

Consumer Land Mortgage Enforcement

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Land Mortgage Financing and Enforcement Fundamentals

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CONSUMER MORTGAGES 101

It is very common for junior members of the Bar to be involved in the execution and registration of mortgages on individual's residences. This presentation is intended on addressing in a very basic manner some of the important issues to keep in mind while acting on a 'normal' consumer mortgage financing.

There are a number of specific legislative requirements that may apply to the financing you are engaged in. It is certainly critical that you have a basic understanding of the *Land Titles Act*, R.S.A., c. L-4. I have attached some excerpted sections from the Act to this paper as a reference for some of the items being discussed today.

It is also important to understand Part 9 of *The Fair Trading Act*, R.S.A., c. F-2., and the associated regulations dealing with Cost of Credit Disclosure. This legislation requires that a disclosure must be completed and signed for all consumer and farm mortgage loans. The disclosure must also be completed for renewals, extensions or other modifications of such mortgage loans. The Act and the Cost of Credit Disclosure Regulation is attached to this section as a Schedule for your reference later. The disclosure is designed to give the borrower a true statement of the effective rate of interest being charged on their loan as well as detailing the various costs of borrowing being charged. In some cases, this disclosure has been signed before you receive your instructions, and it is only necessary for you to confirm that the borrowers have received their copy. Otherwise, it will be your job to ensure that the full details of the loan are adequately revealed and the disclosure properly executed.

Note that even if a lender is statutorily exempted from having a Disclosure Statement signed by the borrower, they may be governed by the Bank Act in respect to the cost of borrowing paid by the mortgagor. For the most part, large financial institutions all fully appreciate the legislative framework within which they operate.

Finally, keep in mind that the *Interest Act*, RSC 1985, c I-15 section 6, requires a clear statement of the applicable rate of interest in blended mortgages.

As most young lawyers are aware, the legislative framework for enforcement of mortgage security in Alberta is found in *The Law of Property Act*. It is imperative that counsel understand this legislation in order for them to properly advise their clients on personal liability under the covenant to pay included in their mortgage. We will go into detail on that in a later section of today's presentation.

Typically, counsel will be engaged once the client has obtained financing approval from their lender. The commitment that is made by the lender is a very important document, and you should take the time to review it carefully. The commitment will provide a roadmap for the deal you are papering.

Look for the following in the commitment:

- specific amount of the loan

- repayment amounts and times

- term of the loan

- interest rate being charged

 - could be either fixed or variable

- whether any conditions remain to be satisfied prior to the commitment becoming unconditional

 - conditional on approval of construction plans etc.

- default provisions

 - Lender may cancel if loan is not funded by specified date.

- description of the documentation required by the lender

 - mortgage registered as first (second) charge on title, subject only to

- requirement of real property report/compliance or title insurance

- statement that the rights under the commitment do not merge in the execution or registration of the security documentation

- requirement of fire and/or other insurance

- property taxes

 - who is responsible to pay

- if property is a Condominium, there will be a number of additional considerations