

CONTINUING LEGAL EDUCATION

BUYING PERSONAL PROPERTY IN A RESIDENTIAL REAL ESTATE TRANSACTION

THURSDAY, JANUARY 20, 1994

INTRODUCTION

When asked to make this presentation on personal property in real estate transactions, it was indicated to me that my comments should be directed toward the usual transactions encountered by practitioners on a day-to-day basis. My presentation is, therefore, limited in scope to the problems and concerns one might encounter in acting for the purchaser of a single family residence or a two or three unit apartment building. I have intentionally excluded matters relating to debentures and large commercial transactions. However, should anyone wish to discuss issues that are not covered in this presentation, I would be more than happy to answer your questions at the end of this presentation or you may feel free to contact me at my office.

THE AGREEMENT

If you are fortunate enough to be asked by your client to draft the agreement of purchase and sale or to review it prior to its execution (which seems to happen less and less these days) the following points should be considered if personal property such as appliances are to be included in the transaction:

(a) Which Fridges and Stoves?

Often you will find in agent-prepared agreements language to the effect that the purchase price is to include 'four fridges and four stoves'. My question in instances where this occurs is which four fridges and stoves? Are they the ones your client viewed or are they any units which the vendor might care to throw into the building prior to closing?

While there are usually numerous arguments upon which a court can make a finding that the chattels to be included are the ones that your client viewed, I think that it is better to avoid the possibility for any dispute by simply including language to the effect that it is the fridges and stoves situate at the property at the time of the viewing which are to be included in the transaction. Better yet, if time allows, you may be able to identify the chattels by make, model and serial number which will not only give you a definitive description but will also give you valuable information when it comes time to conducting searches prior to closing.

(b) **How Are The Chattels To Be Conveyed?**

The standard form of agreement of purchase and sale approved by most real estate boards makes no provision for the conveyance of chattels. The agreement does not provide for the delivery of a bill of sale (whether with or without warranty) nor does it provide that the chattels are to be conveyed free from encumbrances. I would, therefore, suggest that it is imperative that a provision to the following effect be included in any agreement of purchase and sale dealing with chattels:

The conveyance of the personal property which is the subject of this agreement shall be by bill of sale absolute containing a warranty by the vendor that the vendor has good title to the personal property, which bill of sale shall be drawn at the expense of the vendor and is to be delivered on payment of the purchase price on the closing date. The said personal property is to be conveyed free from all encumbrances except as to any encumbrances specified in this agreement.

(c) **Are You Entitled To Search Title To The Chattels And To Raise Objections To The Vendors Title?**

If you examine the title search provisions set forth in the standard form of agreement of purchase and sale used by most real estate boards, you will find that that provision relates solely to a search of and raising objections only in respect of the title to real property. No mention is made of chattels at all.

While it seems to have been the practice of Nova Scotia lawyers to loosely interpret that provision as entitling the purchaser to a description of chattels and the right to conduct searches and raise objections to title, you are much better off relying on clear language in the agreement than on convention. I would therefore suggest that it would be prudent to include in the agreement a provision to the following effect:

The vendor is to furnish the purchaser with a description of the personal property which is the subject of this agreement, after receipt whereof the purchaser is allowed ___ days to investigate the title to the said personal property, which he shall do at his own expense. If within that time any valid objection to title is made in writing to the vendor, which the vendor is unable or unwilling to remove, and which the purchaser will not waive, this agreement shall be null and void and the deposit herein shall be returned to the purchaser, without interest, and without liability by the vendor for any expenses incurred or damages sustained by the purchaser.

(d) **In What Working Order Are The Chattels To Be At The Time Of Closing?**

While it seems somewhat trite to think that if your client examined a working appliance and made an offer based upon that examination that he or she would later be forced to accept a non-working appliance, what happens in instances where your client has failed to make any examination at all prior to submitting the offer and the appliance was not and has not been functioning for sometime? While representations may have been made by the vendor in a listing cut or during a viewing that might be supportive of the view that your client was entitled to assume that the appliance was in working order, I think that it is best to 'flesh' this issue out at the time the offer is made. Your client will then be in a position to adjust the purchase price accordingly. I would therefore recommend the insertion of a clause in every agreement stating that the chattels must be in good working order at the time of closing.

SEARCHES

(a) **Preliminary Information:**

Prior to commencing any searches, there is certain information which is useful to obtain at the outset which will make your task much easier and less time consuming. This information includes:

- (i) The full name or names of the individual vendors. Is the vendor's name John J. Smith or John A. Smith? Having this information will enable you to be more efficient in conducting your searches in that you will not have to then examine documents indexed under the name John A. Smith when the vendor is John J. Smith. Additionally, it avoids the raising of an unnecessary multitude of objections to title.
- (ii) If the vendor is a corporate vendor, a company search should be conducted prior to attending at the Registry of Deeds. It may be that the corporate vendor has changed its name within the six year chattel search period and that you will therefore have to conduct your search partially under one corporate name and partially under the altered corporate name. This information will save you a second trip to the Registry of Deeds.
- (iii) You should obtain an accurate description of the chattels being acquired. Specifically, you should obtain the make, model and serial number of each chattel. This is not only the information which you are going to require if your client's lender is taking security on the chattels but is also information which is useful if it turns out that the vendor owns a number of properties and there are consequently numerous outstanding chattel encumbrances. Knowing the specifics of the purchased chattels at the beginning may save you a lot of headaches when abstracting documents and raising objections to title.

- (iv) You should ask your client if he or she has been made aware of any encumbrances which affect the chattels. If your client was informed, for example, that the chattels are subject to a chattel mortgage in favour of the Royal Bank which will be paid out at the time of closing and your client does not convey that information to you, a problem may occur if the chattel mortgage is unregistered. Section 3 of the *Bills of Sale Act* provides that an unregistered chattel mortgage is void only as against '... subsequent purchasers claiming from or under the [vendor] in good faith, for valuable consideration and without notice, whose conveyance ... is validly registered or is valid without registration'. Therefore, if the stated situation occurs, your client will unfortunately not be able to avail himself of this section of the *Act* as against the Bank because of his prior knowledge. His only recourse if the Bank comes looking for its chattels may be as against an impecunious or bankrupt vendor. Similar logic applies in relation to unregistered conditional sale contracts [cs-s3(1) of the *Conditional Sales Act*]. It is therefore prudent to make the inquiry of your client up front.

(b) **The Searches:**

As you are aware, it is not possible in Nova Scotia to actually search and verify title to personal property. At best all that you can do is conduct searches and inquiries aimed at determining whether there are any outstanding encumbrances, registered or unregistered, as against the chattels being purchased. In the case of registered encumbrances the following searches are appropriate:

(i) **Individual Vendors:**

A search of the indices maintained pursuant to the *Bills of Sale Act* and the *Conditional Sales Act* in the registration district in which the purchased chattels are situate.

(ii) **Corporate Vendors:**

A search of the indices maintained pursuant to the *Bills of Sale Act* and *Conditional Sales Act* in the registration district in which the purchased chattels are situate.

A search of the indices maintained pursuant to the *Corporations Securities Registration Act* in the office of the Registrar of Joint Stock Companies at Halifax.

In the case of unregistered encumbrances, the following searches may be appropriate:

(i) Individual Vendors:

In all situations involving individual vendors, it is prudent to obtain a clearance certificate from the sheriff in the registration district where the goods are located with respect to any execution orders in his hands. It is arguable in the Province of Nova Scotia that a Writ of Execution binds the goods of an execution debtor at the moment the Writ of Execution is delivered to the sheriff to be executed. See Dunlop, Creditor-Debtor Law in Canada at p.146-7.

Additionally, if you are aware that the individual vendor operates a business as a sole proprietorship you ought to be conducting searches in respect of certain statutory liens. For example, if you are aware that the individual owns a number of apartment buildings and employs persons in their management, you ought to obtain current certificates from each of the Workers' Compensation Board and the Director of Labour Standards. The statutory liens which each of these administrative bodies possess attach to the assets of business operators who, in the case of the *Workers' Compensation Act*, are in arrears in payment of remittances and, in the case of the Labour Standards Code, have unpaid employees who have filed complaints. These liens would arguably follow the purchased chattels into the hands of your client.

(ii) Corporate Vendors:

There are a number of statutory liens which may attach to the assets of a corporate vendor. The parties from whom clearance certificates should normally be obtained in the case of an operating business are as follows:

- (a) the Workers' Compensation Board in respect unremitted amounts;
- (b) the Director of Labour Standards in respect of outstanding complaints;
- (c) the Sheriff in respect of outstanding executions;

- (d) the Provincial Tax Commissioner in respect of outstanding Health Services Tax;
- (e) Revenue Canada in respect of unremitted source deductions pursuant to any of the *Income Tax Act*, the *Unemployment Insurance Act* and the *Canada Pension Plan*; and
- (f) Revenue Canada in respect of unremitted goods and services tax.

I have attached in the appendix to this paper addresses to which your requests for certificates can be directed in the case of certain of these statutory lien claimants. You should be aware that in order to obtain a clearance certificate in respect of health services tax, employee source deductions and goods and services tax, you must submit with your request a letter of authorization signed by the corporate vendor. Additionally, in the case of Revenue Canada you must include in your request for a current certificate in respect of source deductions the employer account number and the corporation account number.

My comments above in respect of execution orders in the hands of the sheriff apply equally to corporate vendors.

A further statutory lien claimant that may surface depending upon the nature of your transaction is a municipality in respect of unpaid business occupancy taxes. If you are involved in the purchase of a building and you are aware that the vendor has its office in that building, an inquiry in respect of outstanding business occupancy taxes may be appropriate. If you wish to know about business occupancy taxes, you must expressly request that information. Business occupancy taxes will not normally be disclosed in the usual real property tax certificate.

Having stated all of the foregoing, all of these searches and inquiries in respect of potential statutory liens seem to represent an undue amount of labour in circumstances where your client is buying a \$300.00 appliance. There are a couple of practical ways to deal with such a situation. Firstly, you might consider inserting a provision in the

agreement of purchase and sale to the effect that the vendor will deliver on closing a warranty and indemnity in respect of specified statutory liens. In the case of a corporate vendor, the warranty and indemnity should, if possible, be executed by the principal of the corporate vendor. You should obtain the approval of your client prior to seeking such an indemnity and explain to your client that the indemnity is only as good as the worth of the party executing it.

A second solution to the statutory lien dilemma in the case of a low dollar value transaction is for you to discuss with your client the potential for the existence of statutory liens and have your client expressly waive in writing the requirement that you conduct searches in respect of them. It should be noted that neither of the foregoing shortcuts would be satisfactory if you are being asked by a lender to take security on the chattels on its behalf. Lenders will want you to certify in no uncertain terms the priority of their charge over the assets.

TAKING SECURITY

In circumstances where you are acting in connection with the purchase of an apartment building and chattels are included in the purchase price, you will normally be asked by your client's lender to take security over the chattels. In nearly all instances, the type of security that you will be dealing with is a chattel mortgage. It is very rare to be asked to take a conditional sale contract on the lender's behalf. Normally conditional sale contracts are only employed where the chattels being purchased are new and, in such circumstances, the lender normally has the security executed in its office and attends to its own registrations. Also, as stated at the outset of this paper, it is not my intention to address issues relating to debenture security. I, therefore, intend only to address in this section only some pertinent issues relating to chattel mortgage security.

(a) **Searches:**

In order to be in a position to deliver an opinion to the lender in relation to its chattel mortgage, you need to conduct the same searches and inquiries in respect of the purchaser that you conducted in the case of the vendor.

(b) **Preparation of Documentation:**

In most instances, the lender will provide you with its own chattel mortgage documentation. In certain circumstances, however, you will have to prepare a chattel mortgage. I have attached in the appendix to this paper a sample form of chattel mortgage.

When completing chattel mortgage documentation, aside from being certain that you properly identify the parties to the chattel mortgage, you should be cognizant of the following:

- (i) The goods must be described with sufficient particularity so that they can be readily distinguished and identified (Section 5 of the *Bills of Sale Act*). In this respect, it would be the usual practice to list the chattels by make, model and serial number. Particular care should be paid to the serial numbers and other matters of description as there are numerous instances where chattel mortgages have been declared void due to insufficient descriptions or incorrect serial numbers.
- (ii) In instances where the chattel mortgage is being executed by an individual be certain that you attach an affidavit of execution in compliance with Section 7 of the *Bills of Sale Act*.
- (iii) Particular care needs to be taken in respect of the form of affidavit of bona fides which you attach to the document. In this respect, you need to ask yourself what type of advance the chattel mortgage is being taken to secure.

In instances where the chattel mortgage is being taken to secure a past advance or a present advance, the affidavit of bona fides must be in compliance with Section 9 of the *Act*. In the chattel mortgage attached to this paper, there appears an affidavit of bona fides in circumstances where the chattel mortgage is being taken to secure a present advance or an advance that is taking place at the time the chattel mortgage is being granted.

If the advance in question is a past advance, you need simply amend the language in the second paragraph of the sample affidavit from '... a present advance made by the Mortgagee to the Mortgagor' to '... is justly due or accruing due from the Mortgagor to the Mortgagee.'

In circumstances where the chattel mortgage is being taken to secure future advances, you may encounter a practical problem. Section 8 of the *Bills of Sale Act* provides that such an affidavit must state that the chattel mortgage is being taken to secure repayment of advances to be made by the Mortgagee to the Mortgagor under an agreement therefor and, among other matters, it must set forth the terms or substance of the agreement entered into between the parties in respect of the advances. It is the latter requirement to which either of the borrower or lender will normally object. Many parties do not want the terms of their lending agreement filed in a public registry. As well, the document becomes somewhat cumbersome. In any event, you will not encounter this situation very often and I simply mention it to bring to your attention the fact that you need to be careful that you prepare the appropriate affidavit of bona fides.

(c) **Registration of Security:**

Once the chattel mortgage is executed, it must be registered with the appropriate affidavits within thirty days from its date of execution in the office of the registrar of deeds for the registration district in which the chattels are situate at the date of

execution (Subsection 6(1)). The registration of a chattel mortgage is valid for a period of six years from the date of the original registration unless a renewal statement as required by Section 11 of the *Bills of Sale Act* is filed within that time. You should make the lender aware of this fact at the time you deliver the chattel mortgage document. The renewal registration expires after a further six years.

(d) **Omission To Register or Discovery of Other Mistakes:**

Should you fail to register a chattel mortgage within the prescribed time limit or discover a mistake in the document after registration, you may make an application to the Supreme Court to have the document late registered or the mistake rectified pursuant to the provisions of Section 25 of the *Bills of Sale Act*. The order may be granted in the discretion of the court if it is satisfied that the failure to register or the mistake was accidental or due to inadvertence or impossibility or other sufficient cause. A copy of the order for late filing or rectification must be filed together with a copy of the bill of sale or the amended bill of sale, as the case may be.

The late filing or rectification filing is made subject to the rights of other persons accrued by reason of the failure to file or by reason of the error contained in the original document. By virtue of Section 3 of the *Act*, the parties that may acquire prior rights by reason of the failure to file in a timely manner or by reason of the error contained in the document are creditors and subsequent purchasers or mortgagees claiming from or under the mortgagor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered or are valid without registration. Thus, it is imperative that you conduct subsearches in circumstances where you are making such a filing pursuant to court order. Should you discover an intervening chattel mortgage, you should immediately proceed to obtain a postponement agreement from the holder of that chattel mortgage. As well, if the mortgagor is a corporation, you should ensure that there are no debentures outstanding in the name of the mortgagor. If there are, a postponement agreement should be pursued.

OPINIONS

You should be cognizant of the fact when delivering opinions that it is not possible in Nova Scotia for you to render an unqualified opinion in respect of your client's title to the chattels being charged by the chattel mortgage. At best, you can state that you conducted a number of usual searches and inquiries in respect of the mortgagor and that you found no outstanding registrations in respect of the mortgagor or its assets. A sample form of opinion letter for use in the case of a corporate mortgagor is attached in the appendix to this letter.

ADDRESSES FOR CLEARANCE CERTIFICATES

Director of Labour Standards
Department of Labour
P.O. Box 697
5151 Terminal Road, 7th Floor
Halifax, Nova Scotia
B3J 2T8

Mr. Eric Lavers, C.G.A.
Provincial Tax Commissioner
Health Services Tax Commission
P.O. Box 755
1723 Hollis Street
Halifax, Nova Scotia
B3J 1V9

Revenue Canada Taxation
Collections Department - Source Deductions
Sir John Thompson Building
1257 Barrington Street
P.O. Box 638
Halifax, Nova Scotia
B3J 2T5

Revenue Canada Excise
Collections Department - GST
P.O. Box 2900
2695 Dutch Village Road
CCL Building, 3rd Floor
Halifax, Nova Scotia
B3K 5Z3

Workers' Compensation Board of Nova Scotia
P.O. Box 1150
5668 South Street
Halifax, Nova Scotia
B3J 2Y2

CHATTEL MORTGAGE

THIS INDENTURE made in duplicate this ____ day of _____, 19__.

BETWEEN:

_____, both of Halifax, in the County of Halifax,
Province of Nova Scotia

(hereinafter called the "Mortgagor")

of the FIRST PART

- and -

_____ a body corporate, organized and existing under
the laws of Canada, with head office at Montreal, in the Province of Quebec and
a branch office at Halifax, in the Province of Nova Scotia

(hereinafter called the "Mortgagee")

of the SECOND PART

WHEREAS the Mortgagor is indebted to the Mortgagee in the sum of _____
_____(\$ _____) pursuant to the terms of a mortgage bearing even date herewith
(the "Mortgage") over lands and premises at _____, Halifax, Nova Scotia.

AND WHEREAS the Mortgagee has requested from the Mortgagor additional security
for the amount of the aforesaid indebtedness and the Mortgagor has executed and delivered
this mortgage as such security the same to be held as collateral to any other security held by
the Mortgagee for such indebtedness.

NOW THEREFORE THIS INDENTURE WITNESSETH that the Mortgagor in
consideration of the premises and other good and valuable consideration, the receipt and
sufficiency whereof is hereby acknowledged, by these presents does grant bargain sell and
assign unto the Mortgagee all and singular the goods and chattels mentioned and/or described
in the Schedule hereto all of which said goods and chattels are now the property of the
Mortgagor and are now ordinarily lying and being in upon or about the premises mentioned
in the said Schedule and also any and all goods and chattels hereafter acquired by the
Mortgagor by purchase or otherwise, whether in addition to or in substitution for all or any
of the said goods and chattels hereinbefore referred to and which may be brought upon the
said premises or upon any other premises to which the Mortgagor may remove the said goods
and chattels or any of them until the indebtedness of the Mortgagor as herein stated is fully
paid and satisfied.

TO HAVE AND TO HOLD all and singular the said goods and chattels unto the Mortgagee its successors and assigns to and for its and their sole and only use forever.

PROVIDED ALWAYS and these presents are upon this express condition that if the Mortgagor does and shall well and truly pay or cause to be paid unto the Mortgagee in lawful money of Canada the full amount of the said indebtedness as and when the same shall become due and payable together with interest on such indebtedness or any part thereof remaining unpaid until such indebtedness is fully paid and satisfied at the rate of interest specified in the Mortgage and together with all moneys expended by the Mortgagee for insurance premiums costs and/or expenses as hereinafter provided, **THEN THESE PRESENTS** and every matter and thing herein contained shall be absolutely null and void.

THE MORTGAGOR does put the Mortgagee in full possession of the said goods and chattels by delivering to it this indenture in the name of all the said goods and chattels at the sealing and delivery hereof.

THE MORTGAGOR DOES HEREBY COVENANT, PROMISE AND AGREE to and with the Mortgagee that:

- (1) Except as noted in the said Schedule the Mortgagor exclusively possesses and owns the said goods and chattels free and clear of all encumbrances and will warrant and defend the said goods and chattels against all persons except the Mortgagee;
- (2) The Mortgagor will pay to the Mortgagee all moneys hereby secured with interest on the same as aforesaid as and when the same shall become due and payable and will do, observe, perform, fulfil and keep all the provisions agreements covenants and stipulations set forth in this mortgage;
- (3) In case default shall be made in payment of the said indebtedness or any part thereof or of the interest thereon or any part thereof or in case the Mortgagor shall be in default under the Mortgage or in case the Mortgagor shall attempt to or shall sell or dispose of or encumber or in any way part with possession of any of the said goods and chattels or remove the same or any part thereof from the lands where they now are without the consent of the Mortgagee to such sale disposal encumbering or removal first had and obtained in writing; or in case the Mortgagor shall suffer allow or permit the same to be seized or taken in execution; or upon the issuing of any writ or writs of execution or attachment against the Mortgagor; or upon the seizure of the said goods and chattels or any of them under any such execution or attachment; or upon the failure to insure or keep insured the said goods and chattels or any of them as hereinafter provided; or upon the abandonment of the said goods and chattels or any of them or any part thereof or upon the Mortgagor making any assignment for the benefit of creditors; or becoming bankrupt or insolvent or taking the benefit of or proceedings under any Act now or hereafter in force for bankrupt or insolvent debtors: and so often as the said events or any of them shall happen then and in any and every such case the full amount of the moneys hereby secured shall at the option of the Mortgagee forthwith become due and payable and it shall be lawful for the Mortgagee

its servants or agents with such other assistant or assistants as may be required at any time during the day or night to enter into and upon the lands tenements houses and premises wheresoever and whatsoever here the said goods and chattels or any part thereof may be and for such persons to break and force open any doors locks bars bolts buildings fastenings hinges gates fences houses enclosures and places for the purpose of taking possession of and removing the said goods and chattels or any part thereof; and upon and from and after the taking possession of such goods and chattels or any part thereof as aforesaid the Mortgagee may subject to any applicable law and it is hereby authorized and empowered at its discretion to sell the said goods and chattels or any of them or any part or parts thereof at any time and from time to time at public auction or by private sale on the premises hereinbefore described or elsewhere and at such time or times and either for cash or credit or part cash and part credit as to the Mortgagee may seem meet; and from and out of the proceeds of such sale in the first place to pay and reimburse itself all moneys secured by virtue of this Indenture and all such reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the goods and chattels including reasonable solicitor's costs and legal expenses as may have been incurred by the Mortgagee in the protection of this security or in consequence of the action default neglect failure or attempt of the Mortgagor as aforesaid or in consequence of such action of the Mortgagee as above mentioned and in the next place to pay unto the Mortgagor as required by any applicable law all such surplus as may then remain; and in the event of a sale on credit or for part cash and part credit the Mortgagee shall not be accountable for or charged with any moneys until actually received notwithstanding that chattels may have been delivered or title given to any purchaser pursuant to such sale and a mortgage or other security accepted from such purchaser as and by way of security for any balance of the purchase price payable with respect thereto and the Mortgagee may buy in or rescind or vary any contract for sale of any of the said chattels and may resell without being answerable for loss occasioned thereby and for any of such purposes may make and execute all agreements and assurances it may think fit;

PROVIDED ALWAYS NEVERTHELESS that it shall not be incumbent upon the Mortgagee to sell and dispose of the said goods and chattels but that in case of default in payment of any moneys hereby secured or of the interest thereon, or in case of any such action, default, neglect or failure or absconding by the Mortgagor as aforesaid or upon the occurrence of any of the events aforesaid or of any default by the Mortgagor hereunder, it shall be lawful for the Mortgagee peaceably to take hold, use, occupy, possess and enjoy the said goods and chattels without the let, molestation, eviction, hindrance or interruption of the Mortgagor or any other person whomsoever; and further that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount owing or secured under these presents at the time of such sale, then the Mortgagor will forthwith pay or cause to be paid to the Mortgagee all such deficiency;

- (4) In the event of the Mortgagee taking possession of the said goods and chattels or any part thereof in accordance with the provisions of these presents the Mortgagee shall have the right to maintain the same upon the said premises or upon the premises on which the goods and chattels may then be situate and for the purpose of such maintaining shall be entitled to the free use and enjoyment of all necessary buildings, premises, housing, shelter, and accommodation for the proper maintaining, housing and

protection of the said goods and chattels and for its servant or servants, assistant or assistants, and the Mortgagor covenants and agrees to provide the same without cost or expense to the Mortgagee until such time as the Mortgagee shall determine in its discretion to remove sell or otherwise dispose of the said goods and chattels so taken possession of by it as aforesaid; and

- (5) **THE MORTGAGOR** will forthwith for the benefit of the Mortgagee insure and during the continuance of this security keep the said goods and chattels insured against loss and damage by fire and such other risks as the Mortgagee may reasonably require to their full insurable value in dollars currency of lawful money of Canada in some insurance company or companies to be approved of by the Mortgagee and will pay all premiums and moneys necessary for such purpose as the same shall become due the loss if any to be payable to the Mortgagee and that the Mortgagor will not do or suffer anything whereby any such policy of insurance may be vitiated and will assign and deliver over unto the Mortgagee at the place where the said indebtedness is payable the policy or policies of insurance, receipt or receipts thereto appertaining; and if the Mortgagor shall neglect to keep the said goods and chattels or any of them insured as aforesaid or pay the said premiums or deliver such receipts then it shall be lawful for the Mortgagee to insure the same as to it may seem expedient and all moneys expended by the Mortgagee with interest at the rate aforesaid computed from the time or times of advancing the same shall be repaid by the Mortgagor to the Mortgagee on demand and in the meantime the amount of such payments shall be added to the said indebtedness and be hereby secured and shall bear interest at the rate aforesaid from the time of such payment; and that evidence of the renewal of such insurance shall be produced to the Mortgagee at the place where the said indebtedness is payable at least three days before the termination thereof or the Mortgagee may provide therefor; and that the Mortgagee may require any insurance to be cancelled and new insurance to be effected in a company or companies to be named by it; and that the Mortgagee shall have a first lien for the mortgage debt upon all insurance on the said chattels whether effected under this covenant or not and shall have the right to require that all moneys received on any insurance be applied to discharge any of the moneys hereby secured whether due or not; and that mortgage clauses in a form approved by the Mortgagee will be attached to all insurance policies; and that forthwith on the happening of any loss or damage by fire the Mortgagor will furnish at his own expense all the necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance moneys; and the Mortgagee may effect insurance without reference to the Mortgagor and charge all premiums paid in respect thereof against the Mortgagor in the manner aforesaid; and that the foregoing covenants and provisions as to insurance shall apply to all goods and chattels whether now or hereafter included in this mortgage.

IT IS AGREED:

- (a) **THAT** each of the said goods and chattels whether severable or not shall stand charged with the whole of the indebtedness hereby secured and that no person shall have any right to require the said indebtedness be apportioned;

- (b) **THAT** if the Mortgagee shall deem it necessary to pay any encumbrance lien or claim against or discharge any security interest in the said goods and chattels or any part thereof or any judgment or execution which may now or hereafter be extant against the Mortgagor, or any taxes duties rates assessments rents principal or interest (hereinbefore referred to) then and in every such case it may do so and any sum or sums of money so paid together with all costs, charges and expenses incurred in connection therewith shall be added to the indebtedness hereby secured and shall bear interest at the rate aforesaid from the day of such payment and shall be repayable with the indebtedness hereby secured or on demand as the Mortgagee may deem expedient and shall be secured by and may be realized from the said goods and chattels;
- (c) **THAT** this mortgage shall stand as a continuing security for the payment of all such indebtedness and of all interest and other moneys secured or intended to be secured hereby and for the due and proper payment thereof and of every part thereof as and when the same shall become payable to the Mortgagee notwithstanding any variation of the terms of the Mortgage, or any agreement or arrangement with the Mortgagee or any extension of time for payment, or any release of part or parts of the lands and premises charged by the Mortgage, or any other security held in respect of the indebtedness;
- (d) **THAT** any and all payments made in respect of such indebtedness and interest and the moneys realized from any securities held therefor (including this mortgage) may be applied on such part or parts of such indebtedness and 'or interest as the Mortgagee may see fit; and the Mortgagee may grant extensions take and give up securities accept compositions grant releases and discharges and otherwise deal with the Mortgagor and with other parties and securities as the Mortgagee may see fit without prejudice to the liability of the Mortgagor or the Mortgagee's right to hold and realize the security of this mortgage;
- (e) **THAT** this mortgage shall not operate by way of merger of the said indebtedness or any contract by which the same may now or at any time hereafter be represented or evidenced and that no judgment recovered by the Mortgagee shall operate by way of merger of this mortgage or in any way affect the security hereby created or the Mortgagee's right to interest as aforesaid; and
- (f) **THAT** the Mortgagee may from time to time discharge any part or parts of the mortgaged goods and chattels for such consideration as it may think proper or without consideration if it sees fit and no such discharge shall diminish or prejudice this security as against the goods and chattels remaining undischarged or against any person or corporation whomsoever.

THIS INDENTURE and everything herein contained shall extend to and bind and may be taken advantage of by the respective heirs executors administrators successors and assigns as the case may be of each and every of the parties hereto and where there is more than one mortgagor or there is a female party or a corporation the provisions hereof shall be read with all grammatical changes thereby rendered necessary and where there is more than one mortgagor, all covenants shall be deemed to be joint and several.

IN WITNESS WHEREOF the Mortgagor have hereunto set their hands and seal on the day, month and year first set forth above and designated the address herein named as the place at or to which any and all notices required to be given to them by the terms hereof may be sent or delivered.

Signed, Sealed and Delivered)
in the presence of)
)
)
)
)
_____)
Witness)

SCHEDULE REFERRED TO IN THE FOREGOING BILL OF SALE BY WAY OF MORTGAGE

Between _____, as Mortgagor and _____,
as Mortgagee

All of the following goods and chattels situate at _____, Halifax,
Halifax County, Nova Scotia together with all substitutions or replacements therefor:

<u>UNIT NO.</u>	<u>FRIDGE SERIAL NO.</u>	<u>STOVE SERIAL NO.</u>
1	820400315	DY132325
3	JX305649	HX108427
4	LX301063	X1X190347
5	CWC01236	FVG67647
B	EX304182	JX130922

<u>WASHER SERIAL NO.</u>	<u>DRYER SERIAL NO.</u>
JY586468	EW519279

C A N A D A)

PROVINCE OF NOVA SCOTIA)

COUNTY OF HALIFAX)

I, _____, of _____, in the Province of Nova Scotia, make oath and say:

TO WIT:

1. THAT I am an agent of _____, the Mortgagee in the accompanying Bill of Sale by way of Mortgage named, and I am aware of all the circumstances connected with the said Bill of Sale by way of Mortgage and have a personal knowledge of all the facts herein deposed to.
2. THAT the amount set forth in the said Bill of Sale by way of Mortgage as being the consideration therefor is a present advance made by the Mortgagee to the Mortgagor.
3. THAT the said Bill of Sale by way of Mortgage was executed in good faith and for the purpose of securing to the said Mortgagee the payment of such amount and not for the mere purpose of protecting the goods and chattels therein mentioned against the creditors of the said Mortgagor or for the purpose of preventing such creditors from recovering any claims which they may have against the said Mortgagor.

SWORN before me at the City of Halifax)
 in the County of Halifax)
 in the Province of Nova Scotia)
 this _____ day of _____, 199)
)
)
 _____)
 A Barrister of the Supreme Court)
 of Nova Scotia)

C A N A D A)

PROVINCE OF NOVA SCOTIA)

I, _____, of Halifax, in the County of Halifax, Province of Nova Scotia,
barrister, make oath and say:

TO WIT:

THAT I was personally present and did see the within Bill of Sale by way of Mortgage
duly signed, sealed and executed by _____, one of the parties thereto,
and that the name " _____ " set and subscribed as a witness to the execution
thereof is in my handwriting, and that the same was executed at the City of Halifax in the
County of Halifax on the _____ day of _____, 199.

SWORN before me at the City of Halifax)
in the County of Halifax)
in the Province of Nova Scotia)
this _____ day of _____, 199)
)
)
)

A Barrister of the Supreme Court)
of Nova Scotia)
)

XYZ Bank
1863 New Street
Halifax, Nova Scotia
B3J 3B5

Dear Sirs:

We have acted on your behalf in connection with the, registration and delivery by _____ ("Mortgagor") of a chattel mortgage in your favour dated _____, 19__ (the "Chattel Mortgage").

In this connection, we have examined the following documents and made such investigations as we consider appropriate:

- (a) Copies of the Memorandum and Articles of Association of the Mortgagor and other documents on file with the Registrar of Joint Stock Companies;
- (b) A Certificate of Status issued by the Registrar of Joint Stock Companies at Halifax dated _____, 19__ advising that the Mortgagor is in good standing under the *Companies Act* and the *Corporations Registration Act* of Nova Scotia;
- (c) A Certificate of the Secretary of the Mortgagor with respect to the Mortgagor's Memorandum of Association, Borrowing Resolution and Directors' Resolution authorizing the execution and delivery of the Chattel Mortgage and designating the Mortgagors' signing officers; and
- (d) Such other records and documents as we have considered necessary for the purpose of the opinions expressed herein.

The Chattel Mortgage was duly registered under the provisions of the *Bills of Sale Act* in the office of the Registrar of Deeds in the County of _____, on _____, 19__, as Document No. _____.

We are unable to express an opinion concerning the title of the Mortgagor to the personal property charged by the Chattel Mortgage; however, we have made the usual searches for registrations in respect of the Mortgagor as mentioned below and have found no outstanding registrations or filings affecting the Mortgagor or the assets of the Mortgagor, save as noted:

- (a) Register maintained under the *Bills of Sale Act* and *Conditional Sales Act* for the registration district of _____ as of _____, 19__.
- (b) Certificate from the Sheriff for the County of _____, dated _____, 19__ advising that there are no execution orders outstanding against the Mortgagor on record at his office;
- (c) A certificate issued by the Registrar of Joint Stock Companies at Halifax dated _____, 19__ as to securities registered against the Mortgagor under the *Corporations Securities Registration Act*;
- (d) A certificate from the Director of Labour Standards for Nova Scotia dated _____, 19__ confirming that there are no outstanding claims against the Company under the Labour Standards Code;
- (e) A certificate of the Workers' Compensation Board of Nova Scotia dated _____, 19__ confirming that there are no outstanding claims against the Mortgagor under the *Workers' Compensation Act*;
- (f) A letter of the Provincial Tax Commissioner of Nova Scotia dated _____, 19__ indicating that the Mortgagor is in good standing with the Tax Commissioner pursuant to the provisions of the *Health Services Tax Act*;
- (g) A certificate from Revenue Canada dated _____, 19__ confirming that the Company is in good standing in respect of the remittances of employee source deductions pursuant to the provisions of the *Income Tax Act*, the *Unemployment Insurance Act* and the *Canada Pension Plan*; and
- (h) A certificate of Revenue Canada dated _____, 19__ confirming that the Company is in good standing in respect of remittances on account of goods and services tax pursuant to the provisions of the *Excise Tax Act*.

Based upon and subject to the foregoing, we are of the opinion that:

1. The Mortgagor has been duly incorporated and is a valid and subsisting company under the laws of Nova Scotia with full power and authority to execute and deliver the Chattel Mortgage and to perform its obligations thereunder.
2. The Chattel Mortgage has been duly authorized, executed and delivered to the Bank and constitutes binding obligations of the Mortgagor enforceable in accordance with its terms subject to laws generally affecting enforcement of such security or creditors' rights generally including those relating to bankruptcy, insolvency or reorganization.
3. The Chattel Mortgage has been duly registered, filed and recorded at all offices where registration, filing or recording thereof is at this time necessary for the protection of the charges contained therein. The registration of the Chattel Mortgage is valid for six years from the date of registration. A renewal statement must be filed within six years from the date of the initial registration if the validity of the registration is to be maintained.
4. The Chattel Mortgage constitutes in favour of the Bank, its successors and assigns, a fixed charge on the personal property described in Schedule "A" to the Chattel Mortgage.

Yours very truly.