

# Offers and Counter Offers



**Question:** Must an offer be in writing in order to be a “valid” offer?

**Answer:** No. There is no legal requirement that offers be in writing. The real estate licensing regulations simply state that real estate licensees must “endeavor” to put the agreement of the parties in writing. While setting forth all the terms of the offer in writing helps to avoid misunderstandings and makes it easier for the real estate licensee to “endeavor” to put the agreement of the parties in writing, an oral offer is just as much an offer as one made in writing.

# Offers and Counter Offers (Continued)



**Question:** Must a check accompany an offer in order for it to be a “valid” offer?

**Answer:** Again, while there may be practical reasons on the seller’s part for wanting to see some sort of “good faith” or “earnest” money, there is no legal requirement that a deposit be provided with an offer.

# Offers and Counter Offers (Continued)



**Question:** When must an offer be presented?

**Answer:** According to the Real Estate Licensing Regulations and the Realtor<sup>®</sup> Code of Ethics all offers must be presented as soon as practicable until closing. Therefore, there is simply no valid reason for not presenting an offer.

# Offers and Counter Offers (Continued)

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**Question:** Do all of the same rules apply to counter offers?

**Answer:** Yes.

# Offers and Counter Offers (Continued)

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**Question:** When may an offer or counter offer be revoked?

**Answer:** An offer or counter offer may be revoked at any time before the other party accepts the offer or counter offer.

# Offers and Counter Offers (Continued)

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**Question:** What makes the revocation of an offer or a counter offer effective?

**Answer:** The revocation of an offer or counter offer is legally effective when it is received by the other party before that party accepts the offer or counter offer.

# Offers and Counter Offers (Continued)

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**Question:** Must a seller respond to an offer within 24 hours?

**Answer:** No, there is no law or other requirement mandating that a seller respond to an offer or respond within a particular period of time.

# Property Condition Disclosure Form

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**Question:** What additional duties does the Property Condition Disclosure Law place on real estate brokers and salesperson?

**Answer:** None.

# Property Condition Disclosure Form (Continued)

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**Question:** Do I need to attach an original form to the written offer?

**Answer:** No. You may attach a photocopy or faxed copy of the original form to the offer. The only original signature required on the copy of the form which is attached to the offer is the buyer's to indicate that the buyer has received the form.

# Property Condition Disclosure Form (Continued)



**Question:** What needs to be attached to the contract or purchase agreement?

**Answer:** An original, photocopy or faxed copy of the original Property Condition Disclosure Form bearing the original signatures of both the seller and the buyer should be attached to the contract or purchase agreement. If a photocopy or faxed copy of the form is attached to the purchase agreement or contract, the seller may simply re-sign the photocopy or faxed copy.

# Property Condition Disclosure Form (Continued)



**Question:** The seller will not give me a filled-out Property Condition Disclosure Form even though I have sent it to the seller. What do I do?

**Answer:** You should simply document the fact that you informed the seller of the requirements of the law and send the seller a form. The law specifically states that it is the seller's responsibility to provide the form to the buyer. The seller will be required to credit the purchaser with the sum of \$500 at closing if the seller fails to furnish this report (Connecticut General Statutes Section 20-327c).



**Question:** I received an offer from a buyer who was shown the property by a cooperating broker through a lockbox system, so I did not have the opportunity to provide a form to the buyer as yet. What do I do?

**Answer:** You should immediately transmit a fax or a photocopy of the Property Condition Disclosure form to the cooperating broker along with the request that the buyer sign the form. In the meantime, present the offer to the seller, and if the seller finds the offer acceptable, place a contingency in the offer to the effect that it is contingent on the buyer receiving and executing a Property Condition Disclosure Form.

# Property Condition Disclosure Form (Continued)



**Question:** The seller has asked me for assistance in filling out the form. Should I provide such assistance?

**Answer:** No. The completion of the Property Condition Disclosure Form is the seller's responsibility, not the brokers. In fact if the broker or salesperson assists the seller in completing the form or provides advice to a seller on how to complete the form, the disclosure becomes the broker's and not the seller's which defeats part of the purpose of the form. Therefore, if the seller requests assistance or advice on how to fill out the form, the broker or salesperson should either tell the seller to the best he or she can and that the seller may attach separate sheets of paper containing explanations, limitations, etc. on the responses or advise the seller to consult with his or her attorney. Under no circumstances should a broker or a salesperson advise the seller on filling out the form or how to answer questions, and the broker or salesperson should never fill out a form out in his or her own handwriting.

# Property Condition Disclosure Form (Continued)



**Question:** I am representing a relocation company. Is the relocation company required to provide a Property Condition Disclosure Form?

**Answer:** If the relocation company has taken title to the property, then the relocation company must furnish the Property Condition Disclosure Form. If the relocation has not taken title to the property (in other words, title to the property is still in the name of the employee) then the Property Condition Disclosure Form should be provided by the employee who has title. Relocation companies in of themselves are not exempt.

# Property Condition Disclosure Form (Continued)

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**Question:** I am representing a bank which is selling property it acquired in a foreclosure. Must the bank provide a Property Condition Disclosure Form?

**Answer:** No.

# Property Condition Disclosure Form (Continued)

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**Question:** Are persons holding power of attorney exempt?

**Answer:** No.



**Question:** Are executors, administrators, conservators and trustees exempt?

**Answer:** Yes.

# Property Condition Disclosure Form (Continued)

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**Question:** Does the Property Condition Disclosure Form need to be completed if raw land is being sold?

**Answer:** No. The Property Condition Disclosure Form need only be completed if the property is a one to four family residence.



**Question:** The seller has never occupied the property. Must the seller provide a Property Condition Disclosure Form?

**Answer:** Yes, there is no exemption for persons who have not occupied the property.

# Property Condition Disclosure Report

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**Question:** If a property is listed after 8/10/18 using the old Property Condition Disclosure Report, do we need to change the form or ask the Sellers agent to do so?

**Answer:** Yes. The Department of Consumer Protection advised all real estate licensees that a revised Residential Property Condition Disclosure Report (RPCDR) has been posted. The revisions are to comply with changes enacted in the statute earlier this year. The form is effective August 10, 2018 and required for all new residential listings.

# Notice of Unsatisfactory Inspection



**Question:** Do Buyers need to sign sections 1 and 2?

**Answer:** If the Buyers check box 1 requesting remedy to unsatisfactory items, and the Sellers check the box agreeing to remedy all unsatisfactory items, then the Buyers do not need to sign in Section 2. If the Buyers check box 2 electing to terminate the contract then they do not need to sign section 2. If the Buyers checks box 1 requesting remedy to unsatisfactory items, and the Sellers check the box agreeing to remedy only certain unsatisfactory items, then the Buyers do not need to sign in Section 2. This is because the Buyers made a request, the Sellers changed the terms, so the Buyers need to sign if they agree to the new terms.



## NOTIFICATION OF UNSATISFACTORY INSPECTION Greater Hartford Association of REALTORS®, Inc.



This notification is with respect to the Real Estate Purchase Contract (the "Contract") dated \_\_\_\_\_ between \_\_\_\_\_ (Buyer(s)) and \_\_\_\_\_ (Seller(s)) concerning the Property located at \_\_\_\_\_ :

In accordance with paragraph 17 of the Contract, or the Rider to the Contract, Buyer hereby notifies Seller that the following inspection(s) is/are unsatisfactory [check one or more]:

- |   |   |
|---|---|
| <input type="checkbox"/> Home Inspection                              | <input type="checkbox"/> Radon Inspection         |
| <input type="checkbox"/> Lead Inspection                              | <input type="checkbox"/> Septic System Inspection |
| <input type="checkbox"/> Termite or Wood Destroying Insect Inspection | <input type="checkbox"/> Well System Inspection   |
| <input type="checkbox"/> Asbestos Inspection                          | <input type="checkbox"/> Other _____              |

A copy of the relevant page(s) from the applicable inspection report(s) is/are attached hereto.

**PARAGRAPH 17 OF THE CONTRACT ALLOWS BUYER TO EITHER (1) TERMINATE THE CONTRACT OR (2) GIVE SELLER THE OPTION TO CORRECT THE CONDITIONS THAT ARE UNACCEPTABLE TO BUYER.**

Check one:

(1)  Buyer requests that Seller remedy the following unsatisfactory condition(s) at Seller's expense prior to closing [describe work or see attached documentation]: \_\_\_\_\_

(If this option is selected, Paragraph 17 of the Contract allows Buyer to terminate the contract with written notice if Buyer and Seller cannot come to a mutually satisfactory agreement concerning these conditions.)

(2)  Buyer hereby elects to terminate the Contract (NOTE: Notice of Termination and Release of Deposit form is required)

BUYER(S)

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

**NOTE: THE FOLLOWING SECTION TO BE COMPLETED IF SELLER AGREES TO REMEDY UNSATISFACTORY CONDITIONS. CHECK APPLICABLE BOX.**

The Seller agrees to remedy ALL of the unsatisfactory conditions listed above at Seller's expense prior to closing.

The Seller agrees to remedy the following unsatisfactory condition(s) ONLY at Seller's expense prior to closing [describe work or see attached documentation]: \_\_\_\_\_

SELLER(S)

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

The Buyer ACCEPTS the Seller's agreement as stated above.  
BUYER(S)

# Selling Foreclosure Properties

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**Question:** Who executes the listing agreement?

**Answer:** If the property is a one to four family residence, the listing agreement should be executed by the record owner(s) of the property even if the foreclosure has already been started.

# Selling Foreclosure Properties (Continued)



**Question:** Must the seller of a property under foreclosure provide a Property Condition Disclosure Form?

**Answer:** If the property is a one to four family residence, and the foreclosure has not yet been completed, the record owner of the property should provide a Property Condition Disclosure Form. Property acquired through foreclosure or a Deed In Lieu of Foreclosure is exempt from the property condition disclosure requirement.

# Selling Foreclosure Properties (Continued)

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**Question:** Must a seller of a property under foreclosure provide a Title X Lead Disclosure Form?

**Answer:** Yes. The Title X Lead Disclosure Form is required whether the property is in foreclosure or has been acquired after a foreclosure.

# Selling Foreclosure Properties (Continued)



**Question:** A lender has offered to pay a sum of money for expenses incurred if the lender is provided with a CMA or BPO. Is this legal?

**Answer:** Yes. The law permits a real estate broker or salesperson to charge a fee for a comparative market analysis or broker price opinion in connection with trying to obtain a listing, servicing a listing, obtaining a Buyer Representation Agreement or servicing a Buyer Representation Agreement. The market analysis or opinion cannot be called an “appraisal.” Finally, if the analysis or opinion is performed for a consumer and the broker or salesperson who performed the analysis or provided the opinion receives the listing, the consumer must be credited with the fee paid for the analysis or opinion.

# Title X – Lead Notice Regulations (Continued)



**Question:** What is considered to be a “dwelling?”

**Answer:** A “dwelling” is considered to be a single-family house, including attached structures, such as porches and stoops and a single-family unit in a building that contains more than one separate unit. For example, a three-family house would contain three “dwellings” according to the regulations.

# Title X – Lead Notice Regulations (Continued)



**Question:** What is considered to be a “target housing” under the regulations?

**Answer:** The “target housing” under the regulations is defined as any housing constructed prior to 1978, but there are exclusions. For example, leases for less than 100 days, housing for the elderly and handicapped (unless a child under age 6 resides or is expected to reside in such housing), zero-bedroom housing (efficiency or studio apartment, dormitory housing, etc.), and foreclosure sales. Also excluded under the regulations is rental housing which has been certified “lead-free” by a certified inspector.

# Probate and Conservator Sales



**Question:** I have been asked to take a listing on a property which is in an estate. Who should sign the listing agreement.

**Answer:** If the estate is the estate of someone who has died, either the executor or the administrator should sign the listing. If the estate is the estate of a person who has been declared incompetent to handle his or her own affairs, the listing should be signed by a conservator. Executors, administrators, and conservators are appointed by the Probate Court in a written appointment. An executor (the female form is “executrix”) is appointed to oversee the winding up of the estate of someone who died with a will. On many occasions, the executor is actually named in the will. However, the appointment in the will must be approved by the Probate Court. An administrator ( the female form is “administratrix”) is appointed to wind up the affairs of someone who has died without a will. Whether a person has been appointed an administrator, an executor, or a conservator, there is a certificate issued by the Probate Court bearing the seal of the Probate Court confirming the appointment. You should ask to see the certificate and should retain a copy of the certificate for your file.

# Probate and Conservator Sales (Continued)



**Question:** When is the permission of the Probate Court necessary in order to sell real estate?

**Answer:** The probate Court is required to approve the sale of real estate from an estate in all circumstances except one. If permission to sell has been granted in a will, the executor, once appointed by the probate court, may contract to sell the property and may sell the real estate without further permission of the Probate Court. Since this is the only exception, you should ask to see a copy of the portion of the will in which permission is granted to the executor to sell the real estate. If the executor refuses to give you that copy, you may obtain a copy of the complete will from the Probate Court where the will was filed.

# Probate and Conservator Sales (Continued)



**Question:** How does the Probate Court decide which of the several offers to approve?

**Answer:** The Probate Court must approve the sale which, in the opinion of the Probate Judge, is in the best interests of the estate. The Probate Court has very broad discretion in what is in the best interest of the estate. This is not necessarily the highest or first offer if there are other terms and conditions which make a lower offer more attractive. The Probate Court will hold a hearing for purposes of considering offers.

# Open Houses (Continued)



**Question:** May a licensee utilize a personal assistant to conduct the open house?

**Answer:** No. Personal assistants may be present at an open house in order to provide security, perform secretarial services, or general set up. A personal assistant may not conduct an open house without the presence of a real estate broker or salesperson because conducting an open house is considered to be “engaging in the real estate business” and therefore an activity which may only be done by a licensee.

# Open Houses



**Question:** Customers who came to an open house spoke to the salesperson conducting the open house. They made arrangements for a subsequent appointment. At that appointment, these customers appeared with “their agent.” Can they do this?

**Answer:** Buyers may work with whomever they choose provided they have not executed an exclusive buyer representation agreement with another brokerage. However, this will not mean that the intervening agent will be the procuring cause of the sale and thus entitled to the selling commission. Many procuring cause disputes originate at open houses. While volumes have been written on the question of procuring cause, generally the mere introduction at an open house does not necessarily make the salesperson conducting the open house the procuring cause. On the other hand, members who send their customers to an open house without indicating any acceptance of the listing broker’s offer of compensation made through the MLS leave themselves vulnerable to procuring cause claims made by the firm conducting the open house. Therefore, when a member cannot accompany its customers to an open house, the member should transmit a writing to the listing firm indicating that the member is providing the listing firm with the names of the clients whom the member is sending to the open house along with an indication that the member accepts the listing broker’s offer of cooperation and compensation made through the Multiple Listing Service.

# Open Houses (Continued)



**Question:** Customers who came to an open house spoke to the salesperson conducting the open house about what they were looking for in a property. These customers submitted an offer on the property through their buyer agent. When I complained that I was the procuring cause, the buyer agent said that I had broken the law because I failed to disclose that I was the seller's agent and that the customers were alienated once they found out I was representing the seller. Is the buyer agent correct?

**Answer:** Yes. The Connecticut Real Estate Licensing Regulations state that an unrepresented person's disclosure form must be submitted to the customer at the first personal meeting at which the customer's wants and needs are discussed. In not providing the disclosure form, the agent at the open house violated the licensing regulations and left himself/herself open to such a claim when the agent contested the buyer agent's right to the cooperating broker payment.

# Commissions, Referral Fees and Rebates

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**Question:** May I take a listing or a Buyer Representation Agreement where I will be paid in some other fashion than a commission?

**Answer:** Yes. Connecticut Law provides that the payment of compensation is negotiable. This means as to type and to amount. Therefore, it is permissible to ask for payment based on an hourly rate, flat rate, a retainer payment (both refundable and non-refundable) or any other method which is agreeable between the broker and the consumer.

# Commissions, Referral Fees and Rebates (Continued)



**Question:** A seller who has executed a listing agreement with me wishes to offer a trip to a co-operating broker who sells the property. May this be done?

**Answer:** Rebates, trips, or other sales incentives may be offered to co-operating brokerage firms. The rebate, trip, or other sales incentives must be paid to the selling brokerage firm. It is illegal for an individual salesperson to be paid or to accept any form of compensation directly from any party other than the salesperson's broker.

# Commissions, Referral Fees and Rebates (Continued)



**Question:** An attorney with whom I occasionally work sent me a listing and has asked for a referral fee or a portion of the commission. May I pay the referral fee?

**Answer:** Section 51-87b of the Connecticut General Statutes prohibits an attorney from collecting a referral fee for the referral of closing business. There are some states, however, where attorneys are permitted to charge commission for the sale of real estate. One such state is New York. Members of the New York bar are permitted to act like real estate agents and collect commissions in New York. There is no such provision in Connecticut law. Therefore, a New York attorney cannot collect a commission for real estate sold in Connecticut as this is considered engaging in the real estate business in Connecticut which cannot be performed without the proper license.



**Question:** I wish to employ a marketing plan whereby I will donate a portion of my commission to my church if any member of the church refers a buyer to me. May I do so?

**Answer:** No. As stated above, “consideration” is very broadly defined. An agreement to pay a donation in exchange for a referral provides a consideration to the person who made the referral, i.e. the donation. Under these circumstances, even though you may have the best of intentions and even though the referral fee may benefit the church monetarily, it is still an agreement to pay the consideration in return for the referral of closing business which is RESPA violation.

# Commissions, Referral Fees and Rebates (Continued)



**Question:** I recommend an oil company to buyers with whom I worked who just moved into the area. Without anyone asking, the oil company sent me a check along with a note thanking me for a new customer. May I accept the check?

**Answer:** No. The Real Estate Settlement Procedures Act (RESPA) prohibits the payment of consideration for the referral of closing business. The terms “consideration” and “closing business” are very broadly construed. Even if the oil company is not considered to be in a closing business, the Code of Ethics does not permit you to accept the payment unless your client agrees to it.

# Commissions, Referral Fees and Rebates (Continued)



**Question:** A salesperson has made arrangements for a referral fee with the salesperson of another firm. Is there anything else that should be done?

**Answer:** Yes. A salesperson does not have the authority to create a commission obligation or accept a commission on behalf of his/her broker. Therefore, this arrangement between salespeople should be reduced to writing and approved by each salespersons' broker.

# Commission Enforcement



**Question:** How does one create an enforceable commission agreement?

**Answer:** There are only three ways in which an enforceable commission agreement may be structured. The first is a Listing Agreement where the seller agrees to pay the listing agent's compensation. The second is a Buyer Representation agreement where the buyer agrees to pay his/her agent. These agreements must contain all of the requirements set forth in the statutes and Real Estate Commission Regulations. The third method of creating an enforceable commission agreement is an arrangement between brokers. These arrangements are typically created automatically through the Multiple Listing Service systems but also include referral arrangements and other types of co-brokerage arrangements can be created in this manner.

# Commission Enforcement (Continued)



**Question:** Must a potential cooperating brokerage firm have a legal Buyer Representation Agreement with his or her buyer in order to qualify for payment through the MLS?

**Answer:** Yes. There are three qualifications that must be met in order to collect and enforce a cooperating broker payment through the MLS. First, the broker must be a participant in the same MLS system or on MLS systems that cooperate with each other. Second, since Connecticut law permit blanket offers of cooperation and compensation only to buyer agents, the potential cooperating broker must qualify as a legal buyer agent. This means that the firm has a Buyer Representation Agreement which meets all of the requirements of Connecticut law and the Real Estate Commission's Agency Policy. Third, the cooperating broker must be the procuring cause of the successful transaction. A cooperating broker who does not meet one or more of these elements does not meet the qualifications for a cooperating broker fee and will not be granted an arbitration hearing in order to enforce a claim for such a fee.

# Commission Enforcement (Continued)



**Question:** The residential tenant that I introduced to the property wants to buy it. The lease says I am entitled to a commission if the tenant wants to buy it. Do I have an enforceable agreement?

**Answer:** No. Since this is a residential purchaser/tenant, the strict requirements of the Connecticut statute pertaining to Listing Agreements and Buyer Representation Agreements apply. Therefore, mere agreement on the part of the residential seller/landlord to pay a commission that is set forth in the lease does not meet the requirements of Connecticut law and will not allow the broker access to the courts to enforce such an agreement. In these situations, the proper way to create the enforceable obligation is to execute a Listing Agreement for the sale of the property (if the seller is to pay the commission) and to have that Listing Agreement extend through the termination of the lease. If the buyer is to pay the commission, then the broker should obtain a Buyer Representation Agreement from the tenant in which the tenant agrees to pay compensation to the broker.

# Commission Enforcement (Continued)



**Question:** My listing agreement says that I earn commission if and when title passes. A day before the closing, the seller had a change of heart and backed out. But for the seller defaulting on the purchase contract, this sale would have closed. Am I entitled to a commission?

**Answer:** No. You will be held to the language used in the listing agreement. The listing stated that you earn a commission if and when title passed. Since title did not pass for whatever reason, you are not entitled to a commission by the express terms of your own listing.

# Commission Enforcement (Continued)



**Question:** My listing agreement says that I earn a commission if and when title passes. My listing expires after the parties have executed a purchase contract but before the closing. Should I continue to renew or extend my listing through the closing date?

**Answer:** Yes, it would be a very prudent thing to do. You will be held strictly to the language used in the listing agreement. This listing states that you did not earn compensation unless and until titles passes. Since the title will not pass until after the listing expires, you technically do not have a listing at the time the compensation is earned according to the express terms of your own listing.

# Common Interest Ownership Property

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**Question:** What is a common interest ownership property?

**Answer:** Common Interest Ownership Property is real estate that has been legally declared to have a common interest ownership component. Examples of common interest ownership property are condominiums, co-operatives, PUDs (Planned Unit Developments) and sub-divisions which have common facilities. The usual reason to declare property as common interest ownership property is to provide a mechanism for the collection of association fees, dues or assessments which can be used to maintain the facilities used by all residents.

# Common Interest Ownership Property (Continued)

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**Question:** How do I know if the real estate is part of common interest ownership property?

**Answer:** A Declaration will be recorded on the land record of the community in which the common interest ownership property is located.

# Common Interest Ownership Property (Continued)

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**Question:** Does every common interest ownership property have the ability to levy dues and assessments?

**Answer:** Yes, the filing of the Declaration constitutes notice to the world that the common interest ownership community has the ability to levy dues and assessments. It is also notice that the common interest ownership community has a lien on the individual unit or lot for those dues and assessments.

# Common Interest Ownership Property (Continued)



**Question:** What is a Resale Certificate and why is it important?

**Answer:** When a purchaser of a unit that is a common interest ownership property is not purchasing directly from the developer, the purchaser is entitled to a Resale Certificate and the accompanying documents. Components of the Resale Certificate package are set out in the statutes. The unit owner must furnish the Resale Certificate package and the documents to the purchaser. The importance of the Resale Certificate package lies in its role as a trigger as to the purchaser's right to rescind.

# Common Interest Ownership Property (Continued)



**Question:** Who furnishes the Resale Certificate package?

**Answer:** By statutes, the unit owner is responsible for requesting in writing the preparation of the Resale Certificate package and its accompanying documents. However, because of the Resale Certificate package's importance in triggering the rescission period, the unit owner's agent should ensure that the Resale Certificate package is requested from the condominium association or from the common interest ownership community's or management company and furnished to the purchaser.

# Common Interest Ownership Property (Continued)



**Question:** Can a charge be imposed for the resale Certificate package?

**Answer:** Yes, the statutes authorize a charge of up to \$125 for furnishing the Resale Certificate package plus, if the certificate and the required documents are furnished not later than three (3) business days after the written request, and a \$10 fee for expedited service.

# Common Interest Ownership Property (Continued)



**Question:** Which documents are important in governing the common interest ownership property?

**Answer:** While the Declaration is the document that, upon recording, legally creates a common interest ownership community and contains the community's basic information, it is the by-laws, rules and regulations and the current operating budget that give insight into the community's governance. Potential owners of common interest ownership units should carefully scrutinize by-laws, rules and regulations, the budget and the other contents of the documents before deciding to purchase common interest ownership properties.

# Common Interest Ownership Property (Continued)



**Question:** What is the right to rescind?

**Answer:** A purchaser has the legal right to rescind a purchase contract within five (5) days (excluding Saturdays, Sunday's, and legal holidays) after the purchaser receives, by hand delivery, the Resale Certificate package. If the Resale Certificate package is sent to the purchaser or his/her attorney by registered or certified mail, the purchaser has seven (7) days (excluding Saturdays, Sunday's, and legal holidays) within which to rescind the purchase contract for any reason.

# Common Interest Ownership Property (Continued)

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**Question:** Can a purchaser rescind the purchase agreement for any reason during the rescission period?

**Answer:** Yes. The purchaser has the right to rescind the transaction provided the purchaser does so during the rescission period.

# Advertising and Signs

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**Question:** Who may claim to have “sold” a property?

**Answer:** Both the listing and cooperating (selling) brokers may claim to have sold the property.

# Advertising and Signs (Continued)



**Question:** One of the brokers in an area claims to be “#1.” Isn’t this a violation of the Code of Ethics?

**Answer:** No. The Code of Ethics was never intended to prohibit aggressive advertising or marketing so long as the advertising or marketing does not mislead the public. The Federal Trade Commission, in general, prohibits trade associations from placing restrictions on the member’s ability to advertise even if the advertising constitutes “puffery.” Generally, the Federal Trade Commission looks upon claims of being “#1” as “puffing” and not necessarily misleading.

# Advertising and Signs (Continued)

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**Question:** One of my listings received a solicitation from another broker. Is this a violation of the Code of Ethics?

**Answer:** Not necessarily. If the solicitation from the other broker was the result of a general solicitation made to a group, the solicitation does not constitute ethical violation, even if the property is already listed with another broker. In addition, members may solicit consumers, even when those consumers have a listing with another broker for the purposes of offering another type of service.

# Advertising and Signs (Continued)

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**Question:** May a member offer a “Senior Citizen” discount?

**Answer:** Yes. Senior Citizen Discounts are specifically permitted under Connecticut’s Anti-Discrimination Acts.

# Advertising and Signs (Continued)



**Question:** Is anything different required of a member selling his or her own property?

**Answer:** Yes. The Connecticut Real Estate Regulations prohibit a licensee from advertising property in such a way as to make it appear as though the licensee is a private seller who does not hold a real estate broker's or salesperson's license. Therefore, a real estate licensee in Connecticut must indicate in advertisements for any property in which the licensee has an interest that the property is being offered by a person who holds a real estate license.

# Advertising and Signs (Continued)

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**Question:** May a member advertise another member's listing?

**Answer:** No. According to the Connecticut Real Estate Regulations, one must have a written authorization (listing) to “negotiate” on the seller’s behalf. The term “Negotiate” is used in the broadest sense of the term and includes offering property for sale. In addition, this may constitute interference with the member’s listing which is a violation of both the Connecticut Real Estate Regulations and the Code of Ethics.

# Broker Lien



**Question:** What are the prerequisites to obtaining a broker lien?

**Answer:** There are several prerequisites. The following statutory notice must be placed in the listing agreement or buyer agent agreement:

THE REAL ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS  
PURSUANT TO SECTION 20-325A OF THE CONNECTICUT GENERAL  
STATUTES\*\*

Second, the broker must have earned his or her commission without any contingencies other than closing. Third, the broker must serve a notice of intent to claim the lien on both the buyer and the seller within at least three days prior to the actual closing date or the closing date set forth in the purchase contract, whichever is later. Fourth, the broker must serve and record the lien on the land records. Finally, the broker must begin foreclosure on the lien at least one year from the date of the lien.

# Broker Lien (Continued)

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**Question:** May a co-operating broker place a Broker Lien on a property?

**Answer:** No. The co-operating broker's contract for payment is with the listing broker, not the seller. Since a co-operating broker can not sue a seller directly for a commission, the co-operating broker can not place a Broker Lien on the seller's property.

# Broker Lien (Continued)

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**Question:** May a buyer broker place a Lien on a property?

**Answer:** Yes. A buyer broker may place a lien on the property for the commissions owed the buyer broker by a buyer. However, the Broker Lien is not filed on the land records until the property has been transferred to the buyer.

# Designated Agency

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**Question:** What is Designated Agency?

**Answer:** Designated Agency is an option that the law allows a real estate broker or real estate brokerage firm to use in a Dual Agency situation. Under Designated Agency, the real estate broker or real estate brokerage firm appoints one of the broker's or firm's salespersons to solely represent the buyer and another salesperson or salespersons to solely represent the seller.

# Designated Agency (Continued)

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**Question:** When Designated Agents are appointed, is the real estate broker or firm still a Dual Agent?

**Answer:** Yes. The real estate broker or real estate brokerage firm continues to be a dual agent. However, the salespeople who have been appointed as Designated Agents are not considered Dual Agents.

# Designated Agency (Continued)



**Question:** If the real estate broker or real estate brokerage firm continues to be Dual Agents, what is the advantage of Designated Agency?

**Answer:** Under Designated Agency, the real estate sales people appointed as the Designated Agent for the buyer or the seller are not considered Dual Agents. Therefore, they may provide all the fiduciary duties to the clients for whom they have been appointed. This includes keeping the client's confidential information confidential, advocacy on the client's behalf and advice and opinion to the client including the Designated Agent's opinion as to the value of the property, what price to offer, or what offer to accept.

# Designated Agency (Continued)

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**Question:** May the principal broker or manager serve as Designated Agent?

**Answer:** No. since the principal broker owns all of the listing and buyer representation agreements, neither the principal broker no the principal's broker's manager may serve as a Designated Agent.

# Designated Agency (Continued)

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**Question:** How is the designation made?

**Answer:** The designation is made on a Dual Agency/Designated Agency Disclosure and Consent Form. The designation is made by the principal broker or the principal broker's manager of the firm. The seller and buyer then each agree to the designation.

# Escrow Accounts and Escrow

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**Question:** When must deposit monies be deposited?

**Answer:** According to the Connecticut Real Estate Regulations, deposit monies received by a real estate licensee must be deposited within 72 hours of the date that the parties reach an agreement in the brokerage's escrow or trustee account. This is an outside limit, and deposit monies may be deposited prior to the expiration of the 72 hour limit.

# Escrow Accounts and Escrow (Continued)



**Question:** When may a deposit be released?

**Answer:** Deposits may only be released by agreement of the parties or order of the court. Under no circumstances should deposit monies be released without either the agreement of both parties or an order of the court indicating to whom the deposit monies should be paid. The mere request of the seller, buyer, or an attorney representing either the seller or the buyer, as to the disposition of the deposit monies should never be acted upon without the agreement of the other party or either his or her attorney. According to an Appellate Court ruling, the attorney for a party may grant permission for the release of escrow monies.

# Escrow Accounts and Escrow (Continued)

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**Question:** What is the standard amount required as a deposit?

**Answer:** There is no “standard” amount required as a deposit as the amount of the deposit is negotiable between the parties. There is no magic in this amount and offers should be presented to a seller regardless of the amount the prospective purchaser offers to post as earnest money or a deposit.

# Escrow Accounts and Escrow (Continued)



**Question:** What should the Realtor<sup>®</sup> do if the buyer and seller get into a dispute over the deposit?

**Answer:** Initially, nothing. Since the REALTOR<sup>®</sup> cannot release funds unless the parties agree or there is a court order, the REALTOR<sup>®</sup> should continue to hold the funds. If one of the parties starts a lawsuit against the REALTOR<sup>®</sup>, the REALTOR<sup>®</sup> should file a motion to pay the disputed funds into the court. Public Act 96-105 provides that upon such payment into court, the broker will be dismissed from the suit if there are no other claims against the broker. The form for this process is available on our website at [www.ctrealtor.com](http://www.ctrealtor.com). It is entitled “Motion to Deposit Escrow Funds with Court.” In addition, the CAR form purchase and sale agreement contains provisions permitting the broker to engage an attorney to bring suit to resolve the dispute and pay the attorney’s fees and costs from the escrow account.

# Escrow Accounts and Escrow (Continued)

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**Question:** The buyer's agent is insisting on holding the deposit. Shouldn't the deposit be held by the listing broker?

**Answer:** The short answer to this question is it does not matter. Whether the listing agent or the buyer agent holds the deposit is irrelevant since whoever holds the deposit holds it in escrow for both of the parties and is not free to release the funds absent the agreement of the parties or an order of the court.

**You don't have to be great to start,  
but you have to start to be great.**

*~ Joe Sabah*

SUCCESS IS A JOURNEY,  
NOT A DESTINATION

