certificate, condominium bylaws, financial statements, insurance, and reserve fund study to the lawyer for review prior to removing conditions. Many of the steps set below are therefore carried out prior to the purchaser removing conditions. 				
<ul style="list-style-type: none"> Check if there are any schedules attached to the offer to purchase 				
<ul style="list-style-type: none"> Obtain the name and telephone number of condominium corporation so a request can be made to ensure all condominium payments are current 				
<ul style="list-style-type: none"> Obtain and review the estoppel certificate if one is enclosed with real estate instructions. If the real estate instructions do not include an estoppel certificate, advise your client to obtain one. 				
<ul style="list-style-type: none"> Determine if there are any condominium fee arrears or credits 				
<ul style="list-style-type: none"> Determine if there are any breaches of condominium bylaws by the seller 				

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<ul style="list-style-type: none"> Obtain copy of current condominium bylaws for the purchaser. Review the bylaws to determine whether there are any bylaws that may have an adverse effect on the purchaser. For example, if no pets are allowed, will this be a problem for the purchaser? 				
<ul style="list-style-type: none"> Obtain a copy of condominium insurance certificate 				
<ul style="list-style-type: none"> Obtain and review the financial statements for the Condominium Corporation 				
<ul style="list-style-type: none"> Determine whether the Condominium Corporation has carried out and properly adopted and implemented a reserve study 				
<ul style="list-style-type: none"> Obtain condominium plan to review unit and parking space(s)? 				
<ul style="list-style-type: none"> Additional searches if required: <ul style="list-style-type: none"> Residential tenancy search (see section 6. <i>If Conveyance Involves Rental Property</i>) 				
<ul style="list-style-type: none"> Health certificate 				
<ul style="list-style-type: none"> Fire marshal's certificate 				
<ul style="list-style-type: none"> Consider whether a utility search for any utilities supplied by the city or town is required. The offer may state that the seller is responsible for all utilities up to and including possession date. Problems may arise if the city or town utilities remain unpaid by the seller. Any unpaid utility accounts incurred by the seller will be added to the property's tax assessment and the purchaser will be required to pay them in full. The last utility account may not be available until after possession is granted to the purchaser and the transaction has been finalized. Consider whether a holdback is required. 				

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<ul style="list-style-type: none"> Determine if the property is subject to <i>The Homesteads Act, 1989</i>, SS 1989-90, c H-5.1, and if there is a non-owning spouse. Consider the expanded definition of “non-owning spouse” in subsection 2(d). ISC does not require that a homestead affidavit or consent of non-owning spouse be submitted with a transfer. However, it is standard practice to provide either of those documents with the transfer. The lending institution will require one of them with every mortgage. 				
<ul style="list-style-type: none"> Obtain payout statement calculated to possession date from all encumbrance holders (lenders and interest holders). Because of privacy concerns lenders may require the written consent of the mortgagor before providing a payout statement. It is good practice to routinely ask all mortgagors to sign such a consent. 				
<ul style="list-style-type: none"> Obtain an assumption statement calculated to possession date from all encumbrance holders (lenders and interest holders) whose encumbrances are to be assumed. Request that the lender provide a copy of the mortgage being assumed together with copies of all extension agreements and any required assumption agreement. Because of privacy concerns lenders may require the written consent of the mortgagor before providing an assumption statement. It is good practice to routinely ask all mortgagors to sign such a consent. 				
<ul style="list-style-type: none"> Check the tax status shown in the mortgage statements for credits or debits. Has the lender paid current year’s taxes? Is this reflected in tax search? 				
<ul style="list-style-type: none"> Check the prepayment penalty, if any, in the mortgage payout statement. Will the lender reduce the penalty? Is this a replacement mortgage? 				
<ul style="list-style-type: none"> Is the mortgage that is being paid out or assumed subject to a guarantee or co-covenant clause that may continue after possession date? If so, arrangements must be made to have the guarantor or co-covenantor released. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Survey Certificate (Real Property Report) and Title Insurance. With the use of title insurance in place of a survey certificate, less emphasis is being placed on obtaining a survey certificate than in the past. However, there are instances where having a survey certificate can be useful for the purchaser. The purchaser's lawyer should still consider the issue of whether a survey certificate is required or desired by the purchaser. 				
<ul style="list-style-type: none"> Most lending institutions require a mortgagor to either provide a survey certificate or obtain title insurance. Some lenders will require title insurance even though a survey certificate is available. Obtain a copy of the survey certificate if it is available. The purchaser's lawyer usually obtains the certificate from the realtor or the seller's lawyer. 				
<ul style="list-style-type: none"> Check the offer to purchase and determine: <ul style="list-style-type: none"> Is the seller required to supply the survey certificate? 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Is the seller to supply a current survey certificate? 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Is the seller to supply existing survey certificate? 				
<ul style="list-style-type: none"> Has the purchaser's lender placed an age restriction on the survey certificate? 				
<ul style="list-style-type: none"> Does the purchaser's lender require a survey certificate that shows all improvements on the property? Are there improvements on the property that are not shown on the survey certificate? 				
<ul style="list-style-type: none"> Will the lender accept an affidavit updating the survey certificate? 				
<ul style="list-style-type: none"> Must a new survey certificate be obtained? Should a new survey certificate be obtained? 				

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<ul style="list-style-type: none"> Is a title insurance policy acceptable to the lender and is it appropriate to use title insurance in place of a survey certificate? Most lending institutions now accept title insurance in place of a survey certificate. Some purchasers choose to purchase title insurance even though it is not required by the lending institution. Consider whether you should discuss title insurance with the purchaser. 				
<ul style="list-style-type: none"> Consider whether a building information abstract or zoning certificate for property should be ordered. Some lenders may require certificate showing that property complies with local zoning requirements prior to advancing mortgage funds. If the purchaser's lender does not require a zoning certificate, discuss with the purchaser the advantages of obtaining one. Unless the purchaser obtains a zoning compliance certificate, the purchaser will not know if the prior owner(s) of the property obtained all the required building permits to do basement construction, build an attached or detached garage and necessary electrical permits and whether additions conform to local zoning bylaws. If the purchaser is assuming an existing mortgage or paying all cash for property, the requirement of producing a survey certificate or clear zoning certificate may not have been put in the offer. For discussion of zoning certificates, see <i>Kotowich v Petursson</i>, 1994 CanLII 16684 (MB QB). 				
<p>4. Prepare Seller's Documents</p> <ul style="list-style-type: none"> If acting for the seller, contact the purchaser's lawyer and confirm the designation of the purchaser's names for the transfer authorization. 				

ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Prepare the preliminary statement of adjustments for sale. Obtain a mortgage payout figure and insure there will be sufficient sale proceeds to payout everything that has to be paid in order to provide clear title. If there are writs or liens on the title, obtain payout figures for each encumbrance. Include realtor commissions, legal fees and disbursements in the statement of adjustments. If the sale proceeds are insufficient to cover everything that must be paid, contact the client as soon as possible to discuss how the shortage will be covered (see section 12. Statement of Adjustments). 				
<ul style="list-style-type: none"> Prepare the transfer authorization. This is the ISC document that changes registered ownership of title to property. 				
<ul style="list-style-type: none"> Prepare the affidavit of value required as part of a registrable transfer authorization. 				
<ul style="list-style-type: none"> Prepare the homestead affidavit or consent of non-owning spouse under <i>The Homesteads Act, 1989</i>, SS 1989-90, c H-5.1. 				
<ul style="list-style-type: none"> Prepare the direction for payment, the seller's instructions as to what is to be done with the sale proceeds. This form will allow the seller's lawyer to make undertakings to the purchaser's lawyer (such as paying out and discharging encumbrances) without the threat of the seller changing their mind later. 				
<ul style="list-style-type: none"> If the seller is not the builder of the home and the sale qualifies as exempt from the payment of GST, prepare the certificate of exempt supply confirming that purchaser is not responsible to pay GST on the sale. If there is any doubt as to whether sale will result in GST being paid, consider a ruling from the GST office of CRA. 				
<ul style="list-style-type: none"> Consider if PST is applicable to the sale. 				

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<ul style="list-style-type: none"> Prepare the declaration of possession. This form sets forth various responsibilities of the seller to complete the transaction. As the form is executed by the seller, it prevents the seller from stating later that some aspect of transaction was not properly explained and could prevent possible action against the lawyer. 				
<ul style="list-style-type: none"> Prepare an agency/retainer agreement setting forth and defining your retainer with the client. Make specific mention of items that are outside of the scope of your retainer. 				
<ul style="list-style-type: none"> Prepare a conflict notice if you are also acting for the purchaser. The seller is entitled to know that in case of a dispute with the purchaser that cannot be rectified, the lawyer must withdraw from the conveyance and each side must obtain independent legal representation. 				
<ul style="list-style-type: none"> Prepare the agreement for sale, if required. 				
<ul style="list-style-type: none"> Obtain a clearance certificate from CRA if the seller is a non-resident of Canada as defined by the <i>Income Tax Act</i>, RSC 1985, c 1 (5th Supp), or address holdback requirement. 				
5. Prepare Purchaser's Documents				
<ul style="list-style-type: none"> Confirm the real estate instructions with the purchaser. 				
<ul style="list-style-type: none"> Confirm the purchaser's designation (names) and postal address for the transfer authorization. 				
<ul style="list-style-type: none"> Confirm with the purchaser how he/she/they wish to take title to their property: <ul style="list-style-type: none"> As joint tenants. 				
<ul style="list-style-type: none"> As tenants-in-common. 				
<ul style="list-style-type: none"> Confirm school support if the municipality has both a public and separate school board. 				

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<ul style="list-style-type: none"> Prepare the mortgage documents if the purchaser is obtaining mortgage financing to purchase the property. Remember that when you prepare a mortgage you are acting for the lending institution. The mortgage instructions from the lending institution must be followed. If there is a problem with the instructions, contact the lending institution for clarification. Make changes only if new written instructions are obtained. 				
<ul style="list-style-type: none"> Most lending institutions now provide their own mortgage forms either online or otherwise. Insure you are familiar with the lending institution's forms, that you are using the correct form and that you properly complete the forms. If the lending institution does not specify the form to be used and the mortgage is CMHC insured, use the standard CMHC mortgage form that may be used by any lender where the mortgage is being insured by CMHC. 				
<ul style="list-style-type: none"> Sometimes a loan is CMHC insured and the lender supplies the wrong mortgage form. Lenders will make mistakes. You must not be a party to them. If the wrong form is supplied, contact the lender and obtain the correct form. 				
<ul style="list-style-type: none"> If the mortgage instructions require clauses to be inserted into the mortgage, make sure the appropriate clause is inserted. 				
<ul style="list-style-type: none"> Prepare the order for payment: This is the purchaser's written instruction to their lender to have the lender send net mortgage funds to the lawyer's office. The direction may also instruct the lawyer to utilize the mortgage for such purposes as paying balance of purchase funds to lawyer for seller. 				
<ul style="list-style-type: none"> Review the mortgage approval and mortgage disclosure statement. 				
<ul style="list-style-type: none"> Prepare the statement of adjustments (see: section 12, Statement of Adjustments). 				
<ul style="list-style-type: none"> Consider if GST and/or PST is applicable to the purchase. 				

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<ul style="list-style-type: none"> Review the purchaser's requirements for a survey certificate. 				
<ul style="list-style-type: none"> Review the lender's requirements for a survey certificate or title insurance. 				
<ul style="list-style-type: none"> Prepare the affidavit updating current survey certificate, if required by the lender. 				
<ul style="list-style-type: none"> Prepare the declaration of possession: This declaration contains various undertakings that the purchaser swears to be true in order to complete their purchase. In the declaration the purchaser undertakes to place fire insurance coverage on property and have the utilities placed in their name. 				
<ul style="list-style-type: none"> Prepare the postponement agreement of prior registered interests, if required. 				
<ul style="list-style-type: none"> Prepare the amending agreement and interest registration documents, if required. 				
<ul style="list-style-type: none"> If the writ search indicates that the name(s) of the client(s) will attract a writ of execution and if these encumbrances are not the responsibility of the client, have the client swear an affidavit of identity for summary discharge. If the encumbrances are the client's responsibility, then the encumbrance must be either be discharged or postponed. In dealing with writs review with client whether the writ has or will soon expire by passage of time and whether writ was dealt with in a bankruptcy proceeding. 				
<ul style="list-style-type: none"> Contact Sheriff if enforcement instruction, section 107.1 of <i>The Enforcement of Money Judgments Act</i>, SS 2010, c E-9.22. 				

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<ul style="list-style-type: none"> Prepare the agency/retainer agreement setting forth and defining the retainer with the client. Make specific mention of items that are outside of scope of your retainer. By signing this document, the purchaser is employing the lawyer to act on their behalf on the purchase. The agreement sets forth what actions lawyer will undertake on behalf of the purchaser and what actions are beyond the scope of duty. The agreement also appoints the lawyer as agent of the purchaser for purposes of paying disbursements, such as land titles registration costs, that are not subject to GST without requirement of paying GST on these amounts. 				
<ul style="list-style-type: none"> Prepare a conflict agreement if required. The lawyer should advise the client of any potential conflict in acting for two clients in the same transaction. A conflict can arise if the same lawyer is acting for both the seller and the purchaser or the purchaser and the lender. Each client should be advised that in case of dispute between the parties, which cannot be rectified, each side must obtain independent legal representation. 				
6. If the Conveyance Involves Rental Property <ul style="list-style-type: none"> The following information should be obtained: <ul style="list-style-type: none"> Name of tenant 				
<ul style="list-style-type: none"> Amount of rent 				
<ul style="list-style-type: none"> Term of tenancy 				
<ul style="list-style-type: none"> Amount of damage deposit and interest 				
<ul style="list-style-type: none"> Date of receipt of damage deposit 				
<ul style="list-style-type: none"> Check if suite is legal or illegal 				
<ul style="list-style-type: none"> Obtain copies of leases or rental agreement, if any 				
<ul style="list-style-type: none"> Confirm what tenant's chattels are 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Is a fire marshal's certificate required? 				
<ul style="list-style-type: none"> Is a health certificate required? 				
<ul style="list-style-type: none"> Does <i>The Residential Tenancies Act, 2006</i>, SS 2006, c R-22.0001, apply to this transaction? If it does, contact the Office of Residential Tenancies to ascertain if there are any outstanding infractions or orders registered against the property. 				
7. If the Conveyance Involves an Acreage: Additional Considerations <ul style="list-style-type: none"> Will the sale attract any GST? If there is any doubt, obtain a ruling from the GST office of CRA. 				
<ul style="list-style-type: none"> Have water tests been conducted? 				
<ul style="list-style-type: none"> Has the septic tank been checked? 				
<ul style="list-style-type: none"> Has the pumping rate been checked? 				
8. If the Conveyance Involves a Mobile Home <ul style="list-style-type: none"> Search the SPPR as set out above in section 3: Searches. 				
<ul style="list-style-type: none"> Prepare a bill of sale. 				
<ul style="list-style-type: none"> Treat the transfer of the land on which the mobile home is located as a regular transaction. Register the mortgage against the title to the land and in the PPR. 				
9. Meeting with the Seller <ul style="list-style-type: none"> Make an appointment for the seller. Advise the seller of the type of identification that the seller is required to provide prior to signing the documents (see the notes on this issue in the <i>Introduction</i>). 				
<ul style="list-style-type: none"> Have the seller's documents reviewed and signed: <ul style="list-style-type: none"> The transfer authorization. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> The direction for payment as to how sale funds are to be released. This document must be signed by all parties who are interested in sale proceeds, such as registered owner(s) and their non-owning spouse who have homestead right to property. 				
<ul style="list-style-type: none"> The certificate of exempt supply (GST). 				
<ul style="list-style-type: none"> The agency/retainer agreement. 				
<ul style="list-style-type: none"> The bill of sale, if applicable. 				
<ul style="list-style-type: none"> The homestead consent, if applicable. 				
<ul style="list-style-type: none"> The agreement for sale, if applicable. 				
<ul style="list-style-type: none"> The declaration of possession. 				
<ul style="list-style-type: none"> The concept of vacant possession with the client and advise the client that on possession date all of the seller's possessions must be removed from premises unless the seller has made arrangements with the purchaser for storing seller's items. Request that the sellers contact their insurance agent about insuring their stored possessions. 				
<ul style="list-style-type: none"> The affidavit of identity for summary discharge if your writ search indicates a writ that is not your client's responsibility is registered on their title. 				
<ul style="list-style-type: none"> The preliminary statement of adjustments. 				
<ul style="list-style-type: none"> The mortgage payout statement, if applicable. 				
<ul style="list-style-type: none"> The mortgage assumption statement, if applicable. 				
<ul style="list-style-type: none"> Are there any guarantees attached to the seller's mortgage to be discharged? 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> The assignment of proceeds if the seller has authorized an assignment of sale proceeds to the lender. 				
<ul style="list-style-type: none"> The estoppel certificate if the transaction involves a condominium. 				
<ul style="list-style-type: none"> The trust conditions on which the documents will be forwarded to the lawyer for the purchaser. 				
<ul style="list-style-type: none"> Are there any structures located over utility lines? 				
<ul style="list-style-type: none"> Obtain the survey certificate from the seller if the seller undertook to supply one in the offer to purchase. 				
<ul style="list-style-type: none"> Obtain a copy of the current tax notice from the seller, if applicable. 				
<ul style="list-style-type: none"> Discuss closing with the seller. If the parties used realtors the seller's agent will release keys to the purchaser's agent. 				
<ul style="list-style-type: none"> Advise the seller that if they make any changes to the sales contract with the purchaser, they are to advise both lawyer and agents of the changes. 				
<ul style="list-style-type: none"> Is the seller a non-resident of Canada for purposes of the <i>Income Tax Act</i>, RSC 1985, c 1 (5th Supp)? <ul style="list-style-type: none"> A clearance certificate may be required from CRA. 				
<ul style="list-style-type: none"> It may be necessary to withhold tax from sale proceeds and remit to CRA. 				
<ul style="list-style-type: none"> Advise the seller that if they have any questions about their tax liability for this transaction they must contact accountant, as giving of tax advice is outside scope of your retainer with the seller. 				
<ul style="list-style-type: none"> Keep a record of your meeting with the seller confirming that you have discussed all matters with your client. Note the date and time of the meeting, any questions the seller asked and your advice. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
10. Meeting with the Purchaser <ul style="list-style-type: none"> Make an appointment with the purchaser. Advise the purchaser how much money is required for cash to close and when the cash to close is required. Advise the purchaser the form in which payment must be made (i.e., certified cheque, bank draft, etc.). Advise the purchaser of the type of identification the purchaser is required to provide prior to signing the mortgage (see the notes on this issue in the <i>Introduction</i>). Advise the purchaser about the need to have fire insurance in place with a first loss payable to the lender. 				
<ul style="list-style-type: none"> Have the purchaser's documents (and any other documents required by your client and your office) reviewed and signed. 				
<ul style="list-style-type: none"> If the purchaser is placing a mortgage on the property, review the following: <ul style="list-style-type: none"> Interest adjustment date and first payment date in mortgage. 				
<ul style="list-style-type: none"> Are taxes being paid by the purchaser or will the lender be paying property taxes? 				
<ul style="list-style-type: none"> What deductions will the lender make from mortgage funds? 				
<ul style="list-style-type: none"> The responsibility of the purchaser to maintain insurance coverage on the property and the amount of coverage that lender requires. 				
<ul style="list-style-type: none"> What a purchase money mortgage is and if this mortgage is a purchase money mortgage. 				
<ul style="list-style-type: none"> That under the terms of the mortgage, advance of mortgage funds is at discretion of lender. 				
<ul style="list-style-type: none"> The clauses in mortgage that deal with improvements and repairs and explain that pursuant to terms of mortgage improvements can only be commenced with consent of the lender. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> The due on sale clause. 				
<ul style="list-style-type: none"> The prepayment options. 				
<ul style="list-style-type: none"> That the mortgage is binding on the purchaser and their executors and administrators. Check if the mortgage is life insured. 				
<ul style="list-style-type: none"> If the purchaser is assuming a mortgage registered against the property, review the following: <ul style="list-style-type: none"> Must the purchaser qualify to assume mortgage? 				
<ul style="list-style-type: none"> Is the mortgage current? 				
<ul style="list-style-type: none"> When will the purchaser make their first mortgage payment? 				
<ul style="list-style-type: none"> Will the purchaser be assuming a mortgage tax account and, if so, how much? 				
<ul style="list-style-type: none"> What are the prepayment options contained in mortgage? 				
<ul style="list-style-type: none"> Is the mortgage a portable mortgage? 				
<ul style="list-style-type: none"> Is the mortgage a purchase money mortgage? 				
<ul style="list-style-type: none"> Review the statement of funds required to close and discuss whether interim financing will be required. 				
<ul style="list-style-type: none"> Advise the purchaser to have the utilities placed in their names. 				
<ul style="list-style-type: none"> Review the utility searches (if completed) with the purchaser. Are there outstanding utility accounts on the property for which the purchaser may be responsible? 				
<ul style="list-style-type: none"> Advise the purchaser that utility adjustments are between seller and purchaser and the contract of purchase and sale does not contain conditions that the lawyer for the seller is to hold back funds to pay any outstanding utility accounts. Utilities supplied by the municipality that are not paid may be placed against land as municipal land tax. 				

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<ul style="list-style-type: none"> Consider if the purchaser wishes to obtain a zoning compliance certificate even if one is not required by their lender. 				
<ul style="list-style-type: none"> Review the chattels included in purchase price. 				
<ul style="list-style-type: none"> Review the fire insurance coverage requirements. Obtain confirmation of fire insurance coverage from the purchaser's fire insurance agent showing effective date to be possession date or sooner, that amount of coverage is satisfactory to both the purchaser and the purchaser's lender and the correct loss payable clause is shown on insurance policy or letter of confirmation. 				
<ul style="list-style-type: none"> Review the date of purchaser's first mortgage payment if a mortgage is being placed or assumed. 				
<ul style="list-style-type: none"> Review all the encumbrances that the purchaser is assuming. 				
<ul style="list-style-type: none"> Discuss trust conditions and undertakings with the purchaser. 				
<ul style="list-style-type: none"> Advise the purchaser that their lender, at its discretion, does not have to advance the mortgage funds. 				
<ul style="list-style-type: none"> Discuss pre-closing inspection with the real estate agent. 				
<ul style="list-style-type: none"> Review the availability of keys on possession date. 				
<ul style="list-style-type: none"> Review the condominium bylaws, voting rights, financial statement, management agreement, condominium budget, parking arrangement, and reserve fund study, if applicable. 				
<ul style="list-style-type: none"> Are there any structures located over utility lines? Will the purchaser now be responsible to relocate structure or relocate buried utility lines? 				
<ul style="list-style-type: none"> Advise the purchaser that if they intend to construct addition, they must contact all utility companies to confirm that their construction is not located over buried utility lines. 				

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<ul style="list-style-type: none"> Discuss late interest with the purchaser and explain when it is payable. 				
11. Trust Conditions and Undertakings <ul style="list-style-type: none"> The purpose of trust conditions is to complete transaction in accordance with the offer to purchase. As lawyers we are bound by what our clients have agreed and cannot make changes unless the changes are consented to by all parties in writing. 				
<ul style="list-style-type: none"> Do not impose any trust condition that you would not accept. 				
<ul style="list-style-type: none"> Do not accept any trust condition that will not be possible for you to honour. 				
<ul style="list-style-type: none"> All undertakings must be set forth in a trust letter. 				
<ul style="list-style-type: none"> If you cannot accept trust condition, return all documents unused. 				
<ul style="list-style-type: none"> The Law Society of Saskatchewan has approved a standardized trust letter to close the transaction described in the standard Saskatchewan Real Estate Commission Residential Contract of Purchase and Sale. Use of the trust letter is recommended. 				
<ul style="list-style-type: none"> There are no statutes that deal with trust conditions in Saskatchewan. However, review the Code of Professional Conduct, Law Society of Saskatchewan (2012), especially the rule found in Chapter 7.2 Responsibility to Lawyers and Others. 				
<ul style="list-style-type: none"> For discussion of problems created when trust conditions change the contract entered into by parties, see <i>Milburn v Dueck</i>, 1992 CanLII 8534 (MB CA). 				
<ul style="list-style-type: none"> For discussion of legal nature of trust conditions, see <i>Guay v Dennehy</i>, 1994 CanLII 16669 (MB QB), and <i>Witten, Vogel, Binder & Lyons v Leung</i>, 1983 CanLII 1028, (AB QB). 				

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<ul style="list-style-type: none"> If acting for the seller, send the transfer authorization, statement of funds required and other required documents on appropriate trust conditions and undertakings. 				
<ul style="list-style-type: none"> Provide undertakings with respect to matters to be concluded by the seller's lawyer, such as paying out and discharging encumbrances not assumed by the purchaser. Do not undertake to payout encumbrances until you have written verification statement as to amount required to discharge encumbrance including all applicable penalties and accrued interest. 				
<ul style="list-style-type: none"> If acting for the purchaser, review trust conditions and undertakings from lawyer for the seller. Must trust conditions or undertakings be amended? Has the seller's lawyer made undertakings to retain purchase funds pending registration of transfer authorization? 				
<ul style="list-style-type: none"> Remember reverse trust conditions are not acceptable. For example, if a seller's lawyer forwards documents on the trust condition that the purchase price is to be paid, the purchaser's lawyer cannot impose trust condition on the seller's lawyer that moneys are to be held back pending the payment of unpaid utility accounts. Instead, the purchaser's lawyer before using the documents must have the seller's trust conditions or undertakings amended to reflect a holdback for unpaid utility accounts. 				
<ul style="list-style-type: none"> The seller is not obliged to hand over a transfer in exchange for a promise to pay that is founded on a mortgage unless the seller has so agreed (<i>Norfolk v Aikens</i>, 1989 CanLII 245, [BC CA]). 				
<ul style="list-style-type: none"> Always read the trust conditions and never assume you know what the trust conditions are. 				

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12. Statement of Adjustments <ul style="list-style-type: none"> There are five types of statements of adjustments in real estate transaction: <ul style="list-style-type: none"> The seller's preliminary statement of funds, which will show if there will be sufficient funds from the sale to pay and discharge all encumbrances, real estate commissions and legal costs. 				
<ul style="list-style-type: none"> The statement of seller's funds required, which is forwarded to the purchaser's lawyer indicating the funds required to close the sale. 				
<ul style="list-style-type: none"> The statement of purchaser's funds required, which will show the total cost to the purchaser of purchasing the property. 				
<ul style="list-style-type: none"> The seller's final statement of adjustments, which is a closing statement reconciling all funds that passed through client's trust ledger. 				
<ul style="list-style-type: none"> The purchaser's final statement of adjustments, which is a closing statement reconciling all funds that passed through client's trust ledger. 				
<ul style="list-style-type: none"> If acting for the seller, prepare the statement of funds required 				
<ul style="list-style-type: none"> If a mortgage is being assumed, review the assumption statement. Is there a tax credit being assumed? Is there a tax debit being assumed? 				
<ul style="list-style-type: none"> Review the tax adjustment. Are taxes paid or unpaid for current year? Is there a tax prepayment being assumed by the purchaser? 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> If a mortgage is being placed on the property to finance the purchase price of the property, calculate the net proceeds that will be available from lender on registration. Will the lender deduct accrued interest, withhold amount for built-up tax account, deduct mortgage insurance fee or holdback funds pending repairs to building to be completed by the purchaser? If acting for purchaser, obtain funds to close from the purchaser by way of a certified cheque or bank draft. 				
<p>13. Western Law Societies Conveyancing Protocol</p> <ul style="list-style-type: none"> Practitioners now have the option of completing conveyances under the Western Law Societies Conveyancing Protocol for Saskatchewan. This protocol prescribes the conditions precedent to the issuance of a Lawyer's Opinion under the Western Law Societies Conveyancing Protocol by a Saskatchewan lawyer in a transaction involving an existing single family residential property, including existing single family residential condominium units ("Existing Residential Property"). 				
<ul style="list-style-type: none"> The Lawyer's Opinion under the Western Law Societies Conveyancing Protocol does not apply to multi-family dwellings or commercial property transactions. 				
<ul style="list-style-type: none"> The protocol is not a statement of substantive law and is to be understood in the context of describing procedural conditions necessary for the issuance of a Lawyer's Opinion under the Western Law Societies Conveyancing Protocol for Saskatchewan. Follow the protocol checklists carefully. 				
<ul style="list-style-type: none"> Please note, not all lending institutions will permit the lawyer to use the protocol. Before using the protocol, check with the lending institution to ensure that use of the protocol is acceptable to that lending institution. 				

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<ul style="list-style-type: none"> For further information, please refer to materials from the seminar Quick & Efficient Real Estate Closings: Changes in Conveyancing Practice, February 2001, Saskatchewan Legal Education Society (2001). 				
14. Registration of Documents <ul style="list-style-type: none"> Check that all documents, including those received from the seller's lawyer, are prepared and executed correctly. 				
<ul style="list-style-type: none"> If the purchasers are purchasing as joint tenants or tenants in common, is this stated in the title set-up form? 				
<ul style="list-style-type: none"> Register documents at ISC conditionally, based on the time shown on your search to the title(s). Never register unconditionally because there may be encumbrances registered on title not reflected in your searches. Registration must be subject to only those encumbrances that are registered, known and approved by lawyer for the purchaser. Otherwise documents that are pending registration and not indicated in your searches will be registered on your client's title. 				
<ul style="list-style-type: none"> Register at ISC only when all trust conditions imposed by the lawyer for the seller can be met. 				
<ul style="list-style-type: none"> Once documents are registered, advise the lawyer for the seller. 				
15. Preliminary Mortgage Report <ul style="list-style-type: none"> The preliminary mortgage report is lawyer's request to lender for mortgage funds. It is important that mortgage be registered and adequate survey, zoning certificate and confirmation of fire insurance coverage be included in your report. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Some lawyers will requisition mortgage funds in trust prior to registration of the mortgage. This is a dangerous practice for the following reasons: <ul style="list-style-type: none"> When mortgage funds are advanced the onus is on the lawyer to supply the lender with a mortgage registered in accordance with lender's instructions. The mortgage once registered may be subject to prior encumbrance that cannot be discharged. 				
<ul style="list-style-type: none"> If a mortgage is CMHC insured, upon advancing mortgage funds, a cheque is paid to CMHC for insurance fee. 				
<ul style="list-style-type: none"> The mortgage may be subject to penalty if it is paid out prior to maturity. 				
<ul style="list-style-type: none"> The interest rate is locked in on the date the mortgage funds are advance. 				
<ul style="list-style-type: none"> If mortgage funds are advanced prior to registration and the purchaser decides to collapse the deal and forfeit the deposit and down payment funds, the purchaser must also deal with repaying mortgage insurance fee, mortgage and penalty. 				
<ul style="list-style-type: none"> If the purchaser does not collapse the deal and if rates are now lower, the purchaser will be paying the rate established the date the funds were advanced. 				
<ul style="list-style-type: none"> If a court order or other encumbrance will take precedence over the mortgage and mortgage funds are advanced, what position is lawyer placed in <i>vis-à-vis</i> the mortgage lender, prior encumbrance holder, the seller's lawyer and client and the lawyer's errors and omissions insurance? 				
<ul style="list-style-type: none"> Once the mortgage has registered at ISC, prepare a preliminary mortgage report on title. 				
<ul style="list-style-type: none"> Request mortgage funds. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Does the lender ask you to use their standard form of preliminary and final mortgage report? Can you do so without qualification? 				
<ul style="list-style-type: none"> Review the lender's standard report. Does the lender require you to certify items that are beyond your control? Do not certify or opine to the lender anything that is beyond your control to certify. 				
16. Mortgage Payout Statements/Confirming Assumption of Mortgage <ul style="list-style-type: none"> If acting for the purchaser, advise the lender that the purchaser is now the registered owner. 				
<ul style="list-style-type: none"> Forward to the lender their form of assumption notification together with copy of the purchaser's new title and copy of confirmation of fire insurance coverage. 				
<ul style="list-style-type: none"> If acting for the seller, confirm with the seller's lender that the seller's last required mortgage payment has been paid. 				
<ul style="list-style-type: none"> If acting for the seller whose mortgage is to be paid out, confirm the amount to be paid to-date. Make a note of name of the person spoken to and the date and time of the conversation. Preferably, always confirm the mortgage payout figures by fax or email. 				
<ul style="list-style-type: none"> If acting for the seller whose mortgage is being assumed and the mortgage is not current, forward a trust cheque to lender so that all mortgage arrears are paid. 				
<ul style="list-style-type: none"> If acting for the seller whose mortgage is to be paid out and discharged, forward a trust cheque to lender on the condition that a registrable discharge of mortgage is received from or registered by the lender within a reasonable time of payout. Once received, register the discharge promptly. 				
<ul style="list-style-type: none"> Pay out any other non-assumed encumbrances of the seller in similar fashion. 				

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17. Reporting to Clients: Purchaser and Lender <ul style="list-style-type: none"> Report to the listing real estate broker paying balance of real estate commissions. 				
<ul style="list-style-type: none"> Report to the seller's assignee paying assigned proceeds in full, if possible. 				
<ul style="list-style-type: none"> If applicable, report to local taxing authority paying taxes and applicable arrears in full. Request a statement from the taxing authority confirming that taxes are now fully paid. 				
<ul style="list-style-type: none"> Pay the balance of sale proceeds in accordance with the seller's written instructions. 				
<ul style="list-style-type: none"> Report to the seller with copy of the final statement of adjustments and copies of all payout letters. 				
<ul style="list-style-type: none"> Report to the purchaser with a copy of the final statement of adjustments and a copy of all applicable documents. 				
<ul style="list-style-type: none"> Report to the local tax office advising of notice of change in ownership so they can amend their tax records. 				
<ul style="list-style-type: none"> When the prior mortgage is discharged and the purchaser's lender is first charge on title and the tax certificate is received, prepare the final report on title to the purchaser's lender enclosing the final documents as required by the lender. Do not give unqualified opinions to the lender that requires you to guarantee a form supplied by third party. 				
<ul style="list-style-type: none"> Send a final report to the purchaser enclosing a copy of their title clear of all encumbrances not assumed by the purchaser. 				
18. Closing the File <ul style="list-style-type: none"> Review the file and ensure all required reports have been completed and sent. 				

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<ul style="list-style-type: none"> Check your trust account for remaining funds. A reconciliation statement must be prepared showing all funds that have been received into trust have been disbursed. If there are funds in trust, review your file to ascertain who owns these funds and forward them to the appropriate person or body. 				
<ul style="list-style-type: none"> Review your file. Have you complied with all trust conditions and undertakings? 				
<ul style="list-style-type: none"> Then and only then, close the file. 				
<ul style="list-style-type: none"> Do not destroy any documents, correspondence or memos on file unless you are absolutely sure that in future there will be no problems with the file. Store your closed file as required: <ul style="list-style-type: none"> MacDonald, Rod, "Retention, Storage and Destruction of Client Files", 20 Benchers' Digest, No 5 (November 2007) at page 8, Law Society of Saskatchewan (2007) ———, "Retention, Storage and Disposition of Client Files" (Segment 2), 21 Benchers' Digest, No 2 (April 2008) at page 8, Law Society of Saskatchewan (2008) ———, "Retention, Storage and Disposition of Client Files", 21 Benchers' Digest, No 5 (November 2008) at page 4, Law Society of Saskatchewan (2008) 				

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