



**ADDITIONAL INSTRUCTIONS TO LAWYER  
LEASEHOLD MORTGAGES ON INDIAN LANDS  
(all provinces and territories except Quebec)  
Residential Mortgages**

These instructions apply to leasehold mortgages on Indian lands and supplement the Mortgagee's Standard Instructions to Lawyer. For the purpose of these Additional Instructions, the term "Indian lands" means lands that are located on a reserve within the meaning of the *Indian Act*, R.S.C. 1985, c.i.5, as amended, lands for which a land code has been adopted pursuant to the *First Nations Land Management Act*, S.C. 1999 c.24, as amended, and lands of self-governing First Nations.

Please act on the Mortgagee's behalf in this matter to ensure that the Mortgage is prepared in accordance with these instructions, the Mortgagee's Standard Instructions to Lawyer and the Approval of Mortgage and Cost of Borrowing Disclosure Statement. You are to assume sole responsibility for the accuracy and validity of all documents and the preparation and registration of these documents as required by law, including, confirming the identity of the Mortgagor(s) and the Covenantor(s)/Guarantor(s), investigating title and performing all searches relating to property on Indian lands to ensure that there are no rights or other claims having priority over the Mortgage or otherwise affecting its validity.

**The Mortgagee will not review nor approve any draft or final documents. In the event the documents are not prepared in accordance with these Additional Instructions and the Mortgagee's Standard Instructions to Lawyer, or in the event the Mortgage is not a first mortgage and as a result the Mortgagee suffers a loss, the Mortgagee will seek to recover any such loss from you.**

**1. LEASEHOLD MORTGAGE**

As the home is located on Indian lands, the Borrower(s) will grant a leasehold Mortgage. The Mortgagee's mortgages contain leasehold provisions. Obtain a copy of and review the lease to confirm that (i) it complies with all applicable legislation including landlord and tenant legislation; and (ii) the remaining term of the lease exceeds the amortization period of the Mortgage by at least 5 years. You must also advise the Mortgagee of the amount of the rental payments. Obtain all necessary consents of the landlord and its acknowledgment that the lease is in good standing.

Where the Borrower is the lessee under a sublease, references to "lease" and to "landlord" in these Instructions include the sublease and the landlord under the sublease, respectively.

Review the terms of the ground lease and all subleases and ensure:

- (i) the lease is subsisting and not void for uncertainty;
- (ii) the borrower's interest in the lease can be mortgaged;
- (iii) the term of the lease, excluding any renewal period, is at least 5 years more than the amortization period of the Mortgage;
- (iv) the rent is fully prepaid, or if not fully prepaid, advise us in your Report on Title of the amount of rental payments. You must also advise if the rental payments are up to date;
- (v) the use restrictions or residency requirements do not prohibit the Borrower from using the premises for the Borrower's intended purposes; and
- (vi) the lease does not contain extraordinary circumstances under which it may be terminated.

Ensure the Mortgagee has the following covenants or assurances from the landlord, either in the lease or a tripartite agreement signed by the landlord, tenant (Borrower), and Mortgagee:

- (i) the consent of the landlord and of the Minister of Indian Affairs/Band/Band Council to the mortgage of the lease, as required, including a statement that in the event of default under the Mortgage it will allow an assignment of the sub-lease and enforcement of the Mortgage in accordance with its terms;
- (ii) the lease has not been modified or if it has, the terms of the modification;
- (iii) rent and other charges payable are up to date and there are no defaults under the lease;
- (iv) the landlord's covenant that it will not accept surrender of the lease or agree to modifications which affect the Mortgagee's interest without its consent;
- (v) the Mortgagee's right to notice of defaults and to cure defaults;
- (vi) the Mortgagee's right to notice of and to participate in arbitration pursuant to the lease;
- (vii) the Mortgagee's right to dispose of the leasehold interest on realization (with the consent of the landlord/Minister of Indian Affairs/Band/Band Council, as required, not to be unreasonably withheld); and
- (viii) any other provisions you deem necessary or appropriate.

If any of the foregoing terms are not included in the lease or the tripartite agreement or if there are additional terms in either the lease or the tripartite agreement which are detrimental to the Mortgagee's interest, you should advise the Mortgagee of the legal implications and obtain its approval.

Please obtain all necessary authorizations to ensure the Mortgagee has access to the mortgaged property.

### **Mortgaged Property Located in B.C., Alberta, Manitoba, Ontario or New Brunswick:**

The Standard Mortgage Terms filed by Royal Bank of Canada are available at [www.rbcroyalbank.com/legalforms](http://www.rbcroyalbank.com/legalforms). Please use the Standard Mortgage Terms for the province in which the mortgaged property is located. These Standard Mortgage Terms are to be used even if the Mortgagee is Royal Trust Corporation of Canada or The Royal Trust Company and even if you determine that the Mortgage need not be registered in the provincial land titles system. You are responsible for downloading the applicable Standard Mortgage Terms, preparing them in a form acceptable for registration at the applicable registry, registering them at the appropriate registry/registries, and providing them to the Borrower(s) and Guarantor(s). To assist you in identifying the applicable Standard Mortgage Terms, please refer to the Mortgagee's Standard Instructions to Lawyer to determine whether the Mortgage has a fixed, variable or RateCapper® rate of interest. Please also refer to the Mortgagee's Standard Instructions to Lawyer for the terms applicable to the Mortgage.

You are responsible for preparing a mortgage cover sheet that will accompany the applicable standard charge terms. If the applicable registry will not accept a mortgage consisting of a cover page and standard charge terms annexed thereto, please adapt the standard charge terms to a form that is acceptable for registration.

### **Mortgaged Property Located in Yukon, N.W.T., Nunavut, Saskatchewan, Newfoundland and Labrador and P.E.I.:**

The Mortgagee's forms of mortgage are available at [www.rbcroyalbank.com/legalforms](http://www.rbcroyalbank.com/legalforms). You are responsible for downloading the applicable mortgage, preparing it in a form acceptable for registration at the applicable registry, registering it at the appropriate registry/registries and providing it to the Borrower(s) and Guarantor(s). To assist you in identifying the applicable mortgage, please refer to the Mortgagee's Standard Instructions to Lawyer to determine whether the mortgage has a fixed, variable or *RateCapper* rate of interest. Please also refer to the Mortgagee's Standard Instructions to Lawyer for the terms applicable to the Mortgage.

## **2. ADDITIONAL OR MODIFIED MORTGAGE TERMS:**

No additions or modifications are permitted to the Mortgage that you will find on the Mortgagee's legal forms web site, except as expressly permitted by the Mortgagee.

The following additions or modifications are expressly permitted by the Mortgagee:

- (a) Where the Mortgage refers to a form prescribed by provincial land titles/land registry legislation or regulations, such reference(s) may be removed provided you are satisfied that reference to such form is not required.
- (b) Please insert a description of the tenure and method of acquisition by the Borrower, including a reference to the headlease and the sublease, as applicable.
- (c) The charging and leasehold provisions should be adapted as necessary to ensure the Mortgage charges the leasehold interest of the Mortgagor, and includes references to a headlease and sublease where applicable.
- (d) For properties located in B.C., Alberta, Manitoba, Ontario and New Brunswick – adaptation of standard charge terms as described in section 1 above.

## **3. TITLE INSURANCE**

The Mortgagee requires a title insurance policy naming it as insured and issued by an insurance company approved by it to provide title insurance in lieu of a survey and a solicitor's opinion. Currently the only insurer approved by the Mortgagee for Indian lands is FCT Insurance Company Ltd (carrying on business under the name First Canadian Title). Borrower is responsible for cost of the title insurance.

## **4. ADDITIONAL INFORMATION**

- (a) The only permitted encumbrances are the lease and sub-lease.
- (b) A copy of the Mortgage (including the Standard Mortgage Terms, where applicable) is also to be given to each Covenantor/Guarantor, if applicable. In B.C., ensure each Covenantor(s)/Guarantor(s) signs completed Guarantor's Indemnity and Acknowledgement (Form 3963) with a wafer seal affixed to each signature line prior to signing. You are expressly permitted to modify Form 3963 as required to properly identify the Mortgage. The Mortgagee's form of Guarantor's Indemnity and Acknowledgement is available at [www.rbcroyalbank.com/legalforms](http://www.rbcroyalbank.com/legalforms).