



## **Introduction**

The following real estate recommendations and closing customs for real estate closings were adopted by the New Haven County Bar Association effective January 1, 2006, and revised through July 1, 2015, and supersede all previous real estate recommendations and closing customs. These recommendations and closing customs may be superseded by any purchase and sale contract entered into by the parties thereto; but, in areas where the purchase and sale contract is silent, it is advisable that these recommendations and closing customs be followed.

## **Real Estate Recommendations and Closing Customs for New Haven County, Connecticut**

### **1. PAYMENT OF THE TITLE SEARCH.**

Buyer shall be responsible for the payment of Buyer's title search(es). Buyer shall be responsible for the payment of any title insurance policies that Buyer chooses to purchase.

### **2. ADJUSTMENTS AT CLOSING.**

Adjustments are to be made on the basis of Buyer owning the subject property on the date of the closing. Adjustments to Seller are to be made through the day immediately preceding the date of the closing. Annual adjustments are to be based upon a 365-day year, and monthly adjustments are to be based upon the actual number of days in the month(s) in question.

### **3. TENANCIES.**

Seller shall deliver the originals of all tenant leases to Buyer at the closing, along with a written assignment of those leases if requested by Buyer. Unless otherwise agreed to by the parties, keys to all apartments will be delivered by Seller to Buyer at the closing. Rents shall be adjusted based on the number of days in the month of the sale. It is Seller's responsibility to collect the rent for the month of the closing and Buyer shall receive a per diem rent credit based upon the assumption that such rent has been received; however, if the closing occurs within the first ten (10) days of the month, Buyer and Seller can agree that Buyer may collect the rent for the month of such sale and provide to Seller a rent credit at the closing for the number of days of that month which occur prior to closing. Tenant security deposits will be transferred to Buyer at the closing by separate check or by closing adjustment, at Buyer's option, as a Seller closing

expense, accompanied by an affidavit from Seller confirming the amount of the security deposits and the status of interest due thereon to tenants. Interest on all security deposits in accordance with state regulations shall be (a) paid to the tenant on or before the closing, with a written statement thereof provided to Buyer, or (b) paid by Seller to Buyer at the closing by separate check or by closing adjustment, at Buyer's option. If requested by Buyer, Seller will sign at closing a letter, prepared by Buyer, to be given to each tenant notifying the tenant of the sale of the subject property.

4. ADJUSTMENTS FOR HEATING OIL OR PROPANE IN THE TANK.

Any heating oil or propane located within any tank shall be adjusted in favor of Seller. Seller shall provide at least one (1) business day prior to closing (a) a written reading from Seller's supplier of the amount of oil or propane in such tank within forty-eight (48) hours of the time of the closing, and (b) the current price of such oil or propane.

5. LOCATION FOR THE CLOSING.

In the absence of a contractual provision to the contrary, the closing shall be held at a location within New Haven County, Connecticut and designated by Buyer's attorney.

6. COMMON INTEREST COMMUNITIES – ADJUSTMENTS OF WORKING CAPITAL ACCOUNT CONTRIBUTIONS.

Contributions required to be made by the first purchaser of a unit in a common interest community to a working capital account or reserve account of the community association are not subject to recoupment or other adjustment on subsequent resale of the unit.

7. COMMON INTEREST COMMUNITIES – SPECIAL ASSESSMENTS.

Special assessments of a common interest community not part of the regularly budgeted common expense assessments are not subject to adjustment. If payment of all or any portion of the special assessments is due and payable prior to the closing date stated in the purchase and sale contract, the amount then due (without regard to any grace period) is payable by Seller; if all or any portion of the special assessment is due and payable on or after the original closing date stated in the purchase and sale contract, such payment becomes Buyer's responsibility.

8. COMMON INTEREST COMMUNITIES – MONTHLY ADJUSTMENT OF COMMON CHARGES.

Regularly budgeted common expense assessments are adjusted as if they were payable on the first day of the month in advance, whether such assessments are in fact made on an annual basis and payable monthly, or assessed on a monthly basis.

9. SEWER AND OTHER ASSESSMENTS – ADJUSTMENT AT TIME OF CLOSING.

In those instances where Buyer has agreed to assume and pay one or more outstanding sewer or other benefit assessment, and payment of all or any portion of a principal installment on account of said assessment is due and payable prior to the closing date stated in the purchase and sale contract, such amount then due (without regard to any grace period) is payable by Seller. If all or any portion of a principal installment on account of said assessment is due and payable on or after the closing date stated in the purchase and sale contract, such payment shall become Buyer's responsibility. Typically, interest on sewer assessments is paid in arrears. Buyer would therefore receive a credit at the closing for interest on the outstanding principal balance of such assessment from the date to which interest has been paid to the date of the closing. Interest only shall be adjusted pro rata as of the date of closing. Principal payments shall not be prorated.

10. REAL ESTATE TAXES – ADJUSTMENT AT TIME OF CLOSING.

(a) Real estate taxes shall be adjusted as of the date of the closing unless otherwise agreed to by the parties. The tax year shall be the fiscal year of the town in which the property is located. All New Haven county towns operate on a fiscal year commencing July 1 and ending June 30. If such taxes are reduced or subject to a state or local benefit such as a "circuit breaker", such taxes shall be adjusted on the basis of the actual taxes paid by Seller in advance.

(b) For all New Haven County towns except Meriden and Wallingford, real estate taxes assessed upon the Grand List of the preceding October 1st shall be applicable to the subsequent fiscal year. Tax payments shall therefore be deemed to be paid in advance and shall therefore typically provide for a credit from Buyer to Seller. For example, real estate taxes paid for the July installment of a given year shall be for the period commencing on such year's July 1st and ending on such year's December 31st. This method of tax adjustment shall also apply to any other taxes levied upon the same Grand List (such as fire district taxes, downtown district taxes, special taxing districts and association taxes).

(c) For the towns of Meriden and Wallingford, which adjust on an assessment year basis, adjustments shall be made in accordance with such assessment year and therefore shall typically provide for a credit at closing from Seller to Buyer; the taxes paid during the current year's July for the previous year's October 1 assessment shall be deemed to cover the taxes from the previous year's October 1 to March 31 of the current year. Examples of this are:

- If your closing is on December 15, 2015 and the July 2015 tax bill was paid, adjust from April 1, 2015 to December 15, 2015, Seller to Buyer.
- If your closing is on February 15, 2016 and the January 2016 tax bill is paid, adjust from October 1, 2015 to February 15, 2016, Seller to Buyer.
- If your closing is on June 15, 2015 and the January 2015 tax bill is paid, adjust from October 1, 2014 to June 15, 2015, Seller to Buyer.

(d) If at the time of closing Seller's lender is reporting that such taxes have been paid from an escrow account, but such taxes are showing as due by the municipal taxing authority, such taxes shall be adjusted as if paid and Seller shall place in escrow with Seller's attorney the amount of such taxes due plus two (2) months' interest, to be applied to such tax payments due or refunded to Seller, as applicable, no later than twenty (20) days following the late payment date as determined by the municipal taxing authority.

11. FUNDS AT CLOSING.

At closing, Buyer's attorney shall tender to Seller's attorney in trust, funds in the amount of the balance of the purchase price due at closing as set forth in the purchase and sale contract adjusted in accordance with the purchase and sale contract and these Closing Customs, less any amounts necessary to pay off Seller's mortgage(s), if any. Additionally, Buyer's attorney shall tender to Seller's attorney separate funds payable to Seller's mortgagee(s) necessary to pay off Seller's mortgage(s), if any.

All funds provided in accordance with this Closing Custom No. 11 shall be good funds in the form of either wired funds or cashier's, teller's official or certified checks, issued by a bank having an office located in the State of Connecticut, unless otherwise agreed to by the parties, and shall be issued in accordance with the associated amounts shown on the settlement statement or other closing statement and Seller's mortgage payoff statement(s).

At least three (3) business days before the closing, for each mortgage payoff Seller's attorney shall provide Buyer's attorney with a copy of the payoff statement and written directions stating the name of the payee, the total amount payable to release and pay off the mortgage debt in full and the instructions for payoff (including wiring instructions).

12. PRECLOSING REVIEW OF DOCUMENTS AND CLOSING FIGURES.

At least three (3) business days before the closing, Seller's attorney shall provide to Buyer's attorney: (a) a copy of the proposed deed to the subject property, (b) copies of the form documents to be provided by Seller as set forth in Closing Custom No. 15 below, (c) figures relating to proposed adjustments, (d) Seller's closing expenses and fees, and (e) copies of all mortgage payoffs and/or lien payoffs.

13. RELEASES AT CLOSING.

In the event Seller's title is encumbered by one or more liens, Seller's attorney shall, except as otherwise provided in this Closing Custom No. 13, deliver to Buyer's attorney a release for each such lien together with appropriate recording fees for all such releases. Seller's attorney shall immediately cause payoff proceeds to be delivered to each lienholder(s). If a lienholder will not provide a release of lien prior to closing, Seller's attorney shall deliver to Buyer's attorney a written payoff statement from each lienholder together with funds sufficient to record the release(s) of lien, and Seller's attorney shall cause said payoff funds to be delivered to each lienholder within one (1) business day after closing. Seller's attorney shall provide an undertaking to procure the release of lien together with an indemnity from Seller.

14. UNAVAILABILITY OF RELEASE OF MORTGAGE LIEN AT CLOSING.

In the event that Seller's title is encumbered by a mortgage or mortgages for which Seller's attorney is unable to deliver a release at closing, the parties shall close the transaction, provided Seller's attorney delivers the following:

*If the debt secured by the mortgage previously has been paid but the mortgage is not released from the Land Records at the time of the closing:*

A. Photocopy of mortgagee's written payoff statement as defined by Conn. Gen. Stat. § 49-8a (as the same may be amended from time to time) with respect to each loan secured by such mortgage;

B. Written confirmation (1) that Seller's attorney has made and will make prompt, reasonable and diligent efforts to obtain the release of mortgage and provide the same to Buyer's attorney, along with recording fees for such release, and (2) that, in the event that Seller's attorney, for any reason, is unable to obtain the release of mortgage lien within sixty (60) days from the date of the request for a release, Seller's attorney shall take such immediate action as is necessary to deliver to Buyer's attorney a release of mortgage affidavit and exhibits pursuant to Conn. Gen. Stat. § 49-8a together with appropriate recording fees; and

C. Photocopy of the front and back of the cancelled check paying off said mortgage or other documentary evidence of receipt of payment by the mortgagee, including a confirmation of a wire transfer.

*If the debt secured by the mortgage is to be paid at the time of the closing:*

A. Photocopy of mortgagee's written payoff statement as defined by Conn. Gen. Stat. § 49-8a with respect to each loan secured by such mortgage(s);

B. Written confirmation (1) that Seller's attorney has made and will make prompt, reasonable and diligent efforts to obtain the release of mortgage and provide same to Buyer's attorney, along with recording fees for such release, (2) that Seller's attorney shall immediately cause the mortgage payoff proceeds to be delivered to Seller's mortgagee(s) in accordance with mortgagee's payoff statement, and (3) that, in the event that Seller's attorney, for any reason, is unable to obtain the release of mortgage within sixty (60) days from the receipt of payment by the Mortgagee(s), Seller's attorney shall take such immediate action as is necessary to deliver to Buyer's attorney a release of mortgage affidavit and exhibits pursuant to Conn. Gen. Stat. § 49-8a, together with recording fees for such affidavit(s) and exhibits;

C. Photocopy of (1) payoff check and (2) letter transmitting same to Seller's mortgagee(s) with respect to each loan secured by such mortgage(s). In the event that the

debt is being paid off by wire transfer, Buyer's attorney shall provide a written confirmation of such wire transfer to Seller's attorney; and

D. An indemnity from Seller.

15. IRS FORM 1099 PREPARATION; FORMS PROVIDED BY SELLER.

In the event that an IRS Form 1099 must be prepared from a closing, Buyer's attorney shall prepare, deliver and file such form in the absence of an agreement between the attorneys to the contrary. Seller shall provide the following executed forms at or prior to closing which shall be dated as of the date of closing: IRS Form 1099-S Proceeds from Real Estate Transactions, Non-Foreign Status Affidavit (also known as a "FIRPTA" affidavit), owner's title insurance company affidavit, conveyance tax return(s) (state and municipal, if required by the municipality), Seller authorization if Seller is not attending the closing, organizational and authorization documents if Seller is an entity, and, to the extent required by applicable statute, smoke/carbon monoxide detector affidavit or statement that Seller will provide applicable credit. In the event that a "HUD" form settlement statement will not be utilized at the closing, Buyer and Seller and their respective attorneys agree to execute a closing statement setting forth the agreed adjustments, Seller expenses and Seller payoffs.

16. CLOSING COST CREDIT.

Whenever a purchase and sale contract calls for a closing cost credit and the items to be used to determine the credit are not specifically identified in the purchase and sale contract, a closing cost shall be defined by reference to the allowance that Buyer's mortgage lender attributes to the term. In circumstances where the terms of the closing cost credit are not specifically defined, the intent of this Closing Custom No. 16 is to be as liberal in construing the term "closing cost" as a Buyer's lender will allow without regard to the meaning of the term. It is the intent of this Closing Custom No. 16 that closing costs could be everything other than the sales price in the event a lender allows all items such as appraisal fees, credit reports, application fees and inspection fees to be considered closing costs, including those items paid prior to closing. Absent guidance from a lender, and where a purchase and sale contract is not specific, a closing cost is anything other than the sales price.

Prepared by the Subcommittee on Closing Customs of the Real Estate Committee of the New Haven County Bar Association.

Subcommittee Members:

Paul H. Begemann, Esq. (Chair)      Bruce R. Peabody, Esq.

Gregory P. Muccilli, Esq.              Amy G. Winnick, Esq.