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independent legal advice checklist

This sample checklist is formatted as a precedent for your file. *(reproduced with permission of Philip Epstein, Q.C.)*

Client's name	yr.	mo.	day	Start time	Finish time

Client's address	Telephone

Client's spoken languages	Written languages

Family status	Age

Referred by	Reason for independent legal advice

Client's net worth $	Spouse's net worth $	Security requested by lending institution

The client has limited facility with English, so I obtained an interpreter whose name was:	Also present during our meeting was:

I reviewed the following documents:

Part A – I explained the following to the client

The nature and consequences of a mortgage ..... ❑
The nature and consequences of a guarantee ..... ❑
The effect of power and sale/judicial sale and foreclosure ..... ❑
The effect of an action on the covenant and the liability for any insufficiency ..... ❑
The consequences of his or her spouse's default ..... ❑
The possible consequences of failure to honour the financial obligations (loss of his or her house, business and all other property) ..... ❑
The possibility of obtaining security for the financial obligations ..... ❑
That an indemnity will be worthless if the spouse declares bankruptcy ..... ❑
The risks to the client if there is a breakdown of the marriage ..... ❑

Part B – The Client

I reviewed the current state of the client's marriage ..... ❑
I reviewed the current state of the client's health ..... ❑
I asked about domestic violence and was told _____
The client said that the reason for his or her consent to this transaction or agreement was _____
_____
I satisfied myself that the client was not subject to duress or undue influence and that the client was signing relevant documents freely and voluntarily, without pressure from anyone ..... ❑
I accepted payment from the client only, and not from anyone adverse in interest to the client ..... ❑

Part C – If the independent legal advice relates to a domestic contract

I obtained complete financial disclosure from both my client and the other side ..... ❑
I determined that the document was sufficiently well-drafted to accomplish my client's objectives ..... ❑
I ensured that the terms of the agreement were both certain and enforceable ..... ❑
I ensured that, if the agreement is to be filed against property or as an order of the court, the statutory requirements for filing have been met ..... ❑
I explained the final nature of the agreement ..... ❑
I reviewed the risks and consequences of the agreement ..... ❑
I discussed the effect of the agreement upon the client if his or her spouse dies first ..... ❑
I carefully explained all the clauses of the agreement and the client indicated that he or she understood same ..... ❑

Part D – When client signs contrary to advice

I advised the client against signing the documents, but the client wished to proceed contrary to my advice, so I explained my advice in the presence of a witness, whose name was _____ ❑
The client signed an acknowledgement, in the presence of this witness, that he or she was signing the documents against my advice ..... ❑

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Part E – File management	
I opened a file	❑
I placed this form, a copy of the document and my notes in the general independent legal advice file	❑
I took notes of my meeting(s) with the client and retained these	❑
I docketed the time spent advising the client	❑
I provided the client with a written certificate that the client has received ILA and obtained the client's signature on a copy of the certificate	❑
If applicable, I sent a signed copy of the ILA certificate to the lawyer who represents the client or who has requested independent legal advice	❑
I sent a reporting letter outlining the terms of the agreement or obligation assumed, together with my account	❑
My advice was verbal only and I sent no reporting letter	❑

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