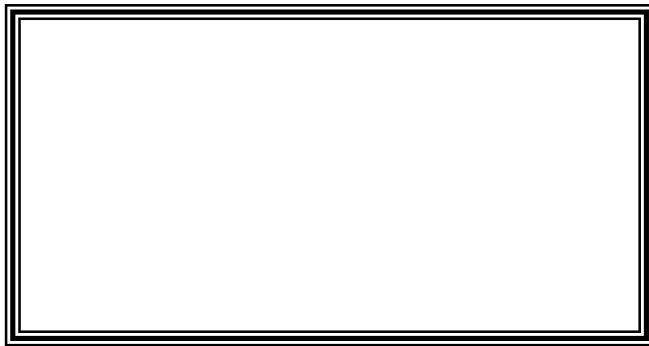




A GUIDE FOR PROPERTY OWNERS SELLING THEIR HOMES



WRITTEN BY THE CONNECTICUT ASSOCIATION OF
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Selling a Home

WHAT YOU SHOULD KNOW

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WORKING WITH A REAL ESTATE PROFESSIONAL

A Realtor® can save you time and assist you in selling your home by: (this list may vary by agreement between you and the Realtor®)

- ❖ Advising you on what repairs or improvements can be done on the home to improve its marketability;
- ❖ Marketing the property and making the most effective use of advertising;
- ❖ Scheduling appointments for potential buyers to view your home even if you cannot be available;
- ❖ Making a basic inquiry into the financial ability of the potential buyer to purchase;
- ❖ Interpreting for you the current selling prices for homes similar to your own as a basis for comparison;
- ❖ Handling negotiations regarding the amount and terms of offers you receive;
- ❖ Scheduling the buyer's home inspection and other inspections requested by the buyer;
- ❖ Furnishing you with copies of Connecticut's Residential Property Condition Disclosure Report form and the Federal Title X Lead-Based Paint Disclosure form so that you may comply with your legal obligations; and
- ❖ Explaining required state and federal forms.

Not all real estate licensees are Realtors®. Membership in the national, state, and local associations of Realtors® means that the Realtor® subscribes to a Code of Ethics which is generally more strict than state real estate licensing regulations.

Complaints concerning Realtors® who have allegedly violated the Code of Ethics may be filed with the local Board of which the Realtor® is a member.

WOULDN'T IT BE LESS EXPENSIVE FOR ME TO SELL MY OWN HOME?

Sure, and it would be less expensive for you to perform your own brain surgery, repair your own car, and represent yourself in that automobile accident lawsuit. While it may be possible for the talented amateur to sell his or her own home there is a lot of work and expertise involved in selling a home. How much time are you willing to devote to educating yourself on the home selling process and being available on those nights and weekends when most buyers will want to see your home? Are you willing to allow any Tom, Dick, or Harry to view your home? Will you be able to obtain the Residential Property Condition Disclosure Report form and the Title X Lead-Based Paint Disclosure form as required by law to furnish to potential buyer? Will you provide notice of lists of hazardous waste sites? Will you be providing comparable sales information and listings to the buyer's appraiser to help the appraiser reach a determination of an opinion of value that supports the purchase price? How much will you pay your attorney to draft a sales contract for the property? How much money are you willing to spend in advertising and marketing your home? What is your marketing plan? How long are you willing to wait for a buyer? Will you limit your advertising to someone else's website? How much traffic will that website generate? Will you have access to a group of ready buyers? Are you willing to go it alone against a buyer's agent? As one can see, selling residential real estate is not necessarily for the faint hearted or those pressed for time. It is a profession that requires a state license because there is a lot of work and responsibility involved.

THERE ARE DIFFERENT WAYS IN WHICH YOU CAN WORK WITH A REALTOR®

There are several different ways that you, as a seller, can work with a Realtor®. When a Realtor® represents you, the Realtor® must keep information about your assets, liabilities, expenses, income, negotiating position, and motivations to sell confidential. The Realtor® representing you will also provide you with his or her advice, opinion and experience. You select the type of representation, but keep in mind that there are different advantages to each option. You should ask the Realtor® to explain these different advantages so you may make an educated decision as to which option will work best for you.

Connecticut law requires that the Realtor® furnish you with a written listing agreement setting forth all the terms and conditions of the representation between you and the Realtor®. The Realtor® must provide this agreement to you prior to marketing your property.

There are three basic types of representation agreements:

(a) **Exclusive Right to Sell (exclusive listing)**

With this representation, you are giving the real estate firm the exclusive right to represent you. There is no need for you to look for a buyer on your own and it may be to your disadvantage to do so as all buyer inquiries must be referred to the listing agency pursuant to the Exclusive Right To Sell agreement. A Realtor® exclusively representing a seller must make a diligent effort to sell the property at the listed price and on the terms set out in the listing agreement.

(b) **Open Right to Sell (open listing)**

Under this type of agreement, you are free to find a buyer through other Realtors® or to deal directly with a buyer. You are not committed to use that particular real estate firm, and that particular firm is not committed to you as a seller. However, keep in mind that a Realtor® under this type of agreement may have a legal obligation to bring new buyers to the attention of those sellers they represent exclusively before they bring such information to sellers under an open agreement. Your property will also not be listed in a multiple listing service.

(c) **Exclusive Agency Right to Sell**

This type of agreement is a hybrid of the two mentioned above. Under this form of agreement, you are free to act as “For Sale By Owner”, but you agree to work only with the real estate firm to which you have given the exclusive agency representation agreement and not with any other firms.

No matter what type of agreement you sign you should inquire as to compensation arrangements. There are non-traditional brokerages that offer a menu of services from which you may choose with the promise that the broker’s compensation will be less depending upon the amount of work you are willing to perform. These are perfectly legal arrangements provided the listing agreement spells out specifically what work you and the broker are each to perform.

On occasion, your real estate firm may have a buyer it represents interested in buying your property. If this situation should occur, your real estate firm would become a dual agent, as it would represent both the seller and the buyer, and you will then be given a dual agency consent agreement for your review and signature. This dual agency consent agreement lays out the “Rules of the Road” of the dual agency relationship.

Furthermore, the firm may offer you, the seller, the option of having another agent from the firm negotiate for you. An agent **designated** on your behalf will be able to advise you on all aspects of the transaction, including providing you with price information and advice as to the amount of offers, list price, etc. Not all firms offer designated agency.

If you try to sell your own home, you will be unrepresented. While this is your right, you should keep in mind that you are not entitled to a Realtor®'s confidentiality, loyalty, options or advice. You cannot expect the buyer's agent to do your work for you. The buyer's agent owes his/her loyalty to the buyer even if the seller pays the buyer agent, and the buyer agent cannot advise the seller. It should go without saying that most real estate brokers represent multiple buyers and multiple sellers. If you give a real estate broker an exclusive listing agreement, that broker will be representing many sellers attempting to sell property. Connecticut law requires a listing broker to make a diligent effort to sell your property, not to sell only your property.

PROPERTY CONDITION AND LEAD-BASED PAINT DISCLOSURES

There are several laws that apply to home sellers that mandate a form of written disclosure to potential home buyers. The first is Connecticut's Property Condition Disclosure law and the second is the Federal Lead-Based Paint Hazard disclosure (Title X – pronounced "Title Ten").

Connecticut law mandates that the seller of a one to four family residence provide a potential buyer with a Residential Property Condition Disclosure Report form prior to the buyer becoming bound by a binder, contract to purchase, option or a lease with a purchase option. The form is issued by Connecticut's Department of Consumer Protection and asks certain questions about the physical condition of the property. Sellers have an obligation to fill out the form to the best of their knowledge and belief. A seller need not provide the form; however, a seller who

fails to properly provide the Residential Property Condition Disclosure Report form must provide the buyer with a \$300.00 credit against the purchase price at closing.

There are certain exceptions to Connecticut's Property Condition Disclosure law. For example, property in an estate and property being sold by order of the court are exempt from the disclosure law. The fact that the seller has never resided in the property is NOT an exemption.

Your Realtor® can provide you with the form, but cannot advise you as to how to answer any particular question as state law mandates that the seller, not the seller's agent, provide the answer.

Federal law provides that any seller of "target housing" provide a statement as to whether the seller has any knowledge of the presence of lead-based paint or lead-based paint hazards on the property. "Target housing" is housing built prior to 1978. "Lead-based paint hazards" are those conditions resulting from the use, disposal, or presence of lead-based paint and can include lead-based paint chips or dust in the ground, air or materials used on the property. In addition, a seller must provide a potential purchaser with an inspection period (at least ten (10) days or such other time as the parties may agree) within which the buyer may conduct whatever tests for the presence of lead-based paint and lead-based paint hazards the buyer desires. Although a seller need not make the purchase contingent on the results of the tests or any particular test results, a seller may not refuse a potential purchaser the right or the ability to test for lead-based paint or lead-based paint hazards.

The failure to provide a purchaser with a Title X Lead-Based Paint Disclosure form or with a testing period is punishable by the Federal Environmental Protection Agency or Department of Housing and Urban Development.

HOW MUCH DO I TELL A POTENTIAL BUYER?

As was discussed previously, the seller must furnish a Residential Property Condition Disclosure Report form and a Title X Lead-Based Paint Disclosure form to a potential buyer. These forms are intended to provide basic information concerning the condition of a property to a potential buyer. Should the seller disclose more?

If a buyer asks a direct question of a seller, Connecticut law requires that the seller's answer be truthful and complete if the seller chooses to answer the question. For example, if a potential buyer asks a seller whether there are development plans for the vacant lot next door, the seller is not obligated to answer, but if the seller chooses to do so, the seller cannot lie or shade the truth.

In addition, real estate brokers and salespeople are obligated by the laws that govern their licenses to disclose material facts about the property to potential buyers. They must disclose such facts even if the seller orders them not to. A "material" fact is a fact that would be of importance to a reasonable potential buyer's purchasing decision. For example, if the real estate salesperson knows that the basement floods periodically, the salesperson must disclose this fact to potential buyers even if the seller tells him or her to remain silent.

Many potential buyers are becoming concerned by environmental matters. Radon gas in well water, molds, leaking tanks and other environmental conditions are all matters that buyers and sellers did not even think about fifteen or twenty years ago. Generally, all parties are better off if potential buyers are told about these conditions. Buyers who discover these conditions after closing are inclined to sue. "AS IS" and similar clauses protect sellers only to the extent that property conditions are made "generally known" to the buyer.

Sometimes, it is a better marketing decision to disclose an item

up front so as to minimize its impact rather than allow the potential buyer to discover it on his/her own and have it be a nasty surprise. For example, if a seller had performed some work on the property without getting zoning or building permits, does that seller really want to wait until the closing when he or she will be asked to sign an affidavit attesting that there was no unpermitted work performed on the property? Probably not, and revealing this fact up front leaves plenty of time to determine whether permits were actually required, whether the work is now grandfathered by law or to obtain permits, if needed. Sellers should discuss these kinds of facts with their Realtor® and their attorney to determine whether they are material and how they should be presented to potential purchasers so as to minimize the possibility of closing or post-closing problems.



CHOOSING A LAWYER

You will need to retain a lawyer as part of your home-selling team.

There are several ways to find and choose an attorney:

- ❖ First, many state and local bar associations have lawyer referral services that will give you the names of attorneys practicing real estate law who are admitted to practice in Connecticut. Check in the Yellow Pages of your phone book under listings for attorneys or lawyers for the number of a local lawyer referral service.
- ❖ Second, friends who have used a local attorney in a real estate transaction should be able to recommend an attorney whose services they found satisfactory.
- ❖ Third, title insurers maintain lists of attorneys authorized to write insurance policies that handle real estate transactions. Attorneys who are authorized to write insurance policies for

title insurance companies can issue title insurance policies and provide other legal services in connection with the transaction.

All attorneys should be happy to discuss fees with you in advance. If you have already chosen your attorney, discuss fees on your first visit. In Connecticut, attorneys are required to provide you with a written fee agreement unless the attorney has previously represented you. While the attorney will be willing to estimate fees and explain how they are calculated, costs may vary depending on the circumstances surrounding your transaction. Each real estate transaction is unique, and additional time or work may be needed.

OFFER AND CONTRACT

In many parts of Connecticut, the buyer will submit the buyer's offer on a purchase agreement form. Once the seller signs the purchase agreement, it becomes the contract between the parties. There are several advantages to this procedure. It is quick, generally less expensive than hiring an attorney to draft the contract, and the contract forms are in widespread use so both Realtors® and attorneys are familiar with their contents. The disadvantage of a form agreement is that it may not suit the particular property or your particular needs. For example, the form contracts are not suitable for new construction or commercial properties.

Do not hesitate to seek an attorney's advice concerning the contract or to ask that the purchase agreement form contain a provision requiring that your attorney approve the contract. It is always your privilege to have your attorney draft the real estate contract, and in some parts of Connecticut, this is the common practice. If you wish to have your attorney draft the contract, you may wish to inquire as to whether the attorney will be using a bar association form contract. Some local bar associations have issued fill-in-the-blank contract forms for use by their members. These forms allow the contract to be executed

quickly and generally for less cost than if the attorney were to write the contract from scratch.

No matter what method you choose, be aware that Connecticut law states that an oral contract for the purchase of real estate is generally not enforceable. So, although the buyer has verbally agreed to buy, the buyer is not obligated to buy the property from the seller unless both parties have executed (signed) and delivered a purchase agreement.

MULTIPLE OFFERS

Congratulations, you have such a desirable property that you have received several offers on it at the same time. Now what?

Keep several principles in mind in dealing with a multiple offer situation. First and foremost, you, the seller, are driving the bus. It is your decision as to how the multiple offer situation should be handled. Second, there are several different ways in which a multiple offer situation can be handled and there are good points and bad points about each. For example, while sellers often dream about the possibility of an "auction style" bidding war between several buyers, the seller should keep in mind that no buyer is bound to anything until a written contract has been signed and delivered to all parties. While the seller may look forward to the prospect of a bidding war, the seller gleefully rubbing his or her hands and starting to count his or her extra change may find that one or more of the potential buyers have withdrawn their offer because they do not want to play. Similarly, the seller may find a clever buyer who decides to make a very high offer and then once the clever buyer has chased away the other potential buyers, starts the price negotiations. All of this means that there is no one best method of handling the multiple offer situation. The smart seller will have the Realtor® review each of the options pointing out the advantages and disadvantages of each method so the seller can make a decision based on what will work best in his or her

particular situation and what strategy best fills the seller's needs.

DEPOSITS

Typically, a potential buyer wishing to purchase your property will be asked to post a deposit. The amount of the deposit is a matter of negotiation between you and the potential buyer.

The purpose of the deposit is to provide a fund that the seller can access in the event the buyer defaults on his/her obligations under the contract. Whether a buyer has actually defaulted is a matter to be decided by a judge. Real estate brokers and the attorneys for the parties are not in a position to decide whether the parties have defaulted on a contractual obligation. As a result, there is nothing automatic about the seller receiving the deposit if the buyer fails to close. In addition, most residential real estate purchase contracts contain certain conditions called "contingencies" that must be met before a buyer is obligated to buy the property. Generally, if one of these conditions is not met and the buyer has acted in good faith to try to meet the condition, the buyer is entitled to the return of the deposit.

In the event that one of the parties is entitled to the deposit, a real estate broker holding the deposit will ask the parties to each sign off on the release of the deposit. Connecticut law does not permit a real estate broker to hand over a deposit to a particular party, no matter how much that party believes he/she is entitled to the deposit, without having all parties sign off on the release of the deposit. In the event that the parties fail to sign off on the release of the deposit, their only recourse is to visit a court of law. As a result, it is irrelevant whether it is your real estate broker or the buyer's real estate broker that holds the deposit since the rules applying to real estate brokers holding deposits apply equally to both.

MORTGAGE CONTINGENCY

It is a fact of modern day life that very few potential buyers have the cash in pocket to purchase a piece of real estate. Therefore, most buyers will require a mortgage loan from a lending institution. That lending institution will gather facts concerning the buyer and will, if the lending institution approves the buyer, issue a *commitment letter* to the buyer. The commitment letter is a contract from the lending institution to make the loan. *A commitment letter is the only document that contractually binds a lending institution to make the loan.* Some lending institutions will issue "pre-approval" or "pre-qualification" as an accommodation to buyers who apply for a loan. Pre-approval and pre-qualification letters are not contractual commitments by the lending institution and are not an absolute indication that the buyer will receive a mortgage commitment. Sellers sometimes become upset when a buyer who has provided the seller with a pre-qualification or pre-approval letter is denied a mortgage commitment by the lending institution. The way to avoid disappointment is to take pre-approval and pre-qualification letters for what they are, some indication that the buyer may receive a loan, and not a contractual commitment by a lending institution to actually make the loan.

Even when a buyer receives a mortgage commitment from a lending institution, that commitment may contain conditions that the buyer must meet before the lending institution will actually furnish the funds. There are sometimes controversies over whether a mortgage commitment that contains such conditions is an actual mortgage commitment. Some purchase contracts make provisions for the fact that a buyer may receive a conditional commitment, but many do not.

A buyer who has not received a commitment letter has not necessarily lied to the seller or committed nefarious misdeeds. The purpose of the lending institution's application and approval process leading to a mortgage commitment is to ferret out

situations with which that particular lender may not be comfortable. Buyers are not necessarily experts on real estate financing nor the wants and desires of lending institutions. Connecticut law simply requires that a buyer make a diligent effort to obtain a mortgage from one lending institution. A “diligent effort” means that the buyer has furnished the lender with such information as the lending institution may reasonably require and has done so in a timely manner. It does not mean that a buyer refused a commitment from a lending institution must try other lending institutions or other types of financing in order to obtain a mortgage.

APPRAISAL AND INSPECTION

After the seller accepts the buyer’s offer, there will be an appraisal and a house inspection. These are different:

The appraisal: A written opinion of the property’s value. The buyer’s lender will require an appraisal. The appraiser visits the house and reviews recent selling prices of similar homes in the area. The buyer will pay the appraisal fee at the closing or as part of his or her mortgage application. The appraisal is not a house inspection.

The house inspection: An evaluation of the property to determine if there are any specific problems that could change its value. The inspection also helps the buyer decide on those items the buyer may wish to ask the seller to repair. The inspector is expected to carefully examine the entire house, inside and out. A detailed report will indicate any problems found. The inspector is not an appraiser. Property values are not within the expertise of the house inspector.

The buyer typically pays for the inspection. Connecticut requires house inspectors to be registered with the Department of Consumer Protection.

Other Inspections a Buyer May Request

- ❖ ***Termite and Pest Inspection:*** If termites are found, the buyer must have proof that the house has been treated and that any termite damage has been repaired. This is usually the seller’s responsibility.
- ❖ ***Water Potability:*** This test determines whether your water meets Connecticut standards for potable drinking water.
- ❖ ***Water Chemical Analysis:*** This test determines whether there are chemicals in private well water that might be harmful to drink or give the water an off-color or taste.
- ❖ ***Radon Gas:*** These tests determine whether there are levels of radon gas in the home or water that exceed levels recommended by the Federal Department of Health and Human Services.
- ❖ ***Lead-Based Paint/Lead-Based Paint Hazards:*** Every buyer of a home built prior to 1978 has the right to perform tests to determine the presence of lead-based paint or lead-based paint hazards.
- ❖ ***Sub-Surface Sewage Disposal:*** Residences are connected to their own private sub-surface sewage disposal system. The care and use of private, sub-surface sewage disposal systems is much different than the use of public sewers. The Connecticut Health Department has several brochures containing information on subsurface sewage disposal. In addition, a standardized examination report from the Connecticut Health Department is available concerning the septic system.

❖ **Well Water Recovery Test:** This test determines how much water the well produces each minute. A relatively low gallons-per-minute rating does not necessarily indicate a bad well provided the well has sufficient storage capacity.

❖ **Underground Oil Tanks:** Leaking underground oil tanks present liability issues for buyers and sellers. Connecticut law imposes responsibility on any landowner for cleanup costs and damage to other properties as a result of an underground oil tank spill. In addition, some towns have special ordinances regarding underground oil tanks. It is important for a purchaser to know whether or not the property has an underground oil tank and to speak with the State Department of Environmental Protection or the local Fire Marshal or building inspector concerning underground oil tanks.

Tanks must be removed using licensed removal contractors. Having your friend who has a backhoe dig out the tank is not adequate. In order for a tank to be “abandoned”, it must qualify to be abandoned according to Connecticut DEP regulations. Simply filling a tank with sand is not “abandonment” according to these regulations.

CLOSING

The actual closing is when papers and checks change hands and title to the home officially becomes the buyer's.

Closings are either “informal” or “formal”. If the closing is “informal”, you and the buyer will meet with your respective attorneys separately, and the attorneys will meet to exchange papers and checks. In a formal closing, the buyers, sellers, the respective attorneys and the Realtors® will all meet at the same time. Papers will be signed in the formal closing and distributed along with the proper checks. It really does not matter what form of closing is used, and the form of the closing is a matter of

agreement between the parties. If you bring children to the closing, you may wish to bring something quiet for them to do as the typical closing is not very entertaining and you will want to concentrate when your attorney reviews the paperwork with you. A closing ordinarily takes approximately 1 to 1.5 hours.

Typically, you will be asked to sign the following documents at the closing:

❖ **RESPA or HUD-1 Form:** This form lays out all of the financial aspects of the transaction and accounts for every penny.

❖ **Deed:** This is the “bill of sale” for the property. It will be signed by you and will contain a legal description of the property. There are various forms for these deeds. The typical form used in Connecticut is a warranty deed. Your attorney can explain the difference in deed types.

❖ **Conveyance Tax Return:** A conveyance tax is a sales tax on real estate. As real property lies within both the state and a municipality, there are two conveyance taxes. The taxes are paid by the seller and accompanied by conveyance tax returns when the deed evidencing the sale is recorded in the town's land records. Sellers will need to provide their social security numbers and sign the return.

For residential real estate, the state tax is imposed at a rate of ½% of the first \$800,000.00 of the purchase price and 1% of any amount of the purchase price in excess of \$800,000.00. The municipal tax until recently was \$1.10 per thousand of the purchase price but, by Public Act in March 2003, the tax was increased to \$2.50 per thousand for all towns, with some towns having the option of approving an additional \$2.50 per thousand.

- ❖ **Checks:** Your attorney will provide checks drawn from the purchase price for the conveyance taxes, real estate commissions, mortgage payoffs and the rest of the seller's sales expenses.
- ❖ **Keys and Garage Door Openers:** You will provide the keys, garage door openers, alarm codes and other means of entry into the property at closing. Typically, these items are provided at the end of the closing.
- ❖ **Title Insurance Affidavit:** If the buyers are obtaining title insurance, a seller's affidavit will ask you to certify that no work has been done on the property in the last 90 days, that no one is occupying the property, that no unpermitted work was done on the property, and to answer questions concerning boundary disputes, encroachments and other matters that may affect title.
- ❖ **Mechanic's lien waivers:** If you had work done on the property within ninety (90) days of the closing date, even if that work was done at the buyer's request, you will be asked to produce mechanic's lien waivers from the contractors who performed the work and the building material supplier to show that all of the work and material bills were paid. You can obtain the waiver form from your attorney.
- ❖ **Transferring utilities:** You will need to contact the power company, water utility, gas company, etc. a few days before the closing to transfer meters. The buyer should do the same.
- ❖ **Oil fill:** If you heat with fuel oil, you may be required to fill your oil tank the day before closing. The buyer will then reimburse you for a full tank of oil. You will need proof of fill-up for the closing.

CLOSING DATES

The purchase and sale agreement will undoubtedly contain a closing date. Do not take this date too literally. Closing dates in real estate contracts are "mere formalities" and are not written in stone. Closings frequently do not take place on the closing date set forth in the contract. If truth be told, lenders have far more influence over the actual closing date than either of the parties. The parties can agree on whatever closing date they wish, but if the lender is not ready to close the mortgage loan, the closing simply will not take place on that date. Therefore, check with your attorney concerning the closing date before arranging for movers, transferring utilities, canceling homeowner's insurance and the like.

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