

# Real Estate Customs of The Fairfield County Bar Association

The following customs for real estate closings were adopted by the Fairfield County Bar Association effective May 9, 2007. The customs may be superceded by the contract between the parties, but in areas where the contract is silent, it is recommended that these customs be followed.

1. **Title Search.** Purchaser's attorney will order or perform the title search. Purchaser pays for Purchaser's own search.
2. **Adjustments.**
  - a. **Generally.** All adjustments are based on a 365 day year, and upon the actual number of days in the month (unless otherwise specified herein). Adjustments are made on the basis of the Purchaser owning the property on the date of the closing. Adjustments to the Seller are made through the day immediately preceding the closing day.
  - b. **Rent & Security Deposit Adjustments.** Rent adjustments are based on the actual number of days in the month. Security Deposits shall be adjusted in favor of the Purchaser. The amount of the Security Deposit shall be calculated by adding the interest from the date of the last payment of interest to the tenant or if no such payment was made, then by adding the interest from the date the security deposit was placed with the Sellers. Interest shall be calculated at the rate set by the Department of Banking for the State of Connecticut as adjusted from time to time.
  - c. **Fuel Oil In The Tank.** The oil in the tank shall be adjusted in favor of the Seller. Seller shall provide at the closing a reading from Seller's oil company of the amount of oil in the tank read within two (2) business days from the date of closing and the current price of that company's oil.
  - d. **Common Interest Communities.**
    - i. *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, reserve account, or any extra common charge payment to the community association are not subject to recoupment or other adjustment on subsequent resale of the unit.
    - ii. *Monthly 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.
    - iii. *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 assessment 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 the 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 the Purchaser's responsibility.

- e. **Sewer Assessments.** In those instances where the Purchaser has agreed to assume and pay any outstanding sewer assessment and payment of all or any portion of 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 the 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 the Purchaser's responsibility. Interest on sewer assessments shall be deemed paid in arrears. As a result, there will normally be an adjustment of interest in favor of the Purchaser from the past due date to the date of closing. The Purchaser shall receive a credit at the closing for interest owed but not paid at the time of closing. Interest only shall be adjusted as of the date of closing. Principal payments shall not be adjusted.
- f. **Real Estate Taxes, Sewer Use Charges, Similar Charges.** Real estate taxes, fire district taxes, sewer use charges, association dues, and taxes imposed by special tax districts (collectively referred to herein as 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 Fairfield County towns are now on a fiscal year commencing July 1 and ending June 30. Real estate taxes assessed upon the List of preceding October 1 shall be considered to be applicable to the subsequent fiscal year.
- g. **Certificate of Occupancy Tax.** For the purchase of new construction, provided the Certificate of Occupancy is issued within the thirty (30) days immediately preceding the closing of title, Purchaser shall pay the full amount of the additional tax imposed upon the issuance of the Certificate of Occupancy. If the Certificate of Occupancy is issued more than thirty (30) days before the date of closing, any additional tax shall be adjusted in the same method as Real Estate Taxes.

3. **The Closing.**

- a. **Location of Closing.** Closings shall be held at the office of the Buyer's attorney.
- b. **Funds at Closing.** At closing, Purchaser shall tender to Seller wired funds, cashier's check(s), or bank treasurer's certified check(s) payable or endorsed to Seller's attorney as trustee for Seller, for the balance of the purchase price due at closing as set forth in the Sales Agreement adjusted in accordance with the Sales Agreement and these Closing Customs less the amounts of all mortgage payoffs. Additionally, Purchaser's attorney shall tender to Seller separate cashier's or bank treasurer's certified check(s) for payoff of Seller's mortgage obligations.

All checks shall be issued in accordance with the associated disbursements listed on the HUD1 Settlement Statement and shall be made payable as directed in the associated mortgage payoff letters. At least one (1) business day before closing, for each mortgage payoff Seller shall provide Purchaser's attorney with written directions stating the name of payee and the total amount of payoff together with a copy of the associated payoff statement(s). Seller shall calculate the total payoff amount to include applicable per diems, late charges, etc. and shall be in an amount sufficient to pay the mortgage in full. Seller shall be responsible to prepare the mortgage payoff package(s) and transmittal(s). Immediately after closing, Seller's attorney shall wire or hand deliver or send via overnight carrier the payoff funds and package to the lender(s).

Mortgage company checks or similar holding company checks, unless certified, should not be accepted at the time of the closing (Caveat: Sec. 36a-758 of C.G.S. states that any financial institution may pay the proceeds of a loan by means of a wire transfer provided such payment is made to the mortgagor, to the mortgagor's attorney or to the mortgagee's attorney. Purchaser's attorney shall determine prior to the closing what form of funding he will receive from the mortgagee's attorney. Mortgagee's attorney shall provide certified or bank checks when the financial institution wire transfers mortgage proceeds to an attorney trustee account in accordance with the statute.)

- c. **Releases at Closing.** In the event Seller's title is encumbered, Seller's attorney shall deliver to Purchaser's attorney a release (suitable for recording) for each encumbrance required by the contract to be released, together with recording fees for all such releases. Seller's attorney shall immediately cause payoff proceeds to be delivered to each such encumbrancer.
- d. **Unavailability of Release of Mortgage Lien.** Notwithstanding the above, if Seller's title is encumbered by mortgage lien(s) for which the Seller's attorney is unable to deliver release(s) of mortgage at closing, the parties shall close the transaction, provided that the following procedure is followed with respect to each mortgage lien:
  - i. The Purchaser's attorney shall tender to the Seller's attorney the mortgage payoff check(s) by cashier's check(s) or bank treasurer's certified check(s) made payable directly to the mortgagee.
  - ii. Seller's attorney shall provide to Purchaser's attorney the following documents at the time of closing: undertaking and indemnity for payoff of mortgage in the form attached as Exhibit A; copy of mortgage payoff statement provided by the mortgagee; mortgage payoff transmittal letter issued by Seller's attorney; and a copy of the mortgage payoff check.
  - iii. Seller's attorney, upon receiving the release of mortgage from the mortgagee, shall immediately record it and provide Purchaser's attorney with a copy of the Release, the recording check, and verification that same was recorded.

- iv. Seller's attorney shall take all necessary steps toward compliance with Section 49-8a of the Connecticut General Statutes for the purpose of filing a statutory affidavit in lieu of release of mortgage should such filing become necessary.
  - v. With respect to an equity line of credit, Seller's attorney shall notify the lender to terminate all future borrowing rights as of the time at which the mortgage payoff statement is requested.
  - vi. Alternative arrangements may be made between the attorneys regarding the breakdown of payment of gross closing proceeds and issuance of the mortgage payoff check, wire transfer of the mortgage payoff and/or hand delivery of the mortgage payoff check.
- e. **Mechanic's Lien Waivers.** When any work has been performed or services been provided at the property during the ninety (90) day period immediately preceding the date of closing for which a lien could be recorded, Seller is obligated to deliver to Purchaser completed and absolute mechanic's lien waivers at closing.
- f. **Additional Documents.** Certain additional documents are to be executed by the Seller and provided at closing. These documents include a Non-Foreign Affidavit (FIRPTA), and a Title Insurance Affidavit.
4. **Title Insurance Policies.** The Purchaser's attorney shall be responsible to address the issue of title insurance with the Purchasers. It is recommended that the Purchasers obtain an Owner's Title Insurance Policy omitting all mortgages except the mortgage given to secure the purchase of the property.
5. **IRS Form 1099 Preparation and Filing.** In the absence of an agreement to the contrary between the parties, Purchaser's attorney shall be responsible to prepare and file any necessary IRS Form 1099.

**EXHIBIT A**  
**UNDERTAKING AND INDEMNITY FOR PAYOFF OF EXISTING MORTGAGE**

Sale of: (property address)

Seller(s): (Name of Seller)

Purchaser(s): (Name of purchaser)

**INDEMNITY OF OWNER**

The undersigned, being the owner(s) of the above referenced property, hereby acknowledge that the property is presently encumbered by the following mortgage:

Mortgage from \_\_\_\_\_ to \_\_\_\_\_ dated \_\_\_\_\_ and recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the \_\_\_\_\_ Land Records, and assigned to \_\_\_\_\_ by Assignment dated \_\_\_\_\_ and recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the \_\_\_\_\_ Land Records.

The attorney signing below has obtained a payoff statement for this mortgage and I/we have directed said attorney to fully pay and satisfy said mortgage from the closing proceeds. In the event the payoff statement provided is not accurate, I/we agree to immediately tender all funds necessary to pay this mortgage in full.

In consideration of the issuance of policies of title insurance without exception to the above referenced mortgage, the undersigned owner(s) agree(s) to indemnify and hold harmless the Purchaser(s) , their attorney, and their title company from and against all loss, cost, or damage, including attorney's fees and court costs, arising or resulting from any claim made in connection with said mortgage.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date:

**CLOSING ATTORNEY'S UNDERTAKING**

The undersigned hereby certifies that I am an attorney licensed to practice in the State of Connecticut. I received a payoff statement for the above referenced mortgage, and I have sent sufficient funds in accordance with the attached payoff statement to the mortgagee to pay off this mortgage in full. Upon payment in full of said loan, I will obtain and record a properly release of the mortgage or, if necessary, I will prepare and record an affidavit in accordance Section 49-8a of the Connecticut General Statutes. Attached hereto is a copy of the payoff statement, payoff check and the transmittal letter to the mortgagee.

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, State, Zip