



# **New Haven County Residential Real Estate Recommendations and Closing Customs**

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## **Introduction**

The following recommendations and customs for residential real estate closings were adopted by the New Haven County Bar Association effective January 1, 2006, and revised in May 2008. These recommendations and customs may be superseded by any contract of the parties, but, in areas where the contract is silent, it is recommended that these be followed.

by  
New Haven County Bar Association  
Real Estate Committee

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Revisions effective January 1, 2006.  
Custom 11 revised May 20, 2008, effective immediately.

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

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

Buyer will pay for Buyer's own search.

### **2. ADJUSTMENTS**

Adjustments are made on the basis of Buyer owning the property on the date of the closing. Adjustments to Seller are made through the day immediately preceding the closing day.

### **3. TENANTS**

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, 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 days of the month, Buyer and Seller can agree for Buyer to collect the rent for the sale month and provide Seller a credit for the days that month before closing. Tenant security deposits will be transferred to Buyer at the closing by separate check as a Seller closing expense, accompanied by an affidavit from Seller confirming the amount of the security deposit and the status of interest due thereon to tenants. Interest on all security deposits in accordance with State regulations shall either 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 as a Seller closing expense. 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 house sale.

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

The heating oil or propane in the tank shall be adjusted in favor of Seller. Seller shall provide at the closing a reading from Seller's supplier of the amount of oil or propane in the tank within 48 hours of the time of the closing and the current price of that oil or propane. This statement shall be in writing if possible.

### **5. LOCATION FOR THE CLOSING**

In the absence of a contractual provision to the contrary, the closing shall be held in an office designated by Buyer's attorney and located in New Haven County.

### **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 original closing date stated in the 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 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 ASSESSMENT ADJUSTMENT AT TIME OF CLOSING

In those instances where Buyer has agreed to assume and pay any outstanding sewer assessment and payment of all or any portion of a principal installment on account of said assessment is due and payable prior to the original closing date stated in the 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 original closing date stated in the contract, such payment becomes 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 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 would not be prorated.

10. REAL ESTATE TAXES – ADJUSTMENT AT CLOSING

Real estate taxes shall be adjusted as of the date of the closing unless otherwise agreed. The tax year shall be the fiscal year of the town in which the property is located. All New Haven county towns are on a fiscal year commencing July 1 and ending June 30. Real estate taxes assessed upon the Grand List of the preceding October 1<sup>st</sup> shall be considered to 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, taxes paid for the July installment shall cover the period from that July 1 through December 31. This method of tax adjustment would also apply to any other taxes levied upon the same grand list, for example fire district taxes and association taxes. Such adjustments are made on the basis of a 365-day year.

This custom does not apply to properties located in Meriden and Wallingford, where adjustments shall be made in accordance with assessment year and shall therefore typically provide for a credit from Seller to Buyer; the taxes paid in July for the previous October 1 assessment shall be deemed to cover the taxes from October 1 of the previous year to

March 31 of the current year. Examples of this are:

- If your closing is on December 15, 2004 and the July 2004 tax bill was paid, adjust from 4/1/04 to 12/15/04 Seller to Buyer.
- If your closing is on February 15, 2005 and the January 2005 tax bill is paid, adjust from 10/1/04 to 2/15/05 Seller to Buyer.
- If your closing is on June 15, 2005 and the January 2005 tax bill is paid, adjust from 10/1/04 to 6/15/05 Seller to Buyer.

#### 11. FUNDS AT CLOSING

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

All checks issued in accordance with this section shall be either cashier's, teller's, official or certified check(s) issued by a bank having an office located in the State of Connecticut, unless otherwise agreed upon by the attorneys, and shall be issued in accordance with the associated amounts shown on the Settlement Statement and the Seller's mortgage payoff statement(s).

At least one (1) business day before the closing, for each mortgage payoff Seller's attorney shall provide Buyer's attorney with a copy of current payoff statement(s) and written directions stating the name of the payee and the total amount payable to pay the mortgage debt in full.

#### 12. PRECLOSING REVIEW OF DOCUMENTS AND CLOSING FIGURES

At least 24 hours before the closing, Seller's attorney shall provide to Buyer's attorney a copy of the proposed deed to the property, as well as the figures relating to Seller's closing expenses, fees and mortgage payoffs. In accordance with RESPA regulations, there shall be no funds transferred between Buyer and Seller not disclosed on the HUD-1 Settlement Statement and there shall be no POC or "paid outside of closing" expenses that do not have a dollar amount and payor/payee attached. The sole exception to this is for fuel oil or propane adjustments.

#### 13. RELEASES AT CLOSING

In the event Seller's title is encumbered by one or more liens, Seller's attorney shall deliver to Buyer's attorney a release for each such lien together with recording fees for all such releases. Seller's attorney shall immediately cause payoff proceeds to be delivered to each lienholder(s).

#### 14. UNAVAILABILITY OF RELEASE OF MORTGAGE LIEN AT CLOSING

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

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

- A. Photocopy of mortgagee's written payoff statement as defined by C.G.S. Section 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 lien and provide 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 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 C.G.S. Sec. 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 lien is to be paid at the time of the closing by the Seller's attorney:*

- D. Photocopy of mortgagee's written payoff statement as defined by C.G.S. section 49-8a with respect to each loan secured by such mortgage(s);
- E. Written confirmation (1) that Seller's attorney has made and will make prompt, reasonable and diligent efforts to obtain the release of mortgage lien 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 lien within 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 C.G.S. Section 49-8a, together with recording fees for such affidavit(s) and exhibits; and

- F. Photocopy of Seller's attorney's (1) payoff check drawn from Seller's attorney's trustee account 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, Seller's attorney shall provide a written confirmation of such wire transfer to Buyer's attorney upon request.
15. **IRS FORM 1099 PREPARATION**  
In the event that an IRS Form 1099 must be prepared from a closing, Buyer's attorney shall prepare, deliver and file that form in the absence of an agreement between the attorneys to the contrary.

**- SAMPLE -**

**SELLER'S ATTORNEY'S CLOSING LETTER**

(CLOSING DATE)

(Name and address of Buyer's Attorney)

(Name and address of Buyer)

(Name and address of Buyer's Title Insurance Company)

Re: Purchase of (Address of property)

Dear \_\_\_\_\_:

This law firm represents (name of Seller) in connection with the closing of the above-captioned property. I have in my possession and submit herewith copies of the following documents in connection therewith:

1. Payoff statement from (name of Bank) ("Seller's Mortgagee")  
Dated \_\_\_\_\_, 20\_\_;
2. My law firm's trustee check in the amount of \$\_\_\_\_\_ ('payoff proceeds')
3. Letter of transmittal directing the release to be delivered to  
(Buyer's lawyer)

This letter will confirm that the undersigned shall immediately cause the Payoff Proceeds to be delivered to Seller's Mortgagee in accordance with the payoff statement, and the undersigned will continue to make prompt, reasonable and diligent efforts to obtain the release.

This letter will also confirm that, in the event the release is not provided to the undersigned within 60 days of today, the undersigned will promptly provide the Buyer's attorney with a release of mortgage affidavit and exhibits, together with all recording costs, pursuant to Section 49-8 of the Connecticut General Statutes.

Very truly yours,

(Name of Seller's Attorney)