

Know Your Mortgage



General Disclosure

A mortgage is a legal document for borrowing money, usually from a bank, to buy or refinance a property under which that property is provided as security. This means that if you don't pay as promised or honour the terms of your Mortgage Loan, your lender can take legal action against your property and among other things, sell it to get its money back. Your lender will register this agreement as a 'charge' (or 'hypothec' in Quebec) against your property with the land registry office to indicate that you have granted this security.



Types of Charges

There are two types of charges lenders use to document the security for a Mortgage Loan: conventional charge and collateral charge.

(Note: Some lenders may refer to a conventional charge as a standard charge, non-collateral charge, traditional charge, traditional residential mortgage, residential mortgage, deed of hypothecary loan or retail mortgage.)

Conventional Charge

A conventional charge is registered for the actual amount of the Mortgage Loan - the amount you borrow. For example, if you require a Mortgage Loan of CAD 250,000 to buy a property, the lender will register the conventional charge for CAD 250,000. The conventional charge contains both the specific mortgage loan terms (such as the mortgage loan amount, interest rate, term and payment amount) as well as other terms related to the security (such as your obligations and the rights of the lender). The charge is registered on title to the property.

Collateral Charge

A collateral charge may be registered for the actual amount of the Mortgage Loan or for an amount that is greater than the actual amount of the Mortgage Loan. For example, if you require a Mortgage Loan of CAD 250,000 to buy a property, the collateral charge may be registered for CAD 300,000. By registering the charge for an amount that is higher than the amount you borrow under the Mortgage Loan, you may be able to borrow additional funds through future loans or other credit agreements that can be secured by the existing collateral charge, subject to any approval requirements of the lender (refer to Borrowing Additional Funds below).

The specific Mortgage Loan terms (such as the mortgage loan amount, interest rate, term and payment amount) are in a separate document (the mortgage loan agreement) and not included in the document registered on title. While the registered charge document may set out an amount, interest rate and other terms that are different from the mortgage loan agreement, the amount you actually owe and the terms of your mortgage loan are those set out in the mortgage loan agreement.



Comparing Conventional Charge Mortgages and Collateral Charge Mortgages

The type of charge that is registered against your property may affect how you are able to have your mortgage transferred to a new lender, how you are able to borrow additional funds (either from the same lender or a different lender) and how you are able to have your mortgage security discharged. The following outlines the key similarities and differences between a conventional charge mortgage and a collateral charge mortgage for these three actions.



Transferring the Mortgage Security to a New Lender (Subrogation in Quebec)

Applicable to both

- Each lender has its own rules for accepting transfers from another lender and will typically only do so if it is familiar and comfortable with the other lender's terms.
- A transfer is usually only possible if all the key elements of the mortgage loan remain unchanged (e.g. amount owing, ownership of the home, etc.).
- For transferring the mortgage loan from both the existing and new lender, there may be costs such as legal, administrative and registration costs. Talk to your lender.
- If you want to switch lenders and a transfer is not possible, including if you want to increase the principal amount, you may be able to do so by discharging the charge and arranging a new loan with a different lender (and registering a new conventional or collateral charge). There may be costs such as legal, administrative and registration costs if there is a discharge. Talk to your lender.

Differences

- Currently, with collateral charge mortgages, it is less likely, but still possible, that a new lender will accept a transfer of a collateral charge mortgage.



Borrowing Additional Funds

Applicable to both

- You will need to apply and be approved by the lender for the increased amount based on the current credit criteria of the lender, your ability to repay the mortgage loan and verification that your home's value supports the mortgage loan request.
- If you want to borrow additional funds from a different lender, the new lender may have to register new security by registering a new additional charge (a second mortgage) or by discharging the existing charge and registering a new charge. In either case, there may be costs such as legal, administrative and registration costs. Talk to your lender.

Differences

From the same lender

- For a conventional charge mortgage, if you want to increase the principal amount of your mortgage loan, the lender will likely need to discharge the existing charge and register a new charge for the higher amount. If you want to add a second mortgage loan, your lender will need to register a new charge against the home. There may be costs such as legal, administrative and registration costs. Talk to your lender.
- For a collateral charge mortgage, your lender may not need to re-register the charge when increasing the principal amount of your mortgage loan or taking out another loan secured by your home, provided that you don't exceed the registered amount on the existing charge. There will be no registration or discharge costs and any legal costs may be lower.

From a different lender (while keeping the existing charge and mortgage loan)

- If you have a conventional charge mortgage and you want to borrow additional funds from a new lender using that same property as security, the new lender may agree to register a second charge against the property. There may be costs such as legal, administrative and registration costs. Talk to your lender.
- If you have a collateral charge mortgage that is registered for more than your loan amount and you want to borrow additional funds from a new lender using that same property as security, your new lender may require information about the outstanding balance or may ask your existing lender to take certain actions to allow room for the new charge. There may be costs such as legal, administrative and registration costs. Talk to your lender.



Discharging the Mortgage Security (may be referred to as a 'release' or 'acquittance' in Quebec)

A discharge is the removal of a charge from the title to your property. When the discharge is registered, the lender loses any rights it would have had against your property under the mortgage security.

Applicable to both

- There may be legal, administrative and registration costs when there is a discharge. Talk to your lender.

Differences

- For a conventional charge mortgage, depending on the lender, once the mortgage loan is paid in full, your lender will either discharge the mortgage security upon your request or discharge it automatically.
- For a collateral charge mortgage, if there are other loan agreements secured by the collateral charge after you have repaid the mortgage loan in full, you can only request a discharge when you have repaid all the loans secured by the charge.