

Western Torrens Conveyancing Protocol

Prepared for: Legal Education Society of Alberta

Real Estate Essentials

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WESTERN TORRENS CONVEYANCING PROTOCOL

1. INTRODUCTION

The Western Torrens Conveyancing Protocol (the “Protocol”) was introduced, on a large scale, to the Alberta Legal Profession in December, 2001. Seminars were presented by the Legal Education Society of Alberta in all the major centres across the Province to both lawyers and support staff. Since that time, the Protocol has been accepted by most members of the profession and by most lenders. Its use is now referred to in the Alberta Real Estate Association’s standard Residential Real Estate Contract and now instructs that the Protocol be used to complete the transaction.

The Protocol was developed as a response of the law societies of the four western provinces to the many changes which have happened in the residential real estate marketplace. It was designed as a restructured process by which a residential real estate transaction can be completed. The process streamlines conveyancing procedures for lawyers and lenders, it provides the public with continued access to independent legal advice on what is usually the largest investment in a person’s life and it ensures the integrity of the Torrens land registration system here in Alberta. It allows for transactions to be completed on time despite lengthy wait periods for registration at Land Titles. It also, in most cases, avoids the need for title insurance, thus saving the Buyer the cost of the title insurance premium.

The Law Society of Alberta’s webpage provides a detailed explanation of the Protocol and that webpage should be referred to for the Protocol document itself and for updates on the procedure as they are introduced by the Law Society of Alberta. This information can be found at www.lawsociety.ab.ca under the tab “For Lawyers” and then, “Conveyancing Protocol”. The webpage also contains the standard form of trust letter and Waiver by the Buyer of a Real Property Report,

The purpose of this paper is not to go into a long and detailed explanation of the Protocol but to provide an easy reference as to when, why, and how it should be used.

2. WHY SHOULD YOU USE THE PROTOCOL?

- there is no question that when the Protocol was first introduced, sixteen years ago, it required a major shift in thinking for real estate practitioners. We did not need to hold on to funds anymore until registration is confirmed. On a Protocol closing, funds are released to the Sellers’ lawyer on the closing date, before or concurrent with submitting the documents to the Land Titles office. The Protocol has been in use since 2001 and

therefore many practitioners are now very familiar with using it and the fear of using it has been overcome.

- the Protocol streamlines the conveyancing process:
 - it allows the transaction to be completed **on time, on the closing date**
 - it closes the registration gap - no longer do you need to wait for Land Titles to register prior to releasing funds
 - **lenders** are not required to have a Real Property Report, unless advised to the contrary because of known survey defects, etc. - still needed for buyers, however
 - provides a short form of opinion letter to the lender. A standardized form of opinion letter was developed by the committee which developed the Protocol and can be found on the Law Society's webpage.
 - unpaid vendors' lien caveats are no longer required. Some practitioners still use unpaid vendors' lien caveats but if closing on Protocol they are not required.
 - transfers back, covenants to restore title and tenancy at will agreements are not required. If there is a problem with title, that would become a claim under the Protocol and should not involve a requirement of the lawyers to attend to the registration of a transfer back. Similarly, there would only be rare occasions when a tenancy at will agreement would be required. Only in circumstances where the keys are being released prior to the actual receipt of funds by the seller's lawyer due to couriering or wiring issues would there ever be a necessity for a tenancy at will agreement.
 - interim financing can possibly be eliminated. At the very least, if interim financing is required, the period of time it is needed for is reduced, therefore costing the purchaser less interest
 - interest for late closing can be avoided because the transaction can close on time
 - it solves some of the insurance issues which we face when closing the pre-Protocol way.

3. **WHEN CAN YOU USE THE PROTOCOL?**

- you can use the Protocol:
 - on cash deals