

UConn
SCHOOL OF BUSINESS
REAL ESTATE CENTER



***Connecticut Real Estate
Legal Review and Update
Mandatory Continuing Education Course
2014 - 2016 CE Cycle***

This course was developed by the:

*UConn Center for Real Estate and Urban Economic Studies
at the request of the Connecticut Department of Consumer
Protection and the Connecticut Real Estate Commission*

Special thanks to the following individuals for their contributions:

| | |
|--------------------------------|--|
| Marilyn L. Keating | Chair, Connecticut Real Estate Commission |
| Lana K. Ogrodnik | Connecticut Real Estate Commission |
| Richard Maloney | Director of Trade Practices, Dept. of Consumer Protection |
| Michele Erling | Real Estate Examiner, Dept. of Consumer Protection |
| Kelly Harvey | Real Estate Examiner, Dept. of Consumer Protection |
| Linda Kieft-Robitaille | Real Estate Examiner, Dept. of Consumer Protection |
| Vicky Bullock, Esq. | Staff Attorney, Department of Consumer Protection |
| John L. Glascock, Ph.D. | Director of the UConn Center for Real Estate |
| Katherine Pancak, Esq. | Professor in Residence, University of Connecticut |

We will review the following ten topics:

1. Community Association Managers 4
2. Residential Property Condition Disclosure 15
& Smoke/Carbon Monoxide Detectors 26
3. Broker Price Opinions..... 31
4. Dual Agency & Designated Agency 35
5. Referral Fees 44
6. Continuing Education 46
7. Legal Entity Licensing51
8. Loan Estimate and Closing Disclosure Form 58
9. Representation Agreements 63
10. Power of Attorney72



Section 1: Community Association Managers (CAMs)

What are CAMs?

➤ CAMs provide services to condominium associations.

The services CAMS provide:

1. *control funds;*
2. *prepare budgets;*
3. *conduct meetings;*
4. *advise in obtaining insurance; and/or*
5. *run the overall operations of the association.*

CGS §20-450 to 20-455



CAMS Must Register with DCP



CAMs are required to :

1. submit an application for registration to DCP
2. along with a state and national criminal record check
and
3. obtain a bond.

Visit www.ct.gov/dcp to obtain a registration application.

CGS §20-457



New CAMS Applications

New applicants are required to:

1. take a review course, and
2. pass the CAMs National Board of Certification exam within one year from the date of initial registration.

REMEMBER: CAM registrations must be renewed before January 31 every year.

CGS §20-457

CT 2014-2016 CE



Legal Entities Must Register

CAMs doing business as a Corporation or LLC must register the legal entity with DCP.

CAM legal entity registrations expire on January 31 every year.

Failing to renew a registration is subject to a fine up to \$500, or imprisonment for less than a year, or both.

CAMs Education and Testing

CAMs are required to:

1. complete a nationally recognized course, such as the Community Association Institute's M-100 course.

AND

2. pass a CAMs National Board Certification exam, unless the individual is exempt.

NOTE: Currently, there are no continuing education requirements for CAMS.

For more information, visit:

http://www.caionline.org/govt/managerlicensing/Pages/Manager_CT.aspx

What happens if I do not comply with the CAM Act?

If CAMS fail to comply, the Real Estate Commission may:

- revoke or suspend the certificate of registration.
- refuse to issue or renew the certificate of registration.
- place a registrant on probation.
- issue a letter of reprimand.



CGS §20-456

Grounds for Suspension or Revocation of CAMs

What could jeopardize my CAM registration?

- (1) making misrepresentations or false promises likely to influence, persuade or induce;
- (2) failing to account for any money;
- (3) conviction of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud;
- (4) commingling funds in an escrow or trustee account;
and/or
- (5) any dishonest, fraudulent or improper dealings.

CGS § 20-456



HERE IS THE QUESTION. What is the Answer?

QUESTION:

I get paid for providing services to a condominium association.
Do I have to register as a Community Association Manager?

ANSWER:

YES. Anyone providing services for a fee to a condominium association must be registered as a CAM.



HERE IS THE QUESTION. What is the Answer?

QUESTION:

Are there any Continuing Education requirements for CAMs?

ANSWER:

NO. Currently, there are no required Continuing Education requirements for CAMs.

QUICK QUIZ

Persons failing to register as a CAM with the DCP are subject to a maximum fine up to:

A.

\$ 200

B.

\$ 300

C.

\$ 500

D.

\$ 600

QUICK QUIZ

CAM registrations must be renewed every:

A.

year

B.

2 years

C.

3 years

D.

5 years



Section 2: Property Condition Disclosure

The Residential Property Disclosure:

- reports the seller's actual knowledge of the condition of the property.
- must be completed by the seller, not the licensee.
- does **NOT** constitute a warranty to the buyer.
- is **NOT** a substitute for a home inspection.

CGS §20-327b



When are sellers required to provide the report?

Sellers are required to provide prospective buyers with a Residential Property Condition Disclosure Report **before** the buyers sign any binder, contract to purchase, option, or lease containing a purchase option, of a 1-4 family dwelling.

CGS §20-327b





What are sellers required to disclose?

- ✓ heating, air conditioning, electrical, and plumbing problems
- ✓ asbestos, lead paint, radon, termites
- ✓ municipal assessments, water and sewer charges
- ✓ leased items, including water heaters and appliances
- ✓ structural or land use problems
- ✓ if the property is in a historic district



What's the law on residential property condition disclosures?



Disclosures must be accurate and complete, or the seller may be liable to the buyer for damages.

If the seller and buyer cannot agree on the cost of repairs, the closing may be called off in accordance with the purchase and sale agreement.

CGS §20-327b(d)(2)(D)

What recourse do buyers have against sellers?



Buyers may file a lawsuit against sellers for:

- 1. negligent misrepresentations*
- 2. intentional misrepresentations*
- 3. nondisclosure of material facts*

Does the seller have to amend the report?

- ❖ If the seller completes the report and then finds out about problems with the property that were not disclosed, the original report must be amended to include those problems.
- ❖ The seller may decide to make the repairs, or give the buyer a credit at closing.

Disclosure Report is not required if the property transfer is:

- (1) to co-owners
- (2) to immediate family members for no paid consideration
- (3) pursuant to a court order
- (4) new construction
- (5) made by executors, administrators, trustees or conservators
- (6) by the federal government
- (7) by deed in lieu of foreclosure
- (8) by the state of Connecticut
- (9) the subject of a contract or option entered into prior to January 1, 1996
- (10) acquired by a judgment of strict foreclosure or by foreclosure by sale or by a deed in lieu of foreclosure

CGS §20-327b



HERE'S THE QUESTION. What's the Answer?

QUESTION:

Sellers were not aware there were termites in the home, and the buyers' inspector did not find any evidence of termites. But after the closing, the buyers discovered termite damage and had to make repairs at a cost of \$5,000. Will the buyers be able to collect damages from the sellers?

ANSWER:

It is unlikely that buyers will be able to collect damages because the sellers did not know about the termites. The buyers may be able to collect from the home inspector for not finding the termite damage. In either case, it is a civil matter to be determined by the court.



HERE'S THE QUESTION. What's the Answer?

QUESTION:

Seller said that the swimming pool was in good working order, but the pool cover could not be removed for inspection. After closing, the buyer found that the pool walls had collapsed.

The pool company testified that the seller knew about the problems. Will the seller have to pay damages to the buyer?

ANSWER:

If the seller had **actual** knowledge of problems with the pool, the seller may be liable to the buyer for damages.





GROUP DISCUSSION: What are your thoughts?

QUESTION:


Sellers knew the septic system had to be replaced, but they marked the status of the septic system as **UNKNOWN** on the Residential Property Condition Disclosure Report. Will sellers have to pay damages to buyer for misrepresenting the condition of the septic system?

ANSWER:

YES. Sellers had “actual knowledge” that the septic system was not working properly. Marking the report **UNKNOWN** was deceptive.

QUICK QUIZ

Sellers knew the water heater had to be replaced, but marked “UNKNOWN” on the Residential Property Condition Report. An inspection performed for the buyers revealed that the water heater had to be replaced. After closing, buyers sued the sellers for misrepresentation. Will sellers have to pay for a new water heater?

- A. Sellers are liable because they had actual knowledge.
- B. Sellers are liable because of their intentional misrepresentation.
- C. Even though buyers had knowledge, sellers still have to pay.
-  D. Buyers did not rely to their detriment on sellers' misrepresentations, so sellers most likely will not have to pay.



Section 2: Smoke and Carbon Monoxide Detectors

- Sellers of one- or two-family homes (built before 10/1/2005) must give buyers an affidavit certifying that the home has working smoke and carbon monoxide detectors.
- Sellers failing to provide an affidavit must credit the buyer with **\$250** at closing.
CGS §29-453(b)
- There are some exemptions to these requirements.
CGS §29-453(e).





Smoke Detector Affidavit

Even though the sellers must disclose any problems with the smoke detectors in the Property Condition Report, that report does *not* satisfy the requirement to provide a Smoke Detector Affidavit.

CGS §29-453



HERE'S THE QUESTION. What's the Answer?

QUESTION:

As a salesperson representing the sellers, am I required to get a smoke and carbon monoxide detector affidavit from the sellers when they sign the listing agreement?

ANSWER:

NO, the sellers' attorney will provide the affidavit to the buyer at closing.

The affidavit is a sworn statement, and it must be signed before a Connecticut attorney or notary public.



HERE'S THE QUESTION. What's the Answer?

QUESTION:

As a broker representing a bank selling real property acquired by foreclosure, does a bank representative have to provide a smoke and carbon monoxide detector affidavit?

ANSWER:

YES. A bank representative must provide the affidavit at closing. Real Estate Owned (REO) properties are not exempt. Residential properties owned by banks are subject to the same rules as real estate owned by individuals.

QUICK QUIZ

Sellers may be fined up to this dollar amount if the smoke and carbon monoxide detectors are not working.

A.

\$250

B.

\$300

C.

\$350

D.

\$400



Section 3: Broker Price Opinions (BPOs)

- *The law is that you must be a licensed appraiser to estimate the value of real estate for a fee.*

There are exceptions to this rule:

1. Licensees can perform a market analysis for a seller in pursuit of a listing agreement, or to
2. determine value for a prospective buyer.

CGS §20-526

What is a Broker Price Opinion?

BPOs/CMA/Market Analysis are all interchangeable terms, and cannot be referred to as an appraisal.

An “appraisal” is defined as an opinion of value.

CGS §20-501



May licensees charge for determining Fair Market Value?

- Licensees may charge fees when determining Fair Market Value for a prospective seller in pursuit of a listing agreement.
- If the licensee lists and sells the property, the fee must be returned to the seller at closing.

CGS §20-526

GROUP DISCUSSION: What do you think?

FACTS:

A licensee was arrested for giving a low “broker price opinion” to a lender considering a short sale. The house was sold to the licensee’s accomplice, and they flipped the property for a profit.

This short-sale mortgage fraud scheme is called “flopping.”



Section 4: Dual Agent

- ✓ A broker or salesperson may act as a Dual Agent by representing both the buyer and the seller with their informed written consent.
- ✓ The licensee shall be neutral with regard to any conflicting interest of the buyer and seller.

CGS §20-325

CT 2014-2016 CE



35

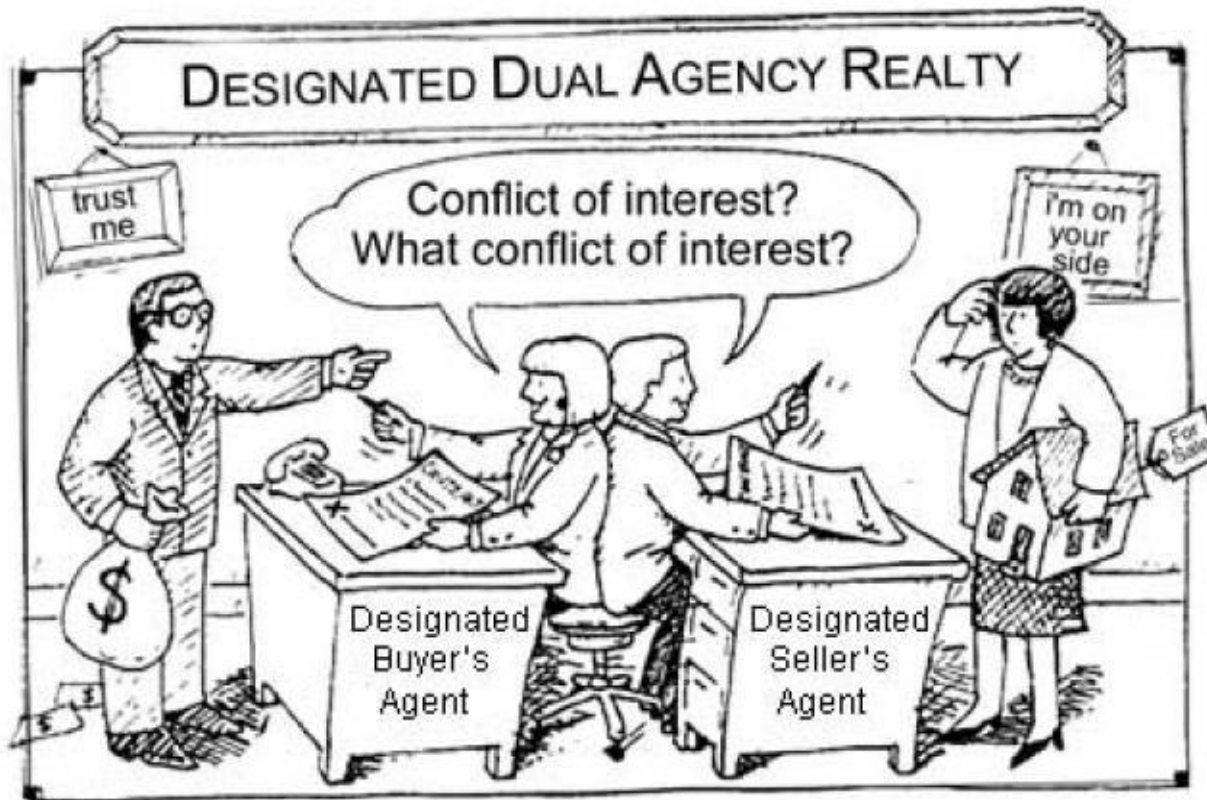


Example of Dual Agency:

Seller signs a listing agreement in a broker's Simsbury office, and buyer signs a representation agreement in the same broker's Bristol office. Agents from all of that broker's offices represent both the seller and the buyer.

The broker, seller and buyer would all have to consent to and sign a *Dual Agency Consent Agreement*.

CGS §20-325i



Opposing Teams. Same Locker Room???



Landlord and Tenant Dual Agency

Dual Agency also applies to agents representing both the **landlord and tenant** in the rental of an apartment.

The landlord and tenant would have to sign a *Dual Agency Consent Agreement*.





Section 4: Designated Agents

- ✓ The broker of record may appoint designated agents to represent each party, but is not required to do so.
- ✓ Both buyer and seller are required to sign a *Designated Agency Agreement*.

CGS §20-325i



Example of Designated Agency:

If the broker of record designates one agent to represent the seller and another to represent the buyer, they would have to sign a *Dual Agency / Designated Agency Notice and Consent Agreement*.



HERE'S THE QUESTION. What's the Answer?

QUESTION:

The seller and buyer are represented by licensees in different offices of the same real estate brokerage business. Are the licensees required to have the parties consent to and sign a *Designated Agency Notice and Consent Agreement* ?


ANSWER:

Under the circumstances, it could be considered a dual or designated agency. This decision would be based on the broker's office policy.




QUICK QUIZ

Which of the following is an example of Dual Agency?

- 
- A. representing landlord and tenant in an apartment rental
 - B. representing ex-spouses in the sale of their real property
 - C. representing the seller of an apartment building
 - D. representing husband and wife in the sale of their home

QUICK QUIZ

Designated Agents may be appointed:

- A. by the broker as an additional agent for a buyer.
- B. by the broker as an additional agent for a seller.
- C. to represent both the buyer and seller of the same property.
-  D. to represent either the buyer or seller of the same property.



Section 5: Referral Fees

Brokers and salespersons are prohibited from receiving compensation for referring clients to a bank or attorney.

Referral fees are prohibited when any portion of a real estate commission is paid to someone engaging in the real estate business without a license.

CGS §20-320





HERE'S THE QUESTION. What's the Answer?

QUESTION:

A real estate attorney and a broker have offices next door to each other. The attorney pays \$100 for every new client referred from the broker. Is this okay?

ANSWER:

NO! It is against the law for attorneys to pay referral fees to brokers. Also, salespersons and brokers are prohibited from giving a “thing of value” to attorneys for referring clients.



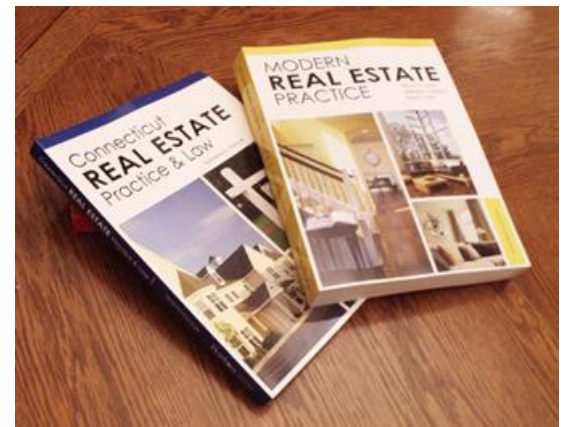
Section 6: Continuing Education (CE)

Licensees are required to complete twelve (12) hours of CE before renewing their license every two years in the even year.

- ❖ The current requirement is to complete three (3) hours of this mandatory course “*Connecticut Real Estate Legal Review and Update*” plus nine (9) hours of real estate elective courses.

OR

- ❖ pass the 40-question Connecticut Continuing Education Examination.





Continuing Education Deadlines

- ✓ CE must be completed prior to the license renewal date of:
March 31 for Brokers and May 31 for Salespersons
- ✓ Real estate schools are required to report CE attendance rosters to PSI within 30 days of completion of the course, and provide a certificate of completion to the licensees.
- ✓ The Department of Consumer Protection does **NOT** maintain Continuing Education records for licensees.

CGS §20-319(b)



Continuing Education Certificates

Real estate licensees are responsible for keeping copies of continuing education certificates to prove compliance with requirements.

Proof of compliance should be submitted to the Real Estate Commission **ONLY** in response to an audit.



May CE courses be held in a broker's office?

Continuing education courses cannot be taught in a real estate or appraisal office. There must be a separate entrance, leading to a separate room, where the course will be taught.



HERE'S THE QUESTION. What's the Answer?

QUESTION:

I have not completed my CE requirements for the current cycle. Is there a grace period to finish my courses?

ANSWER:

NO. There is no grace period for completing continuing education requirements. Real estate licensees must be able to prove compliance with continuing education requirements. Licensees are subject to a civil penalty, and a potential loss of license, for failing to complete CE course requirements.



Section 7: Legal Entity Licensing

All legal entities
engaging in the real estate business
must be licensed
by DCP

- Partnerships
- Limited Liability Companies
- Corporations

What are the differences between these legal entities?



Legal Entity Definitions

Partnership: an association of two or more co-owners who carry on a business for profit based on an agreement as to how profits and losses will be divided

Limited Liability Company: an entity whose owners (members) actively manage the LLC and are protected against personal liability

Corporation: an independent legal entity owned by shareholders that may be privately or publicly held



Officers and Owners of Legal Entities

Officers must be:

✓ *licensed brokers*

Owners may be:

✓ *licensed brokers or salespersons*

✓ *brokers owning at least 51 percent*

✓ *salespersons owning up to 49 percent*





HERE'S THE QUESTION. What's the Answer?

QUESTION:

I am a broker planning to form a LLC for my real estate business. Does the LLC itself need to be licensed?

ANSWER:

YES. Partnerships, limited liability companies and corporations engaging in the real estate business in the name of that legal entity are required to be licensed.

QUICK QUIZ

What type of legal entity is owned by members?

- A. general partnership
-  B. limited liability company
- C. corporation
- D. limited partnership

QUICK QUIZ

What type of legal entity is owned by shareholders?

- A. general partnership
- B. limited liability company
-  C. corporation
- D. limited partnership

QUICK QUIZ

Can a salesperson solely own a legal entity in Connecticut for real estate purposes?

- A. Yes, the law allows a salesperson to be the sole owner (shareholder) of a corporation.
- B. Yes, as long as a salesperson owns at least 51% and a broker owns no more than 49% of the legal entity.
- ➔ C. No, the law does not allow salespersons to solely own a legal entity engaging in the real estate business.
- D. No, only brokers can own a legal entity formed for their real estate business.



Section 8: Loan Estimate and Closing Disclosure

The Dodd-Frank Wall Street Reform and Consumer Protection Act will require a Loan Estimate and Closing Disclosure form to be used for all residential closings (effective August 1, 2015).

Pub. L. No. 111-203, 124 Stat. 1376 (2010).

The Loan Estimate will replace the current disclosures required under the Truth-in-Lending Act.

The Closing Disclosure will replace the HUD-1 Settlement Statement for 1-4 family residential closings.

Laws under the Real Estate Settlement Procedures Act (RESPA) and Truth-in-Lending Act (TILA)

- ❑ Currently, RESPA requires the HUD-1 Uniform Settlement Statement to be completed for 1-4 family residential real estate closings. (As of August 1, 2015, the HUD-1 will be replaced by the Closing Disclosure form).
- ❑ TILA requires banks to provide borrowers with estimates of financing costs.




Who is required to disclose closing costs?

Effective in August 2015, a settlement agent (usually the buyer's attorney) will be required to disclose all closing costs on the new Closing Disclosure form at least **three days prior** to the closing date.

Currently, the HUD-1 Uniform Settlement Statement is used to disclose closing costs, and a sample form can be found at: <http://www.hud.gov/offices/adm/hudclips/forms/files/1.pdf>

QUICK QUIZ

The HUD-1 Uniform Settlement Statement created by the Real Estate Settlement Procedures Act is only required for:

- A. commercial closings
-  B. residential closings (1 to 4 family)
- C. all real estate closings
- D. industrial closings

QUICK QUIZ

Effective August 2015 under Dodd-Frank, the HUD-1 Uniform Settlement Statement will be replaced by a:

- A. RESPA form
-  B. Closing Disclosure form
- C. TILA form
- D. Residential Property Statement



Section 9: Representation Agreements

The two most common types are:

(1) Listing Agreement

(2) Buyer Representation Agreement

CGS §20-328



Representation Agreements must contain:

- full names of all parties;
- broker's name and address;
- beginning and ending dates;
- conditions of the agreement; and
- signatures of all parties.



Unrepresented Persons

If a licensee wants to show property to unrepresented persons, the property must be listed by the sponsoring broker.

In this situation, the licensee represents the seller.

CGS §20-325(d)



When do agreements have to be in effect?

- (1) **Listing Agreements** must be signed at, or prior to, the offering of a property for sale.
- (2) **Buyer Representation Agreements** must be signed before physically showing a property.

CGS §20-328





Who can sign listing agreements?

- ✓ The record owner of the property and the broker, or the authorized licensee, must sign the listing agreement.
- ✓ The broker, not the salesperson, must be named in the listing agreement.
- ✓ *The person signing the listing agreement must hold legal title to the real property.*



Who can sign buyer representation agreements?

Buyer representation agreements must be signed by the broker, or authorized licensee, and all prospective buyers.





How long do we have to keep copies of Representation Agreements?

All parties to the contract must receive copies of the signed representation agreement.

Brokers must retain copies of agreements for **not less than seven (7) years.**

CGS Sec. 20-325(m)

QUICK QUIZ

Who has authority to sign a listing agreement?

- A. an individual having power of attorney for a deceased owner
- B. persons renting the property
- C. immediate family members of the deceased owner
- D. record owners holding title to the real property

QUICK QUIZ

What documents must be retained for not less than seven years?

- A. purchase and listing agreements
- B. leases and option agreements
- C. offers, counteroffers, and cancelled checks
- D. all of the above



Section 10: Power of Attorney (POA)

The POA legally designates an individual to transact business and execute documents on behalf of another person, the **principal**.

What happens if the principal becomes *incompetent*? That depends. Is the POA **durable** or **not durable**?

A **durable** power of attorney survives the incompetency of the principal, which means the POA is still effective.

If the power of attorney is **not durable**, it terminates immediately upon the incompetency of the principal.



Who can sign a listing agreement with a POA?

QUESTION:

A person with a POA from a deceased homeowner signed the listing agreement. Is this okay?

ANSWER:

NO. The person does not have authority to sign the listing agreement. The POA terminated when the homeowner died.



HERE'S THE QUESTION. *What's the Answer?*

QUESTION:

Seller has a POA for his wife. She moved to Florida before the closing on their home in Connecticut. Seller notified the attorney that his wife is now incompetent. Does the seller have authority to sign his wife's name on the closing documents?

ANSWER:

MAYBE. If the POA is *durable*, the husband still has authority to sign for his wife. If the POA is *not durable*, the husband's authority terminated when his wife became incompetent.



HERE'S THE LAST QUESTION. What's the Final Answer?

QUESTION:

A homeowner gave his daughter POA to sell his home. The next day he passed away. Does his daughter still have authority to sell the home?

ANSWER:

NO. The daughter does **not** have authority to sell his home. A POA terminates immediately upon death.

CGS §45a-562





If you have any questions or
comments about this course,
please email
lucy.michaud@business.uconn.edu
or call 860-486-3773