

[ANNOTATED SAMPLE]

FORM 9D

INVESTMENT AUTHORITY

(Note to lawyer: This form is required in a private mortgage transaction whether or not the mortgage was arranged by you. PLEASE HAVE YOUR CLIENT COMPLETE EVERY POINT ON THIS FORM, WITH "N/A" BEING NOTED IF THE POINT IS NOT APPLICABLE. [N.B. some points, e.g. A8a, A8b, A8c, are always applicable and are not to be answered "n/a"] This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)

Instructions in italics are not required but should be left in to ensure they are followed.

To: *(Specify name of lawyer or law firm)* **Leslie Lawyer** *Name of lawyer/law firm representing lender(s)*

I (or we) instruct you to act on my (or our) behalf, on my (or our) mortgage investment (or investments) of *(specify amount)* **\$40,000.00**, *amount the lender signing this Form is advancing the details, conditions and disclosures of which are set out below.*

A. DETAILS ABOUT THE INVESTMENT:

1. Name and address of borrower (or borrowers): *(specify) names and addresses of all of the owners of the property being mortgaged; names to agree with registered mortgage*

Terry Taylor, 123 Main St., Anytown, ON Z9Y 8X7

2. Name and address of guarantor (or guarantors) (if any): *(specify) names and addresses of any guarantors; names to agree with registered mortgage*

Kerry Taylor, 987 Townline Rd., Anytown, ON Z9Y 6W5

3. Legal description and municipal address of real property: *(specify) to agree with registered mortgage and title search*

**Lot 10, Plan 20, Town of Anytown, County of Plenty
123 Main St., Anytown, ON, Z9Y 8X7**

4. Type of property: *(specify, e.g., residence, vacant land, etc.)* **Residence not "fee simple"**

5. (a) Principal amount of mortgage or charge: *(specify)* **\$40,000.00** *amount to agree with registered mortgage*

(b) Amount of loan to be advanced by me (or us): *(specify)* **\$40,000.00** *amount to agree with amount advanced by lender signing this Form 9D; e.g. for a syndicated*

May 5, 2015

mortgage with four equal lenders of \$100,000 mortgage, 5a would be \$100,000 and 5b would be \$25,000

6. Rank of mortgage or charge is first (or specify other rank) **2nd (after payout and discharge of existing second mortgage)** to agree with title search (N.B. title search obtained by lender's lawyer required in every mortgage file)
7. My (or our) investment of (specify amount) **\$40,000.00** to agree with 5b represents (specify percentage) **100%** to agree with 5b divided by 5a: i.e. if this is a syndicated mortgage the percentage will be less than 100% of the total loan to the borrower (or borrowers).
8. (a) I am (or we are) satisfied that the approximate value of the property is (specify amount) **\$250,000.00** This amount is to be determined by the lender. "Unknown" is not an acceptable answer.
(b) I (or we) used the following means to determine the approximate value of the property: (specify) **Arm's length sale of property for \$250,000 in February 2010** This explanation must be sufficient for the lender's lawyer to be satisfied that the lender has made a reasonable assessment of the value of the property (N.B. reliance on the Borrower for the value is not independent and therefore not an acceptable answer)
(c) Including my (or our) mortgage amount, the percentage of the value of the property that is mortgaged (or encumbered) is (specify percentage) **66% (after payout of existing second mortgage)** Total of outstanding mortgages on title, based on recent mortgage statements, plus amount of the subject mortgage, divided by the value in 8a. If % is 95% or higher, lawyer to obtain confirmation from lender that lender is aware of risk.
9. (a) The term of loan is (specify term of loan in months, years, etc.) **1 Year.** to agree with registered mortgage
(b) The due date of loan is (specify date) **September 1, 2011.** to agree with registered mortgage
(c) The loan is amortized over (specify number of years) **15 Years.**
10. The interest rate is (specify interest rate) **5.5%** calculated semi annually, not in advance (or specify how interest rate is calculated). to agree with registered mortgage
Ensure the interest rate does not exceed 60% per annum, which would be a criminal rate of interest. This can happen with short term mortgages when all commissions/fees/costs are included: e.g. broker, lender, legal, registration (insurance fees are not included)

11. Particulars of amounts and due dates (*monthly, quarterly, etc.*) of payments of principal and interest: (*specify*) **\$370.80 on the first day of each month to agree with registered mortgage**
12. Particulars and amounts of any bonus or holdback or any other special terms: (*specify*) **N/A to agree with registered mortgage**
13. (a) The mortgage is to be registered in the name (*or names*) of (*specify name or names*).
Kim Kirby to agree with names of chargees on registered mortgage
- (b) After completion of the mortgage transaction, a collection or administration fee of (*specify amount*) **N/A** per instalment is payable by the investor (*or investors*) (*or borrower*) (*or borrowers*) to (*specify recipient of fee*) **N/A. to agree with retainer agreement and client ledger account**
- (c) If the mortgage is held in trust, the dates on which payments are to be made by the trustee (*if applicable*) to me (*or us*) are: (*specify dates*) **N/A to agree with retainer agreement and client ledger account**
14. Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the **names** of recipients and **amounts paid**, are: (*specify*) **Legal fees \$400.00, Disbursements \$70.00, HST \$53.30, payable to Leslie Lawyer to include all fees and disbursements, including legal; to agree with client ledger account**

B. CONDITIONS:

1. (*Instructions: Clauses (a) and (b) below refer to information which each investor may require from the lawyer. If you require the information referred to in a clause, initial the clause.*)

The information which I (*or we*) require from you as my (*or our*) lawyer before you complete the transaction and make the advance is as follows:

- (a) If my (*or our*) investment will be in a position other than a first mortgage or charge, details, including amounts, of all existing encumbrances outstanding. **"KK" list names of all prior mortgages and balances outstanding from recent mortgage statements; lender(s) to initial this paragraph for prior encumbrances on title**
 - (b) If the mortgage or charge is a syndicated mortgage, and a prospectus is necessary, a copy of the prospectus. We acknowledge and accept that you as my (*or our*) lawyer express no opinion as to the necessity for or validity of a prospectus.
2. (*Instructions: Each investor to complete and initial clause (a) and, if clause (a) is answered in the affirmative, to complete (if necessary) and initial clause (b) and to initial clause (c).*)
 - (a) I (*or we*) instruct you to obtain a current and independent appraisal of the subject property and provide it to me (*or us*) before you complete this mortgage transaction.

(Specify yes or no.) **No "KK"** All lenders signing this Form 9D must answer and initial this statement

- (b) The appraisal is to be paid by me (or us) or (specify name of person who is to pay for appraisal). **NIA** *This statement must be answered "Yes", "No", or "N/A" as appropriate based on the answer to B2a*
- (c) I (or we) have been advised and accept that you as my (or our) lawyer do not express an opinion as to the validity of the appraisal. **NIA** *This statement must be answered "Yes", "No", or "N/A" as appropriate based on the answer to B2a*

C. DISCLOSURE:

1. I (or we) acknowledge being advised by you as my (or our) lawyer that you do not have any direct or indirect interest in the borrower (or borrowers). (Specify yes or no and indicate the date on which the lawyer advised you that he or she has no direct or indirect interest in the borrower or borrowers.) **Yes, Aug 8, 2010** *Answer to be "Yes" or "No" ("N/A" is not acceptable) and must be dated; if answer is "No", it means the lawyer did not tell the lenders the lawyer did not have an interest in the borrower, which suggests the lawyer might have an interest in the borrower, and based on the instruction below, cannot act for the lender. Answer should be "Yes".*

(If the lawyer has an interest in the borrower or borrowers, he or she is unable to act for you on this loan (rules 3.4-28 to 36, Rules of Professional Conduct).)

(Warning: This warning must be in the Form

1. *You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor or investors at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's or investors' instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.*
2. *Any loss you may suffer on this mortgage investment will not be insured under the lawyer's professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it. *)*

I (or we) hereby acknowledge **receipt** of a copy of this form **prior** to the advance of funds to or on behalf of the borrower (or borrowers). I (or we) further acknowledge having read and understood the above warnings. *The lawyer should ensure the lender(s) read and understand the entire Form, and this paragraph in particular. Lawyer should note in the dockets for the mortgage file, the date and amount of time spent going over this Form with the lender to ensure all questions are answered correctly. This Form constitutes the lender client's instructions to the lawyer and is for the protection of both the lender client and the lender's lawyer.*

Investor (or Investors): **Kim Kirby** *All lenders' names for mortgages held on joint account; to agree with registered mortgage. For syndicated mortgages, each lender should have a separate Form 9D unless each lender's contribution is exactly the same: e.g. if four lenders each contribute \$25,000 to a \$100,000 mortgage they could all sign the same form (since the introductory paragraph, A5b, A7 will be the same) IF A8a/b/c, B1, B2, C are the same for all lenders; however if the four lenders contributions are variously \$40,000, \$30,000, \$20,000 and \$10,000 or if the answers to any of A8a/b/c, B1, B2, C are different, then each lender should sign a separate Form 9D.*

456 Avenue Rd., Anytown, ON Z9Y 4V3 *Lender(s)' address(es) to agree with registered mortgage*

*(Specify **full name** of the investor (or full names of the investors) and specify the investor's (or each investor's address.)*

(Signature of the investor (or of each investor)) *Kim Kirby All lenders' signatures*

(Date of signature) **August 30, 2010** *All lenders' signatures to be individually dated **by the lender**, to confirm the actual date of signing: i.e. dates should not be pre-printed*

**(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above.")*