

## **PREAMBLE TO THE CLOSING CUSTOMS OF THE HARTFORD COUNTY BAR ASSOCIATION**

*In 1989, the Real Property Section of the Hartford County Bar Association published the first Hartford County Closing Customs. Prior to that time, many of the customs had not been reduced to written form and were simply passed along from one real estate practitioner to the next. In 1997, the Real Property Committee convened once again, reviewed the original ten published customs and issued a number of additional revisions.*

*Since the 1997 revisions, there have been considerable changes in the real estate transaction, especially on the technology front. This evolution of the closing prompted the Real Property/Transactions Committee of the Hartford County Bar Association to reconvene a subcommittee to address the closing customs. The Closing Customs Committee started the process of revising the closing customs by reviewing the real estate transaction in its entirety. It was a lengthy process resulting in a number of significant changes to the existing customs and the development of many new customs, including adding forms of certain documents, as referenced in the comments. For purposes of guidance, the Closing Customs Committee also reviewed closing customs from other Connecticut counties that had been revised recently. In a number of circumstances, the Closing Customs Committee adopted in whole or in part the customs of these other counties. The Closing Customs Committee hoped that increased uniformity would facilitate the closing process around the State.*

*As a source of guidance to the practitioner in using these customs, the Closing Customs Committee refers the reader to the still-timely comments set forth in the preamble of the 1997 revisions: "[a]s in the past, it is of paramount importance that practitioners recognize the limited function that these customs play. They are primarily intended as a vehicle for resolving disputes in those cases where the parties, for whatever reason, have not addressed the particular issue to come to an agreement on its resolution. Thus, these customs do not purport to dictate how a matter must be readjusted or addressed; rather, they are intended to fill the gaps that may arise in the absence of prior agreement. The Committee hopes that the publication of these customs will aid members of the Association and others in serving their clients and in resolving disputes."*

*It is the hope of this Closing Customs Committee that the revisions below will further aid Association members in better serving their clients and the closing process generally.*

*These Closing Customs were approved by the Board of Directors of the Hartford County Bar Association on March 10, 2009.*

**HARTFORD COUNTY BAR ASSOCIATION  
CLOSING CUSTOMS**

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**HARTFORD COUNTY BAR ASSOCIATION  
CLOSING CUSTOMS**

**Closing Custom No. 1**

**LOCATION OF THE CLOSING AND GOVERNING CUSTOMS**

When the property being transferred is located within Hartford County, then the Hartford County Closing Customs shall apply.

The closing shall be held in an office of the Buyer's Attorney, provided such office is located in Hartford County, Connecticut or at such other place as required by Buyer's Lender, provided it is in Hartford County, Connecticut, or as otherwise agreed upon by the parties.

Seller and Seller's attorney may be released from the closing table once they have completed Seller's side of the transaction and even though Buyer may not yet have completed Buyer's side of the transaction, provided, that Buyer's attorney and where applicable Lender's attorney is (are) reasonably satisfied that all material issues to the closing have been adequately resolved on buyer's part, and provided further, that Seller's attorney execute a check escrow agreement at the request of Buyer's attorney.

*Comment: This custom seeks to eliminate the confusion that may arise as to which county's closing customs apply when the property that is being transferred is located within Hartford County. Moreover, the office in which the closing shall be conducted is in accord with the prevailing practice of "following the money." Finally, this custom recognizes that the Buyer's portion of the closing including execution of loan documentation is typically considerably longer than that required of the Seller. Accordingly, Seller and/or its attorney are afforded reasonable flexibility in managing their time during the closing process. A form of check escrow agreement is attached to these closing customs as Exhibit A.*

**Closing Custom No. 2**

**PAYMENT FOR TITLE SEARCH**

The Buyer shall pay for Buyer's own title search.

*Comment: This custom follows the longtime unwritten custom that Buyers obtain and pay for their own title searches.*

**Closing Custom No. 3**  
**PRE-CLOSING REVIEW OF PROPERTY**

A pre-closing inspection of the property is the Buyer's opportunity to verify that: (a) the property is broom-clean and free of all of Seller's personal possessions; (b) the property is in substantially the same condition as it was at the time of the inspection, reasonable wear and tear excepted; and (c) all of the repair or replacement items discovered during the inspection period and previously agreed upon by Buyer and Seller have been repaired, with paid receipts provided to Buyer or Buyer's Attorney at or prior to such inspections.

If the Seller has not performed the agreed-upon repairs and the parties are otherwise unable to reach a resolution regarding said repairs, then subject to the approval of Buyer's Lender, if applicable, the parties agree to either withhold from the Seller's funds a reasonable sum in escrow to secure the performance of the agreed-upon work or Seller shall provide a reasonable credit at the time of the closing.

*Comment: During the pre-closing inspection, or "walk-through", the Buyer should verify that all work or repairs agreed to by Seller to be performed during the inspection period have been performed and that the property is in the same condition as during the original inspection, reasonable wear and tear excepted. This pre-closing review is not an additional inspection period in which to raise issues that should be raised during a Buyer's contractual inspection period.*

*In an effort to avoid delay at closings or the need for post-closing escrow, suggestions have been made to add an additional inspection prior to the final walk-through to ensure satisfactory completion of any repairs. In weighing the impact on all parties involved in the transaction, this Committee was reluctant to formally make another inspection part of the Customs. That being said, the parties may, where feasible, wish to set a time for conducting a pre-closing repairs inspection to allow enough time prior to closing to cure any defects in said repairs. Such a measure would likely lead to less delays in the closing itself or the need for post-closing escrows.*

**Closing Custom No. 4**  
**ADJUSTMENTS FOR DAY OF CLOSING**  
**(Originally Approved: December, 1990)**

The Buyer is considered the owner of the property for the entire day of the closing, and adjustments are to be made accordingly.

*Comment: This custom seeks to eliminate problems that may arise when the closing day is divided in half.*

**Closing Custom No. 5**  
**REAL PROPERTY TAX ADJUSTMENTS**

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 real property is located. All Hartford 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. This method of tax adjustment would also apply to any other taxes levied upon the same Grand List, such as fire district taxes and association taxes. Such adjustments are made on the basis of a 365-day year. In those circumstances where taxes have been reduced or adjusted in accordance with applicable statute, law or regulation (such as C.G.S. Section 12-129b, commonly known as "frozen taxes," or C.G.S. Section 12-170aa, commonly known as "circuit breaker taxes"), taxes shall only be adjusted on the basis of actual taxes paid by the Seller in advance.

When closings take place during the month that taxes first become due, it shall be the responsibility of Seller to prove payment of taxes, or adjustments shall be made by having the Buyer pay the taxes and adjust to the Buyer for the actual taxes paid. In the event a Seller's mortgagee has "disbursed" taxes and the tax collector has not yet received such payment, the Seller shall deliver to Buyer's Attorney a sum equal to the taxes due, plus two (2) month's interest on said bill, to be held in escrow. In the event that the mill rate has not yet been set, then Seller shall deliver to Buyer's Attorney a sum equal to seven (7) months of taxes. Said taxes are to be calculated based upon the latest available mill rate. Upon proof that the taxes have been received by the applicable taxing authority, Buyer's Attorney shall release such sums from escrow to the Seller. In the event taxes remain unpaid on the 20<sup>th</sup> day of the month after which they are due (e.g., if taxes are due on January 1<sup>st</sup> and July 1<sup>st</sup>, then on February 20<sup>th</sup> and August 20<sup>th</sup>, respectively), then the Buyer's Attorney shall have the right to release the escrowed funds to pay the taxes due. Taxes shall be adjusted in favor of Seller under these circumstances.

*Comment: This custom adopts the current practice in all towns in Hartford County with respect to adjustment of real estate taxes between Buyers and Sellers. The custom also addresses the dilemma that may arise for closings that occur during the month(s) taxes are due and in situations where the mill rate has not yet been set.*

*As of the date of adoption of this closing custom, real estate taxes on the Grand List of October 1<sup>st</sup> in all towns in Hartford County are first due and payable on July 1<sup>st</sup> of the immediately succeeding year. While real estate taxes in most towns in Hartford County are due and payable in semi-annual installments (one-half on July 1st and the balance on the next succeeding January 1<sup>st</sup>), real estate taxes in some towns (e.g., Bloomfield and Windsor) are due and payable in full on July 1<sup>st</sup>.*

*Under the Uniform Fiscal Year method of adjustment, payments of real estate taxes on the October Grand List are deemed to cover the fiscal year of July 1<sup>st</sup> of the immediately following year through the next succeeding June 30<sup>th</sup>. For example, real property taxes on the Grand List*

*of October 1, 2007 are deemed to cover the fiscal year from July 1, 2008 through June 30, 2009. In determining the tax adjustment, the Seller is responsible for all taxes for that portion of the fiscal year prior to the date of closing and the Buyer is responsible for all taxes for that portion of the fiscal year on and after the date of closing. In the example below, it is assumed that all real estate taxes due and payable as of the closing date have been paid. If not, either the Seller must bring the taxes current or the Buyer brings the taxes current and the Seller reimburses the Buyer for the portion of time prior to the closing date covered by the bill for which the Seller is responsible.*

*For example, in a town that allows semi-annual real property tax payments, on the Grand List of October 1, 2006, the first tax payment (one-half), would be payable on July 1, 2007 and the second tax payment (one-half) would be due January 1, 2008. The installment due on July 1, 2007 is deemed to cover the period from July 1, 2007 through December 31, 2007 and the installment due on January 1, 2008 is deemed to cover the period from January 1, 2008 through June 30, 2008. If the July 1<sup>st</sup> installment has been paid by the Seller at or prior to closing and the closing date is September 15, 2007, the Seller is entitled to a per diem credit from the Buyer for the portion of the July 1<sup>st</sup> installment from the closing date (September 15, 2007), through the following December 31<sup>st</sup> and the Buyer is responsible for the second installment due January 1, 2008. If the Seller has not paid (or provided for payment out of Seller's closing proceeds) the July 1<sup>st</sup> installment as of the closing date, the Buyer would pay the July 1<sup>st</sup> installment (but not any interest thereon or lien fees, which are the Seller's responsibility) and the Buyer is entitled to a per diem credit from the Seller for the portion of the July 1<sup>st</sup> installment from July 1, 2007 through September 14, 2007.*

*With respect to situations where statutory tax relief (commonly known as "circuit breakers" or "frozen taxes") has been received by the Seller, this custom is a confirmation of the generally accepted practice of adjusting these taxes. This custom also reflects the lack of uniform practice by Assessors and Tax Collectors in the application of recomputing the assessment upon the transfer and rendering a supplemental tax bill. This custom is intended to avoid those inequitable situations in which a Buyer who otherwise additionally adjusted the so-called "Personal Benefit" portion of the tax in the Seller's favor receives a supplemental bill resulting in a double payment by the Buyer for the same adjustment period.*

**Closing Custom No. 6**  
**SEWER, WATER OR SPECIAL ASSESSMENTS**

Unless the Buyer and Seller otherwise agree in writing, all assessment adjustments against the property for repairs or improvements which have resulted in a caveat or a lien of a liquidated sum prior to the actual closing date, or in a common interest community, a levy of a special assessment, are to be paid in full by Seller at or before the closing, regardless of when the payments are due. In those instances where the Buyer has agreed to assume and pay any outstanding assessments, including but not limited to common interest communities special assessments, and payment of all or any proration of the principal installment of account of said assessment is due and payable prior to the original closing date stated in the contract, without regard to any grace period, such amount then due is payable by the Seller; and if all or any portion of a principal installment on account of such assessment is due and payable on or after the original closing date stated in the contract, such payment becomes the Buyer's responsibility. Interest on such assessments is paid in arrears. Buyer shall 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-rated as of the date of closing. Principal payments shall not be pro-rated. In the event the contract is silent as to the existence of or payment of an assessment, the Seller shall pay the assessment in full.

*Comment: This custom recognizes that the burden is generally on the Seller, who is in the best position to have knowledge of assessments against the property to address the issue of assumption of liens in the real estate contract. This custom seeks to include assessments, caveats and liens recorded against the property for sewer, water, sidewalks, highways and other improvements. This custom also seeks to protect the Buyer from having to pay off a water or sewer lien in full at closing, as is often required by first mortgage lenders, when the Buyer may not have known of the existence of the lien at the time the contract was signed. This custom only applies to assessments, caveats or liens of a liquidated sum; if not liquidated, the obligation is assumed by the Buyer as of closing. The term "actual closing date" is used to make it clear that, even if the original contract closing date changed, the operative date should be the date on which title actually passes.*

**Closing Custom No. 7**  
**OIL AND PROPANE ADJUSTMENTS**

Oil or propane in the tank shall be adjusted in favor of the Seller. Seller shall, at the closing, provide to Buyer in writing a reading by Seller's oil/propane company of the amount of oil/propane in the tank and the price the Seller most recently paid for that oil/propane.

*Comment: This custom has been modified to recognize that Buyer shall reimburse Seller for oil/propane remaining in the tank at time of closing. Similarly, the custom addresses the price on which the adjustment will be made and seeks to eliminate debate over claims that the Buyer could have obtained the oil at a better price than that*

*actually paid by the Seller. The Seller should be prepared to show proof of payment as well as the per gallon rate paid.*

**Closing Custom No. 8  
COMMON INTEREST COMMUNITIES MONTHLY ADJUSTMENT OF  
COMMON CHARGES**

Regularly budgeted common charges are adjusted in favor of Seller for amounts paid whether such common charges are in fact made on an annual basis and payable monthly, or assessed on a monthly basis.

**Closing Custom No. 9  
COMMON INTEREST COMMUNITIES ADJUSTMENTS TO WORKING CAPITAL  
ACCOUNT CONTRIBUTIONS  
(Originally Approved: September, 1989)**

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 common interest community association are not subject to recoupment or other adjustment on the subsequent resale of the unit.

*Comment: Contributions to a working capital or reserve account are not addressed in the Common Interest Ownership Act, but The Federal National Mortgage Association requires such contributions, usually in an amount equal to two months' common expense assessments, as a condition to its approval of a project. The public offering statement usually discloses whether such a payment will be exacted from the purchaser.*

*There are many problems associated with attempts to continue adjustments or recoupment of such contributions on resales of units. While the amount at issue may be easily determined on a resale taking place only a year or two after the contribution is made, such determination will not be so easily accomplished on the future reconveyances of units. The account may have been used by the association for a variety of reasons, and interest will have accrued on monies in the account. Such computations will ultimately prove impossible to be traced through a number of successive transfers, so no adjustment is made, even on the first resale.*

**Closing Custom No. 10**  
**SEWER AND WATER READINGS/ESCROWS**

Seller shall be responsible for obtaining a final water/sewer reading immediately prior to closing. If the water company or sewer authority is unable to provide a final reading at or before closing, then Seller agrees to escrow a reasonable sum pending a final reading. Such final reading shall then be performed within a reasonable period of time after the closing. In determining what amount should be escrowed, the parties shall take into consideration information provided by the sewer or water company such as any estimated or recent bill. Any amounts placed into escrow that are unused after payment of all sums due shall be returned to Seller. If the amount held in escrow is insufficient, Seller shall be responsible to pay the remaining amount.

*Comment: It is not uncommon that the parties will be unable to obtain a reading from the water or sewer authority prior to closing. This custom seeks to guidance in the event the Seller is unable to obtain such a reading prior to closing .*

**Closing Custom No. 11**  
**RENTS AND SECURITY DEPOSITS**

Rent adjustments are based on the number of days in the month of the sale. This is true with respect to agreements to rent back to Sellers and with respect to the tenants in the property. It shall be considered the responsibility of the Seller to collect rent for the month of the closing and rent shall be adjusted as if rent has been paid to the Seller for the month in which the closing takes place. However, if the closing occurs within the first ten (10) days of the month, Buyer and Seller may agree that Buyer collect the rents for the month of the sale. In such event, Buyer will then provide Seller with a credit for the days in the month that occur prior to the date of closing.

Security deposits are also to be adjusted from the Seller to the Buyer. It shall be the responsibility of the Seller to provide a written sworn statement from Seller or an estoppel certificate from tenant(s) stating whether or not a security deposit exists or whether or not interest is due on the security deposit. The amount of the security deposit shall be calculated by adding to the security deposit interest from the date of the last payment of interest to the tenant, or if no such payment of interest has been made, then adding interest from the date the security deposit was placed with the Seller. Interest shall be at the interest rate established by the Department of Banking of the State of Connecticut for rental security deposits, as adjusted from time to time. The parties, shall, if requested by Buyer or Buyer's Attorney, execute an assignment of leases.

*Comment: In the event there are tenants on the property, this custom sets forth who is responsible for collecting rents and how they should be adjusted. Further, in the event of a security deposit, this custom establishes how adjustments and interest on the security deposit*

*shall be calculated and substantiated. A form of estoppel certificate is attached to these closing customs as Exhibit B. Using the interest rate established by the Connecticut Department of Banking for rental security deposits is consistent with accepted practice of calculating security deposit interest. This custom also requires Seller to provide, if requested by Buyer or Buyer's Attorney, an assignment of leases. A form of assignment of leases is attached to these closing customs as Exhibit C.*

**Closing Custom No. 12**

**RESALE CERTIFICATE, CERTIFICATE OF INSURANCE AND STATEMENT OF UNPAID COMMON CHARGES**

When selling a unit in a common interest community, Seller shall, at Seller's cost, at or before the closing provide to Buyer the Resale Certificate (with those items required to be included by C.G.S. Section 47-270) and a statement of common charges current through closing,. The Buyer shall be responsible for any costs incurred for the issuance of a new certificate of insurance naming Buyer or Buyer's Lender.

*Comment: Although Seller is required under C.G.S. Section 47-270 to provide and pay for the Resale Certificate, Buyer shall be responsible for the costs related to the issuance of any new insurance certificates for Buyer's benefit.*

**Closing Custom No. 13**

**EXECUTION AND DELIVERY OF DOCUMENTS**

The Seller's Attorney shall provide to the Buyer's and/or Lender's Attorney, at least twenty-four (24) hours in advance of the closing, documentation necessary to prepare for the closing, including but not limited to adjustment figures and Seller's costs of closing in a HUD-1 format; copies of payoff letters with computations showing the total due as of the date of final payoff; and a copy of the deed and documents to be recorded with the deed. The Buyer's Attorney shall provide to the Seller's Attorney, as soon as reasonably possible, but in no event less than forty-eight (48) hours in advance of the closing, a copy of the legal description of the property and a list of encumbrances. The Buyer's Attorney shall also provide to the Seller's Attorney figures for adjustments in a HUD-1 format, at least twenty-four (24) hours in advance of the closing.

If not delivered prior to the closing, Seller's Attorney shall also deliver to the Buyer at the closing all documents necessary and required by law or by the Buyer's Lender, Buyer's title insurance company or the settlement agent that are customarily part of real estate closings, including but not limited to a Certification of Seller(s) with Respect to Foreign Investment in Real Property required by Section 1445 of the Internal Revenue Code; a Title Insurance or Owner's Affidavit; authorization documents, if Seller is not an individual; an Affidavit of Tenancy; and a Form 1099S or a certification of no reporting.

*Comment: Certain documents and information which has to be reviewed by the Buyer's and/or Lender's Attorney prior to the closing should be provided by Seller's Attorney as soon as possible after it is available. Buyer's Attorney should likewise provide any information as soon as possible after it is available.*

*It is commonly understood that certain documents to be executed by the parties at closing are required by law, the lender to a transaction, the title insurance company or the settlement agent to comply with law and/or custom and such documents should be delivered by the Seller's Attorney prior to or at the closing along with the original deed, documents to be recorded with the deed (such as an original Power of Attorney) and conveyance tax forms.*

#### **Closing Custom No. 14** **ESTATE TAX LIENS AND PROBATE MATTERS**

A Seller of property which is the subject of an estate tax lien or a potential estate tax lien to the State of Connecticut shall provide to Buyer's Attorney at or prior to the time of closing a Release of Estate Tax Lien from the State of Connecticut, Commissioner of Revenue Services, or a certificate of no tax lien or other sufficient documentation from the probate court where the decedent resided; or in the event Seller or Seller's Attorney is unable to obtain the same prior to closing, an agreement by Seller's Attorney to hold the net proceeds from the sale of the property in escrow pending receipt by the Buyer's Attorney of a Release of Estate Tax Lien from the State of Connecticut Commissioner of Revenue Services or a certificate of no tax lien or other sufficient documentation from the probate court where the decedent's estate is probated.

*Comment: This custom recognizes the need for certain documentation to be provided by the Seller when a property is the subject of an estate tax lien or a potential estate tax lien to the State of Connecticut. The closing does not need to be delayed in the event that the Seller is unable to obtain the proper documentation, provided that the net proceeds from the sale are held in escrow until such documentation is received.*

#### **Closing Custom No. 15** **FUNDS AT CLOSING**

At closing, Buyer's Attorney shall tender to Seller's Attorney an attorney's trustee check, bank or certified check for all of Seller's expenses and Seller's net proceeds as set forth in the Settlement Statement, payable to Seller. Seller may request proceeds to be paid by a method other than attorney's trustee check, bank or certified check, but any such request should be made at least three (3) business days in advance of the closing. The settlement agent shall write all checks with respect to the transaction. All funds shall be delivered to Seller's Attorney in escrow pending Buyer's Attorney having the opportunity to deposit funds necessary for closing and to

receive any incoming wires into his/her client's fund account. Buyer and Seller, or their respective attorneys, shall, if requested by one of the parties, execute a check escrow agreement.

*Comment: The customs require that the Settlement Agent cut all checks from the closing and it is understood that some counties do not use this method, but instead have each attorney cut their own checks. The determination on which method should be used should be made based upon the location of the property and not the office where the real estate closing takes place. It is recommended that an attorney involved with a transaction outside of Hartford County should arrange with the other lawyers' office to finalize how the checks are to be cut before the time of closing. These customs also require that the parties execute a check escrow agreement relating to the checks, if requested by one of the parties. A form of check escrow agreement is attached to these closing customs as Exhibit A.*

### **Closing Custom No. 16 RELEASES OF LIEN**

A. If, at the time of closing, title to the property is encumbered by one or more liens that are not institutional mortgage liens, Seller's Attorney shall, subject to the provisions of paragraph B below, deliver to Buyer's Attorney a release or a payoff letter from said lienholder for each such lien together with recording fees for all such releases. Buyer's Attorney shall from the closing proceeds tender to Seller's Attorney a check for payoff of said lien(s) and Seller's Attorney shall cause said payoff proceeds to be delivered to each lien holder within one (1) business day after the closing. In the event no release of lien(s) is delivered at closing to Buyer's Attorney, upon payment of said lien(s), Seller's Attorney shall be responsible for promptly procuring and delivering to Buyer's Attorney a release of said lien(s).

B. If, at the time of closing, title to the property is encumbered by an institutional mortgage lien(s) for which Seller's Attorney is unable to deliver a release of mortgage at closing, the parties shall, subject to approval by Buyer's title insurance company, if applicable, close the transaction as follows:

1. *Where the debt secured by the mortgage lien is to be paid at the time of the closing:*
  - a. Seller's Attorney shall provide to Buyer's Attorney the following documents at the time of closing:
    - i. A copy of the mortgage payoff statement provided by the mortgagee (as defined in Section 49-8a);
    - ii. A copy of the mortgage payoff transmittal letter prepared by the Seller's Attorney;
    - iii. An indemnity signed by the seller, in substantially the same form as Exhibit D attached; and

iv. An undertaking letter signed by the Seller's Attorney, in substantially the same form as Exhibit D attached, and

b. The Buyer's Attorney shall tender to the Seller's Attorney a form of payment (trustee account check; cashier's check; bank check; teller's check) complying with the mortgagee's payoff instructions, payable directly to the mortgagee. The Seller's Attorney shall cause the payment to be sent with the payoff transmittal letter in accordance with the payoff letter's instructions.

c. If the form of payment is a wire transfer of funds, the Buyer's Attorney shall initiate such wire transfer in accordance with the payoff letter's instructions, and shall provide to the Seller's Attorney reference number for the wire transfer and a written confirmation of such transfer.

d. If the mortgage being paid off secures a line of credit, the Seller's Attorney shall instruct the mortgagee in writing to terminate all borrowing rights and close the account when the payoff letter is requested, and again in the payoff transmittal letter. If the mortgagee requires a writing signed by the borrower(s)/seller(s) in order to carry out such instructions, the Seller's Attorney shall provide such writing.

e. 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 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.

2. *Where the debt secured by the mortgage lien has been paid previously but the lien is not released from the land records at the time of the closing, and in circumstances where an independent release tracking service was not utilized seller's attorney shall provide to Buyer's Attorney the following documents at the time of closing:*

a. Mortgagee's written payoff statement as defined by C.G.S. Section 49-8a with respect to each loan secured by such mortgage; and

b. Written confirmation that the Seller's Attorney 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 that, in the event Seller's Attorney, for any reason, is unable to obtain the release of mortgage lien within sixty (60) days of request for such release, Seller's Attorney shall take such 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 to effectuate the release of the mortgage; and

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

3. *Where 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, and in circumstances where an independent release tracking service was utilized for said lien:*

Seller's Attorney shall obtain and provide to Buyer's Attorney a letter from the release tracking service on said mortgage stating that it is currently tracking the release of the mortgage and will remain responsible in accordance with its contractual obligations for obtaining the release or complying with the requirements of C.G.S. Section 49-8a to effectuate the release of mortgage.

C. It is the choice of the Seller's Attorney (in conjunction with Seller) whether or not to use a release tracking service. If the Seller's Attorney chooses to use a release tracking service, the cost of such service shall be borne by the Seller.

*Comment: In the case of an institutional mortgage, lenders do not typically provide a release of a mortgage lien until after all outstanding lien amounts have been paid in full. With respect to all other liens being released upon closing, it is the preferred practice that a release of said lien(s) should be delivered at time of closing for recording. It is recognized, however, that there exist circumstances where the parties are not able to deliver a release at time of closing. As a result, should a release of any lien being paid off not be available at time of closing, it remains the responsibility of Seller or Seller's Attorney to deliver to Buyer's Attorney at or prior to closing evidence of the payoff amount due or where a lien has been paid but no release has been recorded, evidence that the lien has been paid off, and subsequent to closing, Seller's Attorney shall obtain and record the release of any such mortgage or lien. Use of an independent release tracking services is now commonplace and can simplify the documentation Seller's Attorney must provide to Buyer's Attorney.*

**Closing Custom No. 17**  
**OWNER'S AFFIDAVITS**

Seller shall provide to Buyer at closing an owner's title insurance affidavit as reasonably required by Buyer's title insurance company or by Buyer's Attorney.

If work has been performed at the property or labor, service or materials provided at the property within the ninety (90) day period prior to closing, Seller shall provide Buyer with a Mechanics' Lien Waiver and an Owners and General Contractors Affidavit and Indemnity Agreement, if applicable, all on forms provided by Buyer's title insurance company or other forms commonly used in Hartford County.

**Closing Custom No. 18**  
**CLOSING COST CREDITS**

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 contract, a closing cost shall be defined by reference to the allowance that the 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 section 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 section 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 contract is not specific, a closing cost is anything other than the sales price.

*Comment: This custom liberalizes the definition of "closing cost credit" contained in a purchase and sale contract. When the concept of closing costs credit initially began appearing in purchase and sale contracts for real estate in Hartford County, Connecticut, attorneys generally limited the definition of this term to actual closing costs shown on the HUD-1 Settlement Statement as being paid at the closing, but generally excluded bank fees or other closing costs which were paid outside of closing. This led to prolonged negotiations at real estate closings if the parties disagreed on the definition of closing cost credits. By liberalizing the definition of the term closing cost credit, it is hoped that this will alleviate the prolonged negotiations.*

**Closing Custom No. 19**  
**PREPARATION OF PURCHASE MONEY MORTGAGES**  
**(Originally Approved: December, 1990)**

When a Seller, as part consideration for a deed, has agreed to take back a mortgage from the Buyer, the Seller's Attorney has the responsibility for drafting the appropriate documents relating to the mortgage. The Seller absorbs the cost of preparation of the documents, and the Buyer is responsible for recording fees.

*Comment: This custom recognizes that the Seller usually offers purchase-money financing as an additional inducement for the Buyer to make the purchase, and thus the Seller should absorb the costs of providing the documents required by the terms of the sale.*

**Closing Custom No. 20**  
**LIMITING LANGUAGE ON DEEDS**

Unless the buyer and seller specifically agree to the contrary in writing in the purchase and sales contract, a deed shall not contain the phrase, "subject to declarations, restrictions, covenants and easements appearing of record and any state of facts an accurate survey or personal inspection of the property might reveal," or words substantially similar thereto, unless such phrase or words are qualified by a phrase substantially similar to the following: "provided that none of the above interfere with the present location of any building now located on the property, prevent the use of the property as a residence, or render title to the property unmarketable."

*Comment: This custom recognizes the fact that a deed which contains the words "subject to declarations, restrictions, covenants and easements appearing of record and any state of facts an accurate survey or personal inspection of the property might reveal" or words substantially similar thereto, turns a deed into an instrument which more closely resembles a quit claim deed. This custom makes it clear that the use of such a general blanket exception for most matters of record will not be permitted unless qualifying language is added which states that such matters do not adversely affect the marketability of title or interfere with any building located on the property.*

*It is a common practice to list all of the encumbrances which affect the property in a deed, thus eliminating the requirement for a general blanket exception for matters of record. Buyers and their lenders should know what they are getting. The usefulness of our system of land recording system is bolstered by the recitation of encumbrances on title in conveyance instruments. If most deeds were to merely include a blanket exception for matters of record, it would soon be difficult for buyers and their lenders to ascertain the status of title, as the record*

*would be devoid of any specific references to matters affecting the title. This would likely lead to buyers of property being unaware of the matters affecting their title and an increase in litigation with neighboring property owners regarding “declarations, restrictions, covenants and easements” of record that are not found in a buyer’s title search.*

*Therefore, it is strongly recommended that even if such a blanket exception is taken in a deed, the deed should still include a list of all the encumbrances which affect the property. To assist in this regard, it is expected that buyer’s attorney will provide seller with a copy of buyer’s title search.*

**INDEX OF EXHIBITS**

**THE ATTACHED FORMS OF DOCUMENTS HAVE BEEN PROVIDED TO ASSIST THE  
REAL ESTATE PRACTITIONER THROUGH THE CLOSING PROCESS.**

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**EXHIBIT A**

**CHECK ESCROW AGREEMENT**

Seller \_\_\_\_\_

Buyer \_\_\_\_\_

Property \_\_\_\_\_

Date \_\_\_\_\_

The undersigned hereby acknowledges receipt of all checks payable to Seller or on behalf of Seller as referenced on the HUD-1 Settlement Statement, which checks are issued by Buyer's Attorney as settlement agent for the closing on the above-referenced property. The checks referenced are itemized as follows:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

In order to provide sufficient time for the Buyer's Attorney to complete the closing and/or to deposit lender's funds and/or confirm wire funds pursuant to Statewide Grievance Committee Ethics Opinion 99-1, record relevant closing documentation on the appropriate land records, and to assist Buyer's Attorney in its efforts to comply with Practice Book Sec. 27A.1, (OVERDRAFT NOTIFICATION), it is expressly agreed that the above-referenced checks are accepted in escrow and shall not be disbursed to any party until \_\_\_\_\_ or unless sooner notified in writing by fax by a representative of Buyer's Attorney. In the event that the undersigned Seller's Attorney chooses to disburse said checks, he/she acknowledges full responsibility in the event checks are presented for deposit prior to the time referenced herein.

The Buyer's Attorney further agrees to hold the keys to the property until notification of receipt and deposit of all funds for closing has been given to Seller's Attorney or until a Use and Occupancy Agreement has been signed by both the Buyer and Seller. In the event that the undersigned Buyer's Attorney chooses to release the keys, he/she acknowledges full responsibility in the event that the funds are not received.

\_\_\_\_\_  
Seller's Attorney

\_\_\_\_\_  
Buyer's Attorney

**EXHIBIT B**

**ESTOPPEL CERTIFICATE**

**TENANT ESTOPPEL CERTIFICATE**

\_\_\_\_\_ Bank and/or Owner

\_\_\_\_\_

\_\_\_\_\_

Property Address: \_\_\_\_\_

Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

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

Leased Premises: \_\_\_\_\_

Suite Number: \_\_\_\_\_

The undersigned, Tenant under the above-referenced lease, certifies to  
\_\_\_\_\_ as follows:

1. The above referenced lease, attached hereto as Exhibit A (the "Lease"), has not been cancelled, modified, assigned, extended or amended, except as follows:
2. There is no prepaid rent. The amount of the security deposit due pursuant to the Lease is \$ \_\_\_\_\_. Per our deposit records, \$ \_\_\_\_\_ is actually held as a security deposit.
3. Tenant took possession of the Leased Premises on \_\_\_\_\_. The current rent is \$ \_\_\_\_\_ per month. The Lease provides for an annual increase of \_\_\_% per year. The next scheduled increase is on \_\_\_\_\_. Rent was last paid in \_\_\_\_\_ and has been paid through \_\_\_\_\_.
4. The Tenant is not entitled to, and has made no agreement(s) with the Landlord or its agents or employees concerning free rent, partial rent, rebate of rent payments, credit or offset or deduction in rent, or any other type of rental concession, including without limitation, lease support payments or lease buy-outs, except as indicated below.
5. The Lease terminates on \_\_\_\_\_. Tenant has the following renewal, expansion, and/or early termination option(s):
6. Tenant has the following right(s) of first refusal and/or right(s) of first offer and/or similar rights or options with respect to leasing or purchasing any space in the Property:

7. All work to be performed for Tenant under the Lease has been performed as required and has been accepted by tenant. All other conditions under the Lease to be performed by Landlord have been satisfied.
8. The Leased Premises are being used solely for the purpose described in the Lease.
9. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, will constitute a default under the Lease. The Lease is valid, in full force and effect, and Tenant has no claims or counterclaims against Landlord and no offsets or defenses against Tenant's obligations under the Lease.
10. Tenant has received no notice of prior sale, transfer, assignment, hypothecation, or pledge of this Lease or of the rent received pursuant thereto, except:
11. Tenant has no interest in any part of the Property or any personal property appurtenant thereto other than Tenant's interest in the Leased Premises under the Lease.
12. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Leased Premises or to acquire or receive any fee or other interest in the Property.
13. The Lease represents the entire agreement between Landlord and Tenant with respect to the Premises. There are no other agreements, understandings, side letters or representations of any kind, written or oral, between Tenant and Landlord with respect to the Lease, the Leased Premises or the Property.
14. No actions, whether voluntary or otherwise, are pending against the Tenant or any general partner of the Tenant under bankruptcy laws of the United States or any state thereof.
15. The Tenant has not sublet any portion of the Leased Premises to any sublessee and has not assigned any of its rights under the Lease. No one except Tenant and its employees occupies the Leased Premises.
16. The statements contained herein may be relied upon by any transferee or assignee of the Leased Premises or the fee or other interests in the Property, and by any current or prospective purchaser of the Leased Premises or the fee or any other interest in the Property, and by any prospective or current lender to any of the above.

If Tenant is a corporation, the undersigned is a duly appointed officer of the corporation signing this certificate and is the incumbent in the office dedicated under his or her name.

In any event, the undersigned individual is duly authorized to execute this Tenant Estoppel Certificate.

Dated \_\_\_\_\_, 200\_

TENANT: \_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**EXHIBIT A TO ESTOPPEL CERTIFICATE**

Copy of Original Lease and All Amendments

**EXHIBIT C**

**ASSIGNMENT OF LEASES**

To the best of his/her knowledge, the undersigned seller (the "Assignor") represents that the following information is true and accurate with regard to the tenants residing at the property known as \_\_\_\_\_ (the "Property").

| <u>Floor</u> | <u>Tenant's Name</u> | <u>Monthly Rental</u> | <u>Security Deposit</u> | <u>Lease Term</u> |
|--------------|----------------------|-----------------------|-------------------------|-------------------|
|--------------|----------------------|-----------------------|-------------------------|-------------------|

The Assignor further represents that the tenants listed above are the only persons who reside at and/or have rights of tenancy at the Property. The Assignor further represents that the Assignor has paid to the above-referenced tenants the interest on their security deposits through \_\_\_\_\_, and neither the undersigned nor any tenant is in default under such lease and/or tenancies.

The Assignor hereby assigns, transfers and sets over to \_\_\_\_\_, the buyer (the "Assignee") all of his/her right, title and interest in the leases (including any security deposits thereunder) effective as of the date hereof.

The Assignor agrees to indemnify and hold the Assignee harmless from all cost, liability, damage or expense, including, without limitation, attorneys' fees arising out of the leases and originating prior to the date of transfer of title to the Property.

The Assignee hereby accepts assignment of the leases and assumes all of the responsibilities and obligations as the landlord under the leases and agrees to indemnify and hold the Assignor harmless from all cost, liability, damage or expense, including, without limitation, attorneys' fees arising out of the leases and originating after the date of the transfer of title to the Property.

In Witness Whereof, the undersigned has hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

Witnesses:

ASSIGNOR  
LANDLORD (SELLER):

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_

Agreed and accepted on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

Witnesses:

ASSIGNEE  
BUYER:

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_

**[INDIVIDUAL ACKNOWLEDGEMENT]**

**STATE OF CONNECTICUT** )  
 )  
**COUNTY OF** \_\_\_\_\_ )      **ss** \_\_\_\_\_, **20**\_\_\_\_

Personally Appeared \_\_\_\_\_, signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Commissioner of the Superior Court

**[ENTITY ACKNOWLEDGEMENT]**

**STATE OF CONNECTICUT** )  
 )  
**COUNTY OF** \_\_\_\_\_ )      **ss** \_\_\_\_\_, **20**\_\_\_\_

Personally Appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed as such \_\_\_\_\_ and the free act and deed of said \_\_\_\_\_, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Commissioner of the Superior Court

**EXHIBIT D**

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

**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.

\_\_\_\_\_  
Seller Date: Seller 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 arrange for a proper release of the mortgage to be recorded, 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 Date: