

## RESIDENTIAL REAL ESTATE CONFERENCE

PAPER 4.1

# Mortgage Lending: Case Law Update and Best Practices

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These materials were prepared by Timothy J. Lack of Lunny Atmore LLP, Vancouver, BC, for the Continuing Legal Education Society of British Columbia, December 2017.

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## **MORTGAGE LENDING: CASE LAW UPDATE AND BEST PRACTICES**

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### **I. Update on Recent Case Law**

Before jumping into the meaty issues of mortgage lending, I have taken this opportunity to seek out recent cases looking at various aspects of mortgage lending and thought it wise to bring you the recent interesting and relevant ones.

*Summerland & District Credit Union. V. Titan Pacific Contracting Inc.*, 2016 BCSC 2504

This is an interesting case coming out of Penticton, and it deals with those pretty much standardized “All Obligations” mortgages. More specifically, it was a mortgage that was meant (by the lender) to secure all the obligations of the mortgagor and in this case they wanted to secure four different loans. Most of us should be familiar with the standard language that the lender is relying on here but please note the mortgage terms from the case:

”Obligations” means, at any particular time:

- (a) all Debts and Liabilities that the Mortgagor has before the particular time, acknowledged in writing to, or agreed in writing with, the Credit Union are to be secured by this Mortgage, and
- (b) all Debts and Liabilities that the Credit Union in its sole and absolute discretion, has by notice in writing to the Mortgagor before the particular time, elected to add to the Obligations and secured by this Mortgage.

The issue examined was whether a third and fourth loan came within the above definition of obligations as the borrowers asserted that there was no written acknowledgement by the borrowers or agreement in writing that those third and fourth loans were to be secured by the mortgage, and that there was no written notice by the credit union that the loans were to be added to the obligations to be secured by the mortgage.

The judge in this case focused on the above definition, and the requirements set out therein. Further, he looked at the evidence presented as to whether the documentation for the two last loans fit the definition. Accordingly, the Court found that there was simply no evidence that made the two last loans subject to the terms of the mortgage. These loans were noted to be loan agreements, just not secured by the mortgage.

**PRACTICAL TAKE AWAY:** When a lender client has an existing “all-indebtedness” style mortgage security, be sure that future loans are captured by this security in accordance with the loan terms and the mortgage terms. Get it in writing and give lots of notice, and don’t be lazy in relying on the lender’s standard documents.

**Bankers Mortgage Corporation V. Plaza 500 Hotels Ltd., 2017 BCCA 66**

This is a case where the borrowers and covenantors defaulted on a mortgage and were held liable for an “Exit Fee” payable to the mortgage broker under the terms of Loan Retainer Agreement. The borrowers argued that this fee was a penalty on arrears, which we all know, is prohibited under Section 8 of the *Interest Act*.

The trial judge found this fee not to be a penalty, but, rather, a genuine pre-estimate of damages. The Court of Appeal agreed. They stated that the Exit Fee was an unsecured obligation that does not prevent the mortgagor from redeeming the property. It is not “stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property” nor does it have “the effect of increasing the charge on the arrears beyond the rate... payable on principal money not in arrears.” Accordingly, and in light of purpose of Section 8, the section did not operate to prohibit the Exit Fee.

**PRACTICAL TAKE AWAY:** Your mortgage broker and the lender will have, on occasion, competing interests. One is trying to recover a fee, while the other is trying to recover loaned funds. The case tells us these can be separate issues. As an aside, in the above case, the lenders were paid out and the mortgage was discharged and the issue before the courts was just the Exit Fee.

## II. Best Practices in Your Mortgage Practice

### A. Yes, the Form B Rules the Day, But.....

Be mindful, that an agreement that certain property is to stand charged as security for a specified sum, if expressed in clear language, may also constitute a mortgage. Also, a formal defect in a document may still give the right to call for a legal mortgage.

**PRACTICAL TAKE AWAY:** While it seems like the LTO loves to find defects (sorry for the job), lets always be mindful of the documents that are not drafted as a Form B, but may still give your lender client mortgage security (ie. a Promissory Note that includes language that creates mortgage security).

### B. Guarantees and Covenants to Pay

I appreciate that this will be a mini recap of a topic I touched in previous years, but I continue to see, with frequency, documents from law firms where the term guarantor and covenantor were used inter-changeably, and incorrectly, in the various documents. I venture that this error in terminology seems to occur in private lending transactions more frequently because of the unsophistication of the instructing lender/broker and that the documents are not those mandated and prepared by a large financial institution.

In the section of the ‘Documentation’ chapter of the Mortgages Practice Manual entitled ‘Gathering Information’, one of the matters that must be considered by the lawyer is ‘The Guarantor/Covenantor’. That section states:

### 4.1.3

“The lender may require persons other than the registered owner of the property to be liable for repayment of the mortgage loan and observance of the mortgage obligations. These persons are described as guarantors or covenantors. While these terms are sometimes used interchangeably, there is a legal distinction between a guarantee, which creates only an obligation as a surety, and a direct covenant or indemnity. A direct covenant or indemnity is usually required by the lender. ”

A lawyer should seek information determining the requirement of covenantors/guarantors in a mortgage transaction and seek to determine in what capacity a person is to be liable for repayment of the mortgage and observance of the mortgage obligations. Where instructions request a person to sign as a guarantor, a lawyer ought to clarify those instructions to ensure that (as I referenced above) the terms have not been used interchangeably by the lender giving the instructions.

All of which information gathering and retainer confirmations are performed and done with the intent that solicitor is assisting the client in avoiding foreseeable risk in the mortgage transaction.

At this time, and for good order, the distinction between a covenantor and a guarantor should be set out in order that the reader is aware that there is a distinction and the importance thereto.

A covenantor is, in the Prescribed Standard Mortgage Terms, expressed to be “...a primary debtor to the same extent as if the covenantor had signed this mortgage as a borrower and is not merely a guarantor or a surety, ...”.

On the other hand, a guarantor is that person that enters into a collateral contract called a guarantee and the guarantor “...undertakes to answer for the debt or the obligation of the principal debtor to the creditor. In other words, the guarantor promises to the creditor that “if the debtor does not pay, he [or she] will.” (from Bennett in “Creditors’ and Debtors’ Rights and Remedies”)

The distinction between a contract of indemnity and a contract of guarantee is simple in principle: (i) in a contract of indemnity, the obligation is an independent undertaking to make good a loss. The indemnitor assumes the primary liability, either alone or concurrently with the principal debtor; and (ii) in a contract of guarantee, the guarantor assumes a secondary liability to answer for the principal debtor who remains primarily liable. If the true meaning of the contract is that the promisor will pay only if a third party does not, then the agreement is a guarantee. If the promisor is liable to pay in any event, then the contract is an indemnity” (see *Credit Foncier Trust Company v. Zatala Holdings Inc.*, (1986), 4 B.C.L.R. 25 (C.A.).

The collateral nature of a guarantee distinguishes it from other forms of contract which are often employed to serve similar goals. The simple guarantee is predicated on the principle that the debtor shall first be liable and that once the liability has been established, the guarantor then becomes liable along with the debtor for the guaranteed obligation. Many guarantees, however, make the guarantor *directly* liable with the debtor. Therefore, the term “guarantee” may be a misnomer, as the person who signs the document may in effect be signing a direct contract to pay the creditor irrespective of whether the debtor can pay. This is especially so with bank guarantees. (again, please see Bennett)

Please note that with the use of specific language, either by the lender or the lender’s solicitor, a guarantor can be effectively elevated to being a primary obligant directly liable with the debtor.

The Mortgages Practice Manual makes this clear:

#### 7. GUARANTEE/CONVENANT [§5.25]

Many institutional lenders have included guarantor or covenantor provisions in their filed standard mortgage terms. A covenantor provision is included as section 15 of the prescribed standard mortgage terms. The *Land Title Transfer Forms Guidebook* states that a covenantor or guarantor may sign the Form B Mortgage in

#### 4.1.4

Item 12. The covenantor's or guarantor's name is to be typed or printed below the signature. It should also be indicated in Item 12 that the person is signing as "guarantor" or "covenantor", using the appropriate defined term from the filed standard mortgage terms. Note that the filed standard mortgage terms must include a guarantor or covenantor provision for this procedure to be followed. Ensure that the reference to the parties reflects the definition of the parties in the application mortgage terms (filed or otherwise); see *Kalsiv. Achary*, 2012 BCSC 361.

A separate guarantee and covenantor's agreement that refers to the mortgage may also be used to obtain the required covenant or guarantee.

Accordingly, lawyers should clarify in what capacity certain persons, are to be liable for the repayment of the mortgage loan and for the observance of the mortgage obligations.

In the case of a covenantor, the language necessary in bringing such person into the role as a primary debtor is found in the Prescribed Standard Mortgage Terms. A solicitor has the necessary language to bind the covenantor readily available without having to produce his or her own terms or receiving them from the lender client.

In the case of a guarantor, the main requirement is that [the guarantee] be set out in writing in order to be enforceable. Further, "[i]n establishing the validity and construing guarantees, many of the basic rules that developed in the construction and interpretation of contracts are applicable." (from Bennett) Simply put and for practical purposes, the terms of the guarantee need to be established, in writing. Therefore, be sure to seek instructions from the lender in order to produce the guarantee, or otherwise have the lender's form of guarantee signed by the guarantor.

**PRACTICAL TAKE AWAY:** Watch your instructions. Be careful not to "willy-nilly" interchange the terms *covenantor* and *guarantor* in your documentation. The Prescribed Standard Mortgage Terms uses the term *covenantor* and sets out such a person's obligations therein. It doesn't use the word the word *guarantor* so be careful not to reference a guarantor unless you have specific guarantee language in your documents. Also, watch your staff on this issue as they too may use the terms interchangeably (and wrongly).

### C. Interest Act (Canada), Criminal Code, Unconscionable Mortgages

Under Section 6 of the *Interest Act*, when mortgage money is payable in "blended" payments of principal and interest are made, no interest is payable unless the mortgage contains a statement of the amount of principal money and the rate of interest chargeable on that money, calculated yearly, or half-yearly, not in advance

**PRACTICAL TAKE AWAY:** Watch your instructions and your documents. Private lenders love monthly compounding and they also love "prime plus" rates or maybe a combination of a fixed and prime plus. A table of equivalent rates should be inserted in the schedule.

Sections 2 and 8 of the *Interest Act*, which read as follows:

2. Except as otherwise provided by this Act or any other Act of Parliament, any person may stipulate for, allow and exact, on any contract or agreement whatever, any rate of interest or discount that is agreed on.

8. (1) No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

#### 4.1.5

(2) Nothing in this section has the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrears.

In a recent Supreme Court of Canada decision (*Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18), the majority held that:

Section 8 of the Act identifies three classes of charges – a fine, a penalty or a rate of interest – that shall not be stipulated for, taken, reserved or exacted, in a mortgage agreement, if the effect of doing so imposes a higher charge on arrears than that imposed on principal money not in arrears. Section 2 of the Act preserves a general right of freedom to contract for any rate of interest or discount, with the *caveat* that such freedom is subject to what is otherwise provided for by this Act.

The ordinary sense of the words that Parliament chose to include in s. 8, read together with s. 2 and considered in light of the Act's objects, support the conclusion that s. 8 applies both to discount (incentives for performance) as well as penalties for non-performance whenever their effect is to increase the charge on the arrears beyond the rate of interest payable on principal money not in arrears. By directing the inquiry to the effect of the impugned mortgage term, Parliament clearly intended that mortgage terms guised as a “bonus”, “discount” or “benefit” would not as such comply with s. 8. Substance, not form, is to prevail. What counts is how the impugned term operates, and the consequences it produces, irrespective of the label used. If its effect is to impose a higher rate on arrears than on money not in arrears, then s. 8 is offended.

And:

The labeling of one charge as an “interest rate” and the other as a “pay rate” is of no consequence, given s. 8's explicit concern for substance over form.

This case is particularly important to note because our British Columbia Court of Appeal had previously concluded that a similar style discount did not offend s.8. (See *North West Life Assurance Co. of Canada v. Kings Mount Holdings Ltd.* (1987), 15 B.C.L.R. (2d) 376.

**PRACTICAL TAKE AWAY:** Be aware! Business as usual in BC with respect to discounts from high rates that disappear upon a default offends the *INTEREST ACT*, as our SCC holds firm on the concept of substance over form. Section 8 applies both to discounts (incentives for performance) as well as penalties for non-performance whenever their effect is to increase the charge on the arrears beyond the rate of interest payable on principal money not in arrears. Also, use language that reverts back to the lower original rate to avoid having the court say that there is NO interest rate.

Section 347 defines a “criminal rate” of interest as an effective annual rate of interest ... that exceeds 60% on credit advanced under an agreement or arrangement. “Interest” is broadly defined as may include application fees, standby fees, broker fees, legal fees and disbursements and other non-refundable charges. The big concern is that these fees do add up and the rate might be over 60%, which would allow the courts to sever the interest provisions from the mortgage.

**PRACTICAL TAKE AWAY:** Consider including a severance clause stipulating that if any provision of the mortgage is found to unenforceable (for example, the rate of interest), the balance of the mortgage terms will still be operative and binding on the borrowers.

Courts can and will exercise their equitable powers to relieve against unconscionable transactions. Please take note that section 9(2) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 provides that where it is alleged that a mortgage transaction is unconscionable, the burden of proof that the transaction was not unconscionable is ON THE LENDER. Section 8 of the same

*Act* obliges a court to consider all the surrounding circumstances of a mortgage transaction that the lender knew or ought to have known – in particular:

- (1) whether the lender subjected the borrower or guarantor to undue pressure to enter into the transaction;
- (2) whether the lender took advantage of the borrower or guarantor's inability or incapacity to reasonably protect his or her own interest because of the borrower or guarantor's physical or mental infirmity, ignorance, illiteracy, age, or inability to understand the transaction;
- (3) whether at the time the transaction was entered into, the cost of the transaction grossly exceeded the cost to like borrowers;
- (4) whether at the time the transaction was entered into, there was no reasonable probability of repayment;
- (5) whether the terms were so harsh or adverse to the borrower as to be inequitable.

***PRACTICAL TAKE AWAY:*** Record (in writing) the facts where the mortgage transaction that was instructed to you has harsher than usual terms or higher than usual interest rates or fees. In that case, you would be best to send the borrower out for independent legal advice and you should also warn your lender client that the transaction may later be set aside or varied. Note, you may not be privy to all the surrounding circumstances even if your client is so aware.

#### **D. The Property Law Act and the Section 28 Notice**

When doing a second mortgage (that is often an equity take out mortgage) ensuring that the second mortgage isn't squeezed out of recovery as against the property on account of a prior mortgage taking all of the equity out of the property is of fundamental importance. It sounds easy enough to confirm the first and send a "section 28 notice letter", but there are no ready or standard precedents for this task. Although I do think the Act sets out the minimum of what needs to be done sufficiently clear, I urge you to grab some of the past CLE's on this subject, and get up to speed on the correct manner in confirming the first and giving notice to that prior mortgagee after your second is registered. But, for good order and because people do call me on this matter I will leave you with a practical take away.

***PRACTICAL TAKE AWAY:*** Seek the first mortgage balance yourself and directly from the prior mortgagee. Send your Section 28 notice letter, even if the prior mortgage is not identified as a "secured and running account" in the Form B. Send the notice letter in a manner that ensures receipt by the prior mortgagee.

I enclose the form of prior mortgage information request that I use and the two forms of notice as appendix 1 to this paper. (Both notices are sent to the prior lender as there is some issue as to who should be providing this notice) I am still waiting for the definitive case on this matter, but until then, I think that an overabundance of caution, confirmation and notice is in order. For the sake of all my second mortgage lender clients, and my own practice, I really want that first real "on-point" case to rule in favour of that second mortgage lender who has provided reasonable notice.

#### **E. GST and Priority Concerns**

Deemed trusts are increasingly becoming a concern for lenders, particularly those private lenders who do not have the time or resources to perform comprehensive due diligence. Deemed trusts result from unpaid income tax, Canada Pension Plan contributions and employment insurance

#### 4.1.7

premiums. If an individual or their employer does not remit these monies to the Receiver General, the individual becomes a tax debtor.

The *Income Tax Act*, *Excise Tax Act*, *Employment Insurance Act* and the *Canada Pension Plan Act* all contain sections that deem the tax debtor's property, as well as any proceeds therefrom, are held in trust for the Crown up to the value of the tax debt. Pursuant to the deemed trust, the property of the tax debtor is considered to be beneficially owned by the Crown regardless of any registered security interests. This includes the proceeds of the sale of real property.

The concern for lenders as a whole is that the lender has no ability to perform any due diligence to determine if there is a deemed trust or what the amount of the deemed trust is without authorization from the borrower. Even with the authorization in hand, it can take weeks to obtain the information from the CRA, a length of time that lenders typically do not have.

So in light of the time crunch in getting tax information prior to funding a mortgage, I now have lenders who attempt to get this confirmation after funding but prior to discharging their mortgage. I have been requested to insert clauses in the Schedule E such as this:

##### **Condition of Discharge:**

As a condition of discharge of this mortgage and all related loan security documents, and in addition to full payment of all costs due and owing to the Lender including principal and interest, interest on interest, protective disbursements and all costs and other amounts, as provided for under this Mortgage, the Borrower will provide the Lender with current and up to date clearance letter from:

- i. Canada Revenue Agency, Income Tax Act (deemed statutory trusts) section 227(4) (payroll deductions);
- ii. Excise Tax Act (G.S.T.) collected under Section 222(1);  
and
- iii. Employment Standards Act, RSBC 1996.

Such clearance letter must be in form acceptable to Lender and dated not more than thirty (30) days before the date that the Mortgage is repaid in full. This clearance letter process can take a considerable time to obtain and, accordingly, the Borrower is advised to make arrangements for obtaining this clearance letter as soon as possible in advance of the anticipated repayment and discharge of this Mortgage.

**PRACTICAL TAKE AWAY:** While I see the intent behind this clause, and have inserted it in some of my mortgages, I have received serious push back from borrower's counsel on occasion and it puts the lender's lawyer in the awkward spot of trying to explain this issue to a private lender.

**III. Appendix I**

**VIA FACSIMILE:**

Month \_\_\_\_\_, 2017

File No.:

**BANK**

Attention: Manager / Mortgage Administration

Dear Sirs/Mesdames:

**A.**

**Re:   Mortgagor:                   Name**  
**Mortgaged Property: Address, British Columbia**  
**Legal Description:    PID:**  
**Land Title Office Mortgage Registration Number:**

---

On behalf of our client, Lender, we hereby provide you with notice that a second mortgage in the amount of \$\_\_\_\_\_ granted by the above Mortgagor will be filed electronically for registration in favour of Lender in the Land Title Office (the "Second Mortgage") on the above Property.

In order for our client to confirm that you have received this notice, confirm all amounts secured by your mortgage and in order for our client to complete its due diligence for funding the Second Mortgage, please complete and fax back to us the following information with respect to your mortgage registered against the Property under your Mortgage having registration number \_\_\_\_\_ ("Your Mortgage"):

- (a) confirmation that Your Mortgage is current and in good standing:    Y \_\_\_\_ N \_\_\_\_;
- (b) the total amount of arrears, if any: \$ \_\_\_\_\_;
- (c) the balance of all amounts outstanding and secured by Your Mortgage: \$ \_\_\_\_\_  
\_\_\_\_\_; OR, the balance outstanding after payment of any arrears by our office: \$ \_\_\_\_\_  
\_\_\_\_\_;
- (d) are property taxes paid by your mortgage:    Y        N        (please circle one); and
- (e) all amounts, if any, that you are REQUIRED to further advance beyond the amount set out at (c) above to the Mortgagor(s) and/or that is secured by Your Mortgage: \$ \_\_\_\_\_  
\_\_\_\_\_; OR, \_\_\_\_\_ (please check, if applicable), further advances under Your Mortgage are permitted at your discretion and you are not required to make any further advances above and beyond those amounts already advanced by you.

4.1.9

We enclose a copy of Your Mortgage and the Mortgagor's authorization to provide us with above information.

Please note that we are relying on the above information for the purposes of funding the Second Mortgage and ensuring that our client can avail itself to all its' rights and remedies as a mortgage lender. Also, where your office responds by way of your own standard form of information statement, we still request and require that you advise us, without exceptions, if there are any other amounts that make up the total of all amounts secured and to be secured by Your Mortgage.

Yours very truly,

Please complete, or stamp with bank stamp: NAME: _____ Branch No: _____ Phone No: _____
--

**VIA FACSIMILE:**

**ORIGINAL VIA MAIL & COURIER**

Month \_\_\_\_\_, 2017

File No.:

**BANK**

Attention: Manager / Mortgage Administration

Dear Sirs/Mesdames:

**B.**

**Re:   Mortgagor:                   Name**  
**Mortgaged Property: Address, British Columbia**  
**LTO Mortgage Registration Number:**

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On behalf of our client, Lender, we hereby provide you with notice that a new mortgage in the principal amount of \$ \_\_\_\_\_ was granted by the above Mortgagor and filed for registration on Month \_\_\_\_\_, 2017 in favour of Lender (“\_\_\_\_\_”) under registration number CA \_\_\_\_\_ (the “Second Mortgage”). We note Bank (“BANK”) is the registered owner of a mortgage number CA \_\_\_\_\_ filed against the property with a stated Principal Amount of \$ \_\_\_\_\_ (“Your Mortgage”).

Prior to advancing funds under the Second Mortgage specified in paragraph 1 below, BANK responded to our Notice Letter and confirmed to our office in writing that the total amount owing under Your Mortgage as at Month \_\_\_\_\_, 2017 is \$ \_\_\_\_\_.

**NOTICE IS HEREBY GIVEN BY SECOND MORTGAGEE TO BANK:**

1. The new mortgage was filed for registration in favour of Lender in the Land Title Office on Month \_\_\_\_\_, 2017 under registration number CA \_\_\_\_\_ (the “Second Mortgage”), a copy of which is attached for your reference.
2. That the Balance Due Date of the Second Mortgage is Month \_\_\_\_\_, 2017.
3. That relying on the confirmation of the total amount owing under Your Mortgage as at the registration date as set out above, the Principal Amount of \$ \_\_\_\_\_ was fully advanced under the Second Mortgage on or about Month \_\_\_\_\_, 2017.
4. That in the circumstances, the Second Mortgage shall at all times hereafter, while registered on Title, rank in priority over Your Mortgage for any amount(s) owing under Your Mortgage, for any purposes whatsoever, in excess of \$ \_\_\_\_\_ unless the prior written consent of Lender or its assignee is obtained for such excess amount(s).

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We enclose for your reference a copy of the Borrower's Irrevocable and Unconditional Direction to not re-advance to the Borrower.

Without limiting anything set out in this notice letter to you, this notice is intended to provide you with notice from the subsequent mortgage holder, Lender, or its assignee, in accordance with Section 28(2) of the Property Law Act [RSBC 1996] Chapter 377.

Yours truly,

**VIA FACSIMILE:**

**ORIGINAL VIA MAIL & COURIER**

Month \_\_\_\_\_, 2017

File No.: 00000

**TO:            BANK**  
                  C.  
                  D.    Attention: Manager and Mortgage Administration

**FROM:           LENDER**

Dear Sirs/Mesdames:

**Re:   Mortgagor:           Name**  
          **Mortgaged Property: Address, British Columbia**  
          **LTO Mortgage Registration Number:**

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Lender hereby provides you with notice that a new mortgage in the principal amount of \$\_\_\_\_\_ was granted by the above Mortgagor and filed for registration on Month \_\_\_\_\_, 2017 in favour of Lender (“Second”) under registration number CA\_\_\_\_\_ (the “Second Mortgage”). Bank (“BANK”) is the registered owner of a mortgage number CA\_\_\_\_\_ filed against the property with a stated Principal Amount of \$\_\_\_\_\_ (“Your Mortgage”).

Prior to advancing funds under the Second Mortgage specified in paragraph 1 below, BANK responded to a Notice Letter from FIRM and confirmed to their office in writing that the total amount owing under Your Mortgage as at Month \_\_\_\_\_, 2017 is \$\_\_\_\_\_.

**NOTICE IS HEREBY GIVEN BY SECOND MORTGAGEE TO BANK:**

1. The new mortgage was filed for registration in favour of Lender in the Land Title Office on Month \_\_\_\_\_, 2017 under registration number CA\_\_\_\_\_ (the “Second Mortgage”), a copy of which is attached for your reference.
2. That relying on the confirmation of the total amount owing under Your Mortgage as at the registration date as set out above, the Principal Amount of \$\_\_\_\_\_ was fully advanced under the Second Mortgage on or about Month \_\_\_\_\_, 2017.
3. That in the circumstances, the Second Mortgage shall at all times hereafter, while registered on Title, rank in priority over Your Mortgage for any amount(s) owing under Your Mortgage, for any purposes whatsoever, in excess of \$\_\_\_\_\_ unless the prior written consent of Lender or its assignee is obtained for such excess amount(s).

#### 4.1.13

Without limiting anything set out in this notice letter to you, this notice is intended to provide you with notice from Lender, or its assignee as the subsequent mortgage holder, in accordance with Section 28(2) of the Property Law Act [RSBC 1996] Chapter 377.