

Residential and Commercial Real Estate Practice Standard

Effective 11 April, 2005

At the Spring Term Convocation Benchers formally confirmed and adopted for the Law Society the practice standard earlier provided to members. The standard was adopted concerning residential and commercial real estate practice. The standard is repeated below. Where appropriate to the transaction, members should read singular or plural into the standard.

- On a transaction where title is encumbered by one or more mortgages, or by any other form of realty security and which requires full or partial release for closing, the vendor's solicitor shall provide the purchaser's solicitor with a discharge/payout statement from each of the lenders and which provides the sum requested to obtain a full or partial release of the security.

- The purchaser's solicitor shall deliver to the vendor's solicitor a trust cheque or bank draft in favour of the mortgagee or security holder in an amount sufficient for discharge as per the payout statement from the mortgagee or security holder, and a cheque payable to the vendor's solicitor or firm in trust for the balance of the monies payable under the transaction. The vendor's solicitor shall undertake: (1) to remit the discharge payout to the mortgagee or security holder, and (2) to obtain a release of mortgage, for deposit with the purchaser's solicitor.

This practice standard requires:

- The provision of a discharge statement from the vendor's lending institution to the purchaser's solicitor prior to closing

- The issuance directly from the purchaser's solicitors trust account to the vendor's lending institution an amount sufficient to liquidate the payout. The amount shall be tendered to the vendor's solicitor

- The obtaining of written permission from the vendor to release the discharge statement to the purchaser's solicitor

- The obtaining of an undertaking from the vendor's solicitor to submit the funds to the lender and to obtain a release of the discharge.

This standard shall be acted upon in the normal course of a closing. It will not address all situations that may arise. Situations may arise where either a discharge statement is not obtainable (ie old mortgages that appear to have been paid out years earlier but no release has been filed and no discharge statement or release is available in time for the closing). In all other respects, this practice standard shall govern real estate transactions.

April 11, 2005