

**PREAMBLE TO THE CLOSING CUSTOMS OF THE
WINDHAM COUNTY BAR ASSOCIATION**

In 2001, the Windham County Bar Association Committee on Standards for Residential Real Estate Closing in Windham County met on several occasions and did extensive work towards updating the Real Estate Closing Customs for Windham County.

The Committee issued a Report containing proposed Updated Residential Closing Customs, that were reviewed and discussed at a meeting of the Windham County Bar Association held in March 2002. Following several questions and comments by members present, the proposal was tabled for further review.

In 2010, President Jack Guarnaccia appointed the undersigned Committee to endeavor to finalize the draft updated Closing Customs for final consideration and action by the Association. The Committee reviewed and addressed the concerns that were raised in 2002 and prepared the attached, further revised Residential Real Estate Closing Customs for Windham County dated as of May 2011.

The proposed Closing Customs are intended as a tool in guiding practitioners towards resolutions of questions that may arise in the course of closing real estate transactions in Windham County where parties, for whatever reason, have not addressed a particular issue or come to an agreement on its resolution. The updated Residential Real Estate Closing Customs for Windham County are offered to aid members of the Association and others in serving their clients and in resolving disputes.

Committee Members:

Nicholas A. Longo

George H. Jackson, III

Giacomo J. Guarnaccia

William H. St. Onge, Esq.

Edwin C. Higgins, III

James F. Brennan

Stephen J. Adams

**WINDHAM COUNTY BAR ASSOCIATION
REAL ESTATE CLOSING CUSTOMS**

TABLE OF CONTENTS

	<u>Page</u>
Closing Custom No.1 - PAYMENT FOR TITLE SEARCH AND ISSUANCE OF TITLE INSURANCE.....	4
Closing Custom No. 2 - ADJUSTMENTS.....	4
Closing Custom No. 3 - RENT AND SECURITY DEPOSIT ADJUSTMENTS.....	4
Closing Custom No. 4 - ADJUSTMENS FOR FUEL/PROPANE IN TANK	5
Closing Custom No. 5 - LOCATION FOR THE CLOSING AND GOVERNING CUSTOMS.....	5
Closing Custom No. 6- COMMON INTEREST COMMUNITIES – ADJUSTMENTS OF WORKING ACCOUNT CONTRIBUTIONS.....	5
Closing Custom No. 7 - COMMON INTEREST COMMUNITIES – SPECIAL ASSESSMENTS.....	5
Closing Custom No. 8 - COMMON INSTERST COMMUNITIES – MONTYHLY ADJUSTMENT OF COMMON CHARGES AND RESALE CERTIFICATE.....	5
Closing Custom No. 9 - SEWER AND WATER ASSESSMENT - ADJUSTMENT AT CLOSING.....	6
Closing Custom No. 10 - REAL ESTATE TAXES – ADJUSTMENT AT CLOSING.....	6
Closing Custom No. 11 - FUNDS AT CLOSING.....	7
Closing Custom No. 12 - RELEASES AT CLOSING.....	7
Closing Custom No. 13 - MECHANIC’S LIEN WAIVERS.....	9

Closing Custom No. 14 -	SUCCESSION / ESTATE TAX LIENS AND PROBATE MATTERS.....	9
Closing Custom No. 15 -	EXECUTION AND DELIVERY OF DOCUMENTS.....	9
Closing Custom No. 16 -	ESCROW FOR FIRE DISTRICT TAXES OR WATER BILLS	6
Closing Custom No. 17 -	CLOSING COST CREDITS	10
Closing Custom No. 18 -	ESCROWS, ESCROW AGENTS AND ESCROW AGREEMENTS	10
EXHIBIT A	ASSIGNMENT OF LEASES.....	11
EXHIBIT B	UNDERTAKING AND INDEMNITY FOR PAYOFF OF EXISTING MORTGAGE.....	12
EXHIBIT C	ESCROW AGREEMENT	13

Approved : May 18, 2011

Windham County Bar Association
Real Estate Closing Customs - 2011

Residential Real Estate Closing Customs for Windham County

1. PAYMENT FOR THE TITLE SEARCH AND ISSUANCE OF TITLE INSURANCE

Buyer will pay for Buyer's own title search, and Buyer's counsel will furnish any required or requested title insurance policies.

2. ADJUSTMENTS

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

3. RENT AND SECURITY DEPOSIT ADJUSTMENTS

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 transferred 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 Buyers' counsel execute an assignment of leases form in substantially the same form as is attached hereto as Exhibit "A".

4. ADJUSTMENTS FOR OIL/PROPANE IN THE TANK

The oil in the tank shall be adjusted in favor of the Seller. Seller shall provide a reading of the amount of oil in the tank, within forty-eight (48) hours of the closing, at the last price paid for that oil from the last provider. When the tank is a 275 gallon tank the parties shall adjust based on a full tank containing 275 gallons of oil. In circumstances where the Sellers of property are to maintain possession after closing oil adjustments shall be made between the parties on the date of occupancy is taken by the Buyers. The Seller shall be reimbursed for propane gas in tanks to remain at the property (i.e. tanks not to be picked up and removed by Seller's provider) at the current price based upon a statement to be furnished by the Seller from such supplier.

5. LOCATION FOR THE CLOSING AND GOVERNING CUSTOMS.

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

If the property being transferred is located in Windham County, then the Windham County Closing Customs shall apply.

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

Contributions required to be made by the Seller 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 pro-rata 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 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 Buyer's responsibility. Post-Contract assessments shall be subject to negotiation between the parties.

8. COMMON INTEREST COMMUNITIES – MONTHLY ADJUSTMENT OF COMMON CHARGES AND RESALE CERTIFICATE

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. Seller shall provide the Resale Certificate at seller's expense.

9. SEWER AND WATER ASSESSMENT ADJUSTMENT AT TIME OF CLOSING

(a) In those instances where the 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 the Seller.

(b) 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 Buyer's responsibility.

(c) Interest on sewer assessments is paid in arrears. This custom would then provide for the Buyer to 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.

(d) In the event the contract is silent as to the existence of or a payment for a Sewer or Water Assessment, the seller shall pay said assessment in full.

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 Windham County towns are now on a fiscal year commencing July 1 and ending June 30. Real Estate taxes assessed upon the List of the preceding October 1st 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, for example fire district taxes and association taxes. Such adjustments are made on the basis of a 365-day year. Taxes shall only be adjusted on the basis of actual taxes paid by the Sellers in advance in those circumstances where taxes have been reduced or adjusted pursuant to *C.G.S. 12-129b* or *C.G.S. 170aa*, or similar applicable statutes.

When closings take place during the months of July or January it shall be the responsibility of the Sellers to prove the payment of taxes or adjustments shall be made by having the Buyers pay the taxes and adjust to the Buyers for the actual taxes paid. In the event a Sellers' mortgagee has "disbursed" taxes and the tax collector has not yet received such payment the Sellers shall deliver to Buyers' counsel a sum equal to the taxes due plus two (2) months interest on said bill. Upon proof that the taxes have been paid the Buyers' counsel shall release such sums to the Sellers. In the event taxes remain unpaid on August 20th for the July bill or February 20th for the January bill the Buyers' counsel shall have the right to use the escrowed sums to pay the taxes due. Taxes shall be adjusted in favor of the Sellers under this circumstance.

11. 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 income 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. This custom shall apply for closings on properties located within Windham County, irrespective of the County within which a closing may take place.

12. 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 lien holder 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 follow:

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 C attached; and
 - iv. An undertaking letter signed by the Seller's Attorney, in substantially the same form as Exhibit B 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 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 cancelled 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.

13. MECHANIC'S LIEN WAIVERS

A seller of property is obligated to deliver to the buyers or the buyers' counsel completed absolute lien waivers at the closing whenever work has been performed or services have been provided during the ninety (90) days preceding the transfer of title. The buyers or counsel for buyers shall not be obligated to accept, in lieu of lien waivers, any indemnity agreement promising to hold buyers or counsel harmless from the loss arising from sellers' failure to provide such waivers.

14. SUCCESSION / ESTATE TAX LIENS AND PROBATE MATTERS

A seller of property which is subject to an unreleased inchoate succession or estate tax lien to the State of Connecticut shall provide to buyers' counsel either of the following:

(a) A Release of Estate Tax Lien or a Certificate of No Tax Due or other documentation from the Probate Court where the decedent resided evidencing that the property is not subject to estate or succession tax or that all taxes are paid; or

(b) An Agreement to hold a portion of the gross proceeds acceptable by Buyers' counsel from the sale of the property in escrow pending receipt by the Buyers' counsel of a Release of Succession or Estate Tax Lien from the State of Connecticut Commissioner of Revenue Services or Probate Court.

15. EXECUTION AND DELIVERY OF DOCUMENTS

It is commonly understood that certain documents to be executed by the parties at closing are required by a lender to a transaction as well as by the Settlement Agent to comply with law and/or custom. Such documents to be executed specific to the property referenced by the respective parties include a Non-Foreign Affidavit (if applicable), a Title Insurance Affidavit, and a Form 1099 or its alternative.

16. ESCROW FOR FIRE DISTRICT TAXES OR WATER BILLS

In the event counsel is unable to obtain information for either fire district taxes or final water readings for use at closing the custom in Windham County is to escrow an appropriate amount (approximately one and one-half (1 ½) times the last fire district tax bill.

17. CLOSING COST CREDITS

Whenever a contract for purchase 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 that allowance that the Buyers' mortgage lender attributes to the term. The intent of this section is, in circumstances where the terms of the closing cost credit are not specifically defined, to be as liberal in construing the term "closing cost" as a Buyers' lender will allow without regard to each parties' understanding of the meaning of the term. In general terms it is the intent of this section that closing costs could be everything other than the sale price in the event a lender allows all such items to be considered closing costs. Absent guidance from a lender, and where a contact is not specific, a closing cost is anything other than the sale price. Notwithstanding the foregoing, the term "closing costs" shall not be deemed to include any portion of a Buyer's broker's commission that would result in payment of total commission compensation in excess of that provided for under the terms of any real estate listing agreement executed by the Seller(s).

18. ESCROWS, ESCROW AGENTS AND ESCROW AGREEMENTS

The handling of escrows at closing has become an issue after the Appellate Court decision in *Galvanek v. Skibitchy* and the enactment of *C.G.S. Sec. 51-81h*. This section is adopted in consideration of the foregoing while balancing the ethical implications of attempts to hold escrow agents harmless from their responsibilities as escrow agents while recognizing their obligations as attorney for one of the parties. Connecticut Bar Association Informal Opinion 99-17 requires that any limitation of liability with respect to escrow agent's responsibilities may be considered an attempt to limit prospective liability for malpractice and such a limitation can only be made if the client consents after solicitation of independent representation. As a result, and in attempt to balance the practicalities of the practice of real estate law with the case law, statutory authority and ethical obligations, these closing customs permit the handling of an escrow by one of the parties attorneys upon the signing of an escrow agreement in substantially the same form as attached hereto as Exhibit "C" "for escrows in an amount less than the small claims limit of Five Thousand and 00/100 (\$5,000.00) Dollars. For any escrows in excess of the small claims limit of Five Thousand and 00/100 (\$5,000.00) Dollars it is believed that given the nature of any anticipated litigation that an independent escrow agent should be engaged.

EXHIBIT A

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 though _____, 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 there under) 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, attorney's 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, attorney's 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 _____, 20__.

Witness:

ASSIGNOR
LANDLORD (SELLER):

Agreed and accepted on this _____ day of _____, 20__.

Witness:

ASSIGNEE
BUYER:

EXHIBIT C

ESCROW AGREEMENT

PARTIES:

Buyer: _____

Seller: _____

Property Address: _____

Whereas Seller desires to convey the property listed above to the Buyer, and the Buyer desires to obtain possession of said property; and whereas Buyer and Seller acknowledge that certain work needs to be done and/or certain items need to be repaired and/or the parties wish an escrow established for the following purpose (s).

Now in consideration of the above, Seller and Buyer hereby deliver _____
(\$ _____) to _____, Escrow Agent, and agree to the following:

1. That the following items will be repaired and/or the following work and/or will be performed (Add additional sheets if necessary):

<u>ITEMS/WORK REQUIRED</u>	<u>ESCROWED AMOUNT</u>	<u>COMPLETION DATE</u>
A. _____	_____	_____
B. _____	_____	_____
C. _____	_____	_____

MISCELLANEOUS PROVISIONS

1. All items on the schedule above are to be completed in reasonable workmanlike manner of a quality customary for similar work in the Windham County area.
2. Amount escrowed for any one item may be released when that particular item is completed, and upon written notification from both Buyer and Seller.
3. The money escrowed is solely for the above items and is applicable only to them and cannot be retained for other items not set forth above.

4. If any item is not completed by the date set forth above, the amount escrowed for such item shall be released to _____. The Buyer retains the right to exercise any legal remedy, including but not limited to monetary reimbursement, necessary to satisfy such deficiency.
5. If the Buyer feels that any item has not been completed in a reasonably workmanlike manner as required in paragraph "2" above, the matter shall be submitted to an appraiser employed or selected by mortgage bank for decision, and Seller and Buyer shall split the cost of said appraiser's fee.
6. Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith. It is further agreed that the escrow agent is not a party to and shall not be bound by the agreement between Buyer and Seller. The parties to this Escrow Agreement hereby agree that the Escrow Agent referenced herein is acting as an attorney for one of the parties to this Agreement. The parties hereby waive any conflict of interest, if any, which may arise with respect to the representation of said party by the Escrow Agent in the event of negotiation or litigation if required over any issue reflected in this agreement. The party represented by the Escrow Agent in this transaction acknowledges that they have the right to consult with independent counsel regarding any limitation of liability that this paragraph provides to Escrow Agent and has either consulted such counsel or has decided not to do so.
7. The parties hereto agree that in the event legal action is required to enforce the terms or conditions of this escrow agreement the successful party in any such litigation shall be entitled to reasonable attorney's fees and costs. The parties further agree that in the event the escrowed amount is less than Five Thousand and 00/100 (\$5,000.00) Dollars any legal action hereunder will be brought in the same Claims Division of the Superior Court and the parties hereto waive rights to remove said action to the Superior Court Docket unless a counterclaim in excess of the small claims limit is to be filed.

Dated this _____ day of _____, 20__ at,
 _____ Connecticut.

 Buyer:

 Seller:

 Buyer:

 Seller:

 Buyer:

 Seller:

 Buyer's Attorney:

 Seller's Attorney:

 Escrow Agent / Date Accepted