

VIRGINIA ESCROW REQUIREMENTS

Earnest Money Deposits – Pre-Test

1. When does an EMD have to be deposited?
 - a. As soon as practical but no more than 10 business days from date of ratification unless otherwise agreed to in writing by the parties.
 - b. Within 5 business banking days following ratification unless otherwise agreed to in writing by the parties.
 - c. Whenever the agent remembers to turn it in to bookkeeping.
2. You are working a short sale and both the seller and buyer want to delay depositing the EMD until the lender approves the deal. Is that ok?
 - a. Yes if all parties agree
 - b. Yes because the contract isn't ratified until the lender approves the deal.
 - c. No it must be deposited when buyer and seller have ratified the contract.
3. Do you need an EMD for contract formation?
 - a. No, the mutual promises in the contract are ample consideration to form a binding agreement.
 - b. There can be no binding agreement without a deposit.
 - c. Yes, failure of the buyer to deliver an EMD is default of the contract and therefore the contract is null and void.
4. If the buyer delays getting the EMD to the agent and the agent is unable to deposit the check within 5 days of ratification is the agent in violation of VREB regs?
 - a. Yes
 - b. No
5. What if the agent is given a post dated check, is that a violation of the VREB regs?
 - a. Yes
 - b. No
6. If an agent fails to turn in an EMD within five business days what must the broker do?
 - a. Immediately deposit the check and take steps to review office procedures for EMD and the requirements under the VREB regs.
 - b. The broker must report this violation to the VREB within three business days along with the name of the licensee and license number, when the deposit was due and when it was received.
 - c. These things happen we don't need to make a big deal out of them.
7. Do all EMD in a real estate transaction have to be held by a real estate licensee
 - a. Yes
 - b. No

8. Seller accepts a back-up contract, contingent on the primary contract not closing. Listing agent has received an EMD, should it be deposited now or when the contract becomes primary?
 - a. Now because the contract is fully ratified when all parties have agreed to the terms and signed the contract.
 - b. Once the contract becomes primary than the EMD must be deposited within five business days of that position.
9. Buyer, seller and selling agent have entered into a release of contract, but the listing agent refused to sign. May the selling agent release the EMD without the listing agent's signature on the release?
 - a. Absolutely not, all parties must sign the release
 - b. The release is irrelevant
 - c. Yes, because the buyer and seller have agreed to the disposition of the EMD
 - d. Both a and b
 - e. Both b and c
10. Buyer and seller have parted company and agreed to terminate a contract. May the selling agent return the deposit to buyer without a release signed by all parties?
 - a. No, an EMD must never be returned without the signature of the buyer, seller, selling agent and listing agent.
 - b. Yes, because the only thing necessary to return an EMD is the agreement of all parties to terminate the contract and return the deposit.
 - c. Only if this policy is in agreement with the broker's company policy.



VIRGINIA REALTORS®
RELEASE OF CONTRACT OF PURCHASE



(This is a legally binding contract; if not understood, seek competent advice before signing.)

This RELEASE OF CONTRACT OF PURCHASE made as of _____ between _____ ("Seller"),
and _____ ("Purchaser"), provides:

(a) By a Contract of Purchase dated _____ (the "Contract"), Purchaser agreed to purchase and Seller agreed to sell to Purchaser certain real estate and all improvements thereon located at _____ in the City or County of _____ and described as _____; and

(b) Seller and Purchaser wish to terminate entirely all of their respective rights and obligations arising under the Contract.

1. Seller and Purchaser mutually terminate entirely all of their respective rights and obligations arising under the Contract.

2. Seller and Purchaser mutually release and fully discharge each other from any and all claims, demands, damages, actions, or liability of any kind and nature whatsoever for, on account of, based on, or growing out of negotiation, execution, performance, termination and release of the Contract, both as to all matters and things now known or unknown, and also as to all matters and things which may hereafter be discovered.

3. The entire deposit made by Purchaser and held by _____ ("Escrow Agent") in escrow under the Contract shall be disbursed as follows:

\$ _____ to Purchaser;
\$ _____ to Seller;
\$ _____ to _____ (other); and
\$ _____ to _____ (other).

Accrued interest on the deposit, if any, shall be disbursed according to the terms of the Contract of Purchase.

4. This Release of Contract of Purchase shall be construed, interpreted, and applied according to the law of Virginia, and it shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

5. This Release of Contract of Purchase is acknowledged to be between Seller and Purchaser only. It is not intended to release the parties from their obligation(s) to pay a real

estate brokerage commission as set forth in the Contract of Purchase or in a brokerage agreement.

6. This Release of Contract of Purchase constitutes the entire understanding among the parties and may not be modified or changed except by written instrument executed by all parties, and all parties understand its contents and execute it solely for the consideration herein described and without any other representation, promise, undertaking, or agreement of any kind whatsoever.
7. Other Terms:

Seller:

_____/_____
Date Signature

_____/_____
Date Signature

_____/_____
Date Signature

_____/_____
Date Signature

Purchaser:

_____/_____
Date Signature

_____/_____
Date Signature

_____/_____
Date Signature

_____/_____
Date Signature

COPYRIGHT©2020 by Virginia REALTORS®. All rights reserved. This form may be used only by members in good standing with Virginia REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "VIRGINIA REALTORS®," in connection with any other form, is prohibited without prior written consent from Virginia REALTORS®.



VIRGINIA REALTORS®
EARNEST MONEY DEPOSIT CONFIRMATION
(To be used in lieu of copy of check)



Seller's Name: _____

Purchaser's Name: _____

Property Address: _____

Contract Date: _____

Earnest Money Deposit Amount: _____

Escrow Agent: _____

Escrow Agent Address: _____

Escrow Agent Contact Info: _____

The Earnest Money Deposit, listed above, was received on _____ (date) by
Escrow Agent.

Escrow Agent

Date

COPYRIGHT©2018 by Virginia REALTORS®. All rights reserved. This form may be used only by members in good standing of Virginia REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia REALTORS®", in connection with any other form, is prohibited without prior written consent of Virginia REALTORS®.

TERMINATION



____ ("Buyer")
and _____ ("Seller")
previously entered into a Standard Purchase Agreement dated _____ ("Purchase
Agreement") with respect to certain real property located at: _____
_____ ("Property").

This Termination is made by ☐ Buyer ☐ Seller

The undersigned terminates the Purchase Agreement based on the following paragraph(s) of the Purchase Agreement:

NOTICE: A PARTY SEEKING TO TERMINATE THE PURCHASE AGREEMENT IS CAUTIONED TO CONSULT WITH AN ATTORNEY CONCERNING THE CONSEQUENCES OF SUCH TERMINATION WITHOUT A FULLY EXECUTED RELEASE AGREEMENT. DISPOSITION OF DEPOSIT IS ADDRESSED IN THE RELEASE AGREEMENT.

Signature

Date

Signature

Date



RELEASE AGREEMENT

Buyer and Seller previously entered into a Standard Purchase Agreement dated _____ ("Purchase Agreement") with respect to certain real property located at: _____ ("Property"). This Release Agreement is made between _____ ("Buyer"), and _____ ("Seller"), _____ ("Selling Firm"), and _____ ("Listing Firm").

RELEASE:

Buyer and Seller agree that all existing understandings, promises, obligations and contracts, written or oral, specifically including the Purchase Agreement between Buyer and Seller with respect to the Property, are hereby terminated, rescinded, null and void, and not the basis for further claim, except for the obligation to pay Brokerage Fees. Buyer, Seller, Listing Firm and Selling Firm further agree to release each other from, and shall hold each other harmless from and against, any and all further claims, suits, actions, or any further or other obligations whatsoever arising out of the Purchase Agreement, except for the obligation to pay Brokerage Fees or claims related thereto. The terms of this paragraph constitute a general release of the parties' obligations under the Purchase Agreement and constitutes the complete and whole agreement between the parties. Buyer and Seller agree to the following **ADDITIONAL** provisions related to the release and termination of the Purchase Agreement: _____

DISPOSITION OF DEPOSIT:

Total Deposit Amount \$ _____
Charges:

_____ \$ _____
_____ \$ _____
_____ \$ _____
TOTAL CHARGES \$ _____

Deposit held by _____

Deposit for Disbursement: \$ _____

Disburse to:

Buyer _____ \$ _____
Seller _____ \$ _____
Other _____ \$ _____
Other _____ \$ _____

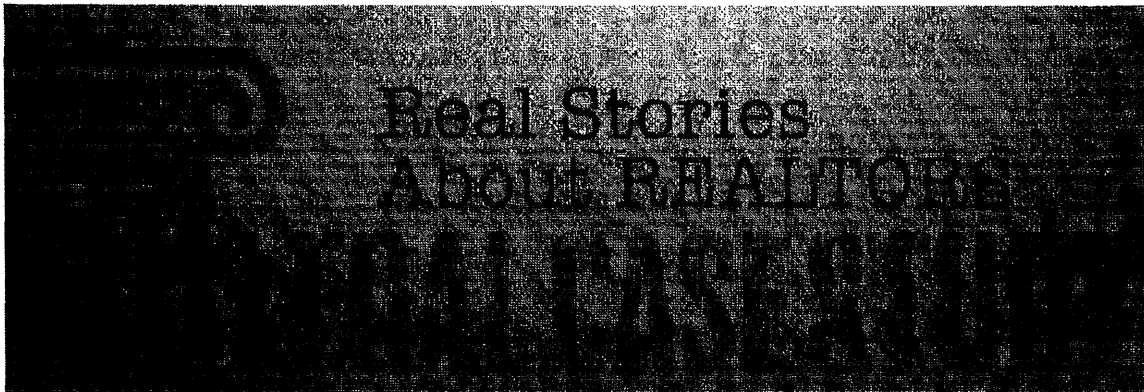
ADDRESS(ES) FOR DISBURSEMENT OF DEPOSIT: (☐ BUYER ☐ SELLER ☐ OTHER _____)

(Selling Firm) _____ (Buyer) _____ (Date) _____

By: _____ (Date) _____ (Buyer) _____ (Date) _____

(Listing Firm) _____ (Seller) _____ (Date) _____

By: _____ (Date) _____ (Seller) _____ (Date) _____



EMD – ESCROW VIOLATION

This case looks to an escrow violation, where the agent failed to timely deposit the EMD check by one day. Even a late deposit of only one day is an escrow violation. However, the brokerage firm had clear policies regarding escrow and the agent took full responsibility for his actions, which the board took into consideration.

THE SITUATION:

Mr. Michael Horn was issued a Real Estate Salesperson License in Virginia in March 2015 and was a licensed real estate salesperson at Southwest Realty, Inc (“Southwest Realty”).

On April 3, 2019, the Board received a written complaint from Trina Russo, Broker for Southwest Realty, which stated that Mr. Horn had turned in a late earnest money deposit (EMD) check.

THE INVESTIGATION:

Investigators learned that in February 2019, Ms. Camilla Beck entered into an Exclusive Right to Represent Buyer contract with Southwest Realty, which commenced on February 3, 2019, and is set to expire on June 30, 2019. Mr. Horn is listed as the Buyer’s agent.

On March 21, 2019, Mr. Horn submitted a Standard Purchased Agreement offer (“contract offer”) on behalf of Ms. Beck for the purchase of 100 Main Street, Roanoke, VA (“100 Main Street”). The contract listed Southwest Realty as holding the escrow deposit.

On March 22, 2019, Mr. Horn received a \$500 EMD check from Ms. Beck and placed the check in an envelope slot near his desk, as the seller had not yet signed the offer. Mr. Horn then continued to



show Ms. Beck another property that was listed for sale at 31 West Ave, Roanoke, Virginia ("31 West Ave"). After viewing this property, Ms. Beck decided to withdraw her offer on 100 Main Street, and instead submit a new contract offer to purchase 31 West Ave. Mr. Horn notified the seller via email that Ms. Beck was withdrawing her offer.

Ms. Beck's offer on 31 West Ave. was accepted and the contract was ratified on March 25, 2019. The contract required the EMD to be deposited within five business days of ratification and Southwest Realty was listed as the escrow agent. Mr. Horn stated on April 2, 2019, he was in the process of retrieving a personal check from the envelope slot near his desk when he found the EMD check. He immediately notified the front desk staff of his error and submitted the check for deposit. It was deposited into the escrow account on April 2, 2019, six business days after ratification. He also notified the listing firm representing the sellers that the EMD was deposited on the sixth business day after ratification.

Mr. Horn stated that he intended to use the \$500 EMD check from the previous offer as the EMD for the ratified contract. He also told investigators that instead of selecting the "submit" option on DotLoop, he selected the "shared" option. This meant that the front desk staff did not receive the contract documents to review. Mr. Horn stated that if the front desk staff would have received the contract documents, they would have asked him for the \$500 EMD check. Finally, he stated that he was the licensee responsible for the EMD check as he was the licensee that handled the buyer responsibilities for the transaction.

Investigators received the Southwest Realty policy regarding EMD, which stated in part:

1. Sales Associates must hand in any contract file and earnest money deposit (EMD) check within one business banking day from the date of ratification of Contract of Purchase, or in accordance with the written terms set out in the Contract.
2. Sales Secretaries must process the contract file and deposit the EMD check into the company escrow account within one business banking day from the receipt of the contract file from the Sales Associate.
3. In the event a Sales Associate is asked by a client to hold money in the company's escrow account and there is no Contract of Purchase to which the money is attached, there must be a written escrow agreement in place and reviewed by company management before the money can be deposited into the company's escrow account.

The transaction closed on May 10, 2019.



THE RESULT:

Published December 2020



Ordinary Care

In this case study, an agent forgot to deposit the earnest money deposit in a timely manner. Even though the agent was not responsible for the delay, the Board still found that there was a violation for not ensuring the EMD for the subject property was delivered in a timely manner. It is important for brokerage firms to have policies in place regarding EMDs, as the firm did in this case study, and for agents to be proactive in identifying issues with earnest money deposits before a violation occurs.

THE SITUATION:

On June 3, 2021, the Board received information from Rebecca Hines, Principal Broker at Forest Real Estate, regarding real estate salesperson Amelia Kahn.

On February 5, 2015, Ms. Kahn was issued a real estate salesperson license, and had been affiliated with Forest Real Estate since June 18, 2017.

THE INVESTIGATION:

On May 20, 2021, Queen Investments, LLC, as buyer, and Geoffrey Edmonstone, as seller, entered into a residential sales contract for the purchase of 248 City Road, Charles City, Virginia. Forest Real Estate was the listing and selling firm. Ms. Kahn represented both the buyer and the seller.

Forest Real Estate's policy regarding an earnest money deposit ("EMD") stated, in part:

Earnest money deposit funds (the "EMD") must be delivered to the branch administrator within 24 hours of contract acceptance or, if acceptance occurs on a weekend, no later than the following business day.

The only exception to this procedure is in the event the parties agree in writing to an alternate date of deposit within the Contract of Sale in those jurisdictions where it is allowed by law. All EMD funds must be delivered for deposit immediately, including additional deposits or funds received in accordance with an EMD promissory note.

The contract stated, in part:

4. **DEPOSIT:** Purchaser shall make a deposit of \$500.00 to be held by Forest Real Estate (the "Escrow Agent") in the form of: ☒ check ☐ cash ☐ other (the "Deposit"). Purchaser [select one]: ☐ has paid the Deposit to the Escrow Agent OR ☒ will pay the Deposit to the Escrow Agent within 5 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.

On May 20, 2021, the contract was ratified.

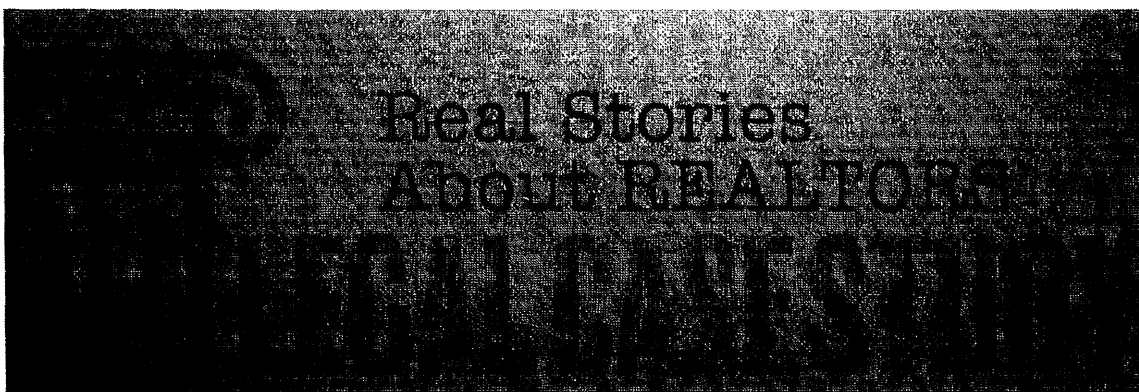
On June 1, 2021, a representative for the buyer delivered the EMD for the subject property to Ms. Kahn at Forest Real Estate. On the same date, the EMD was deposited into Forest Real Estate's escrow account.

Ms. Kahn told investigators:

As soon as the mistake was realized, I, Amelia Kahn, immediately drafted an addendum notifying both the seller and purchaser of the mistake. Please see attached addendum. Both parties, seller and buyer, were not in any way upset and signed the addendum on June 1. That said, I take full responsibility for the mistake and accept any consequences the Board decides to impose. I ask for leniency, as this is the first complaint/violation against my license.

Ms. Kahn further stated that she had forgotten about the EMD in the five days following the ratification of the contract. She did ask the buyers for the check as soon as she realized that she had not received it, but the check was not given to her immediately because the buyer's representative was out of town.

THE RESULT:



EMD – CONTRACT DETAILS

This case examines an escrow case where the agent neglected to check certain boxes on the contract. While this does not void the contract, it does create an escrow violation for the real estate licensee. It highlights the importance of verifying the completeness of contracts and paying attention to details.

THE SITUATION:

On June 7, 2019, the Department of Professional and Occupational Regulation received an email from April Maze, Principal Broker, for A-Maze-ing Real Estate, Inc., which reported an earnest money deposit violation by Tricia Morningstar, a real estate licensee affiliated with her firm.

THE INVESTIGATION:

On May 17, 2019, James Waldorf, as Buyer, and Bank One U.S.A. as trustee for Property Participation Trust, as Seller, entered into a contract for the purchase of 124 Old Stage Road, Winchester, Virginia. James Waldorf was represented by A-Maze-ing Real Estate, Inc., and Tricia Morningstar as the Buyer's Agent.

On May 17, 2019, Ms. Morningstar drafted the contract on behalf of Mr. Waldorf. Paragraph four of the contract indicated the terms and conditions of the EMD. It started:



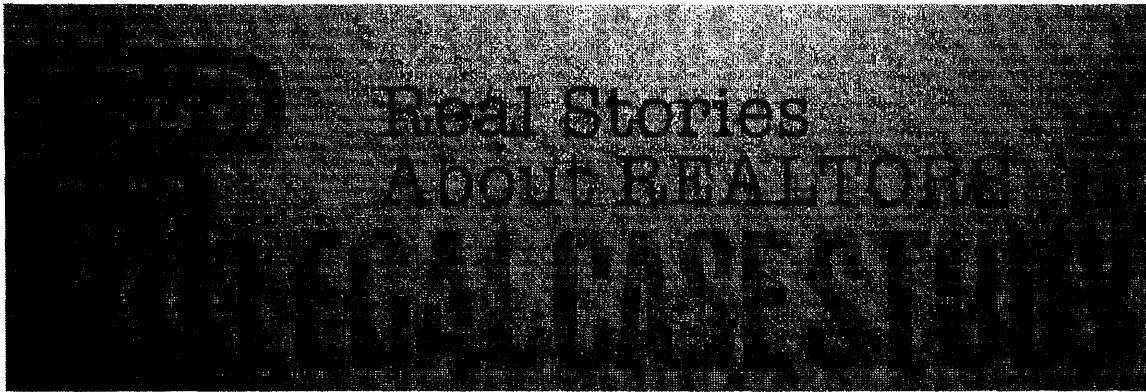
4. **DEPOSIT:** Purchaser shall make a deposit of \$2,000 to be held by Real Estate Law Firm (the "Escrow Agent") in the form of: ☐ check ☐ cash ☐ other (the "Deposit"). Purchaser **select one:** ☐ has paid the Deposit to the Escrow Agent OR ☐ will pay the Deposit to the Escrow Agent within 3 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.

Ms. Morningstar told investigators that she did not know why she did not check the boxes in this paragraph. She did confirm that when she drafted the contract, she was not sure what type of payment the bank would require.

THE RESULT:

Published January 2021





EMD & TIMING

This case again looks at an escrow violation, where the agent provided the check to the brokerage but not the ratified contract, and due to firm policies, the check was not deposited in a timely manner. Further, the agent failed to inform the parties that the earnest money deposit was not deposited.

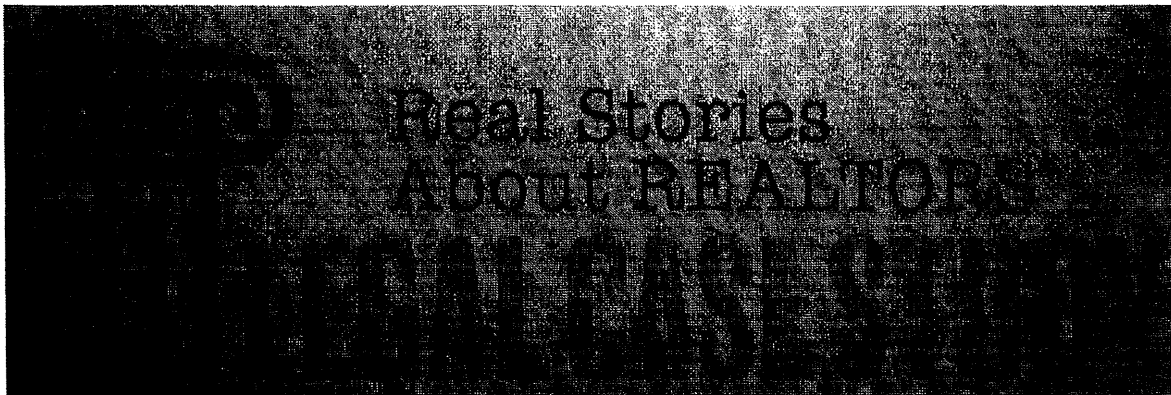
THE SITUATION:

Mr. Ari Rasid was issued a Real Estate Salesperson License in Virginia in September 2015 and began working at South Realty, Inc.

On June 28, 2018, Richard and Christina Grey, as buyers, and Ryan and Isabelle Yang, as sellers, entered into a contract for the purchase of a property located in Blacksburg, Virginia. Mr. Rasid represented the buyers with his fellow associate, Erica Kaan. T

he agreement was ratified on June 29, 2018. The contract required the purchaser to pay a \$5,000 earnest money deposit (EMD), which Mr. and Ms. Grey had provided to Mr. Rasid on June 28, 2018. On July 7, 2018, the buyers executed their right to terminate the contract, and on July 9, 2018, both parties signed the Release of Contract of Purchase.

On July 11, 2018, the Board received information from Hudson Laris, Broker for South Realty, Inc. regarding Mr. Rasid. Mr. Laris alleged that Mr. Rasid failed to submit an EMD and ratified contract in a timely manner.



Late EMDs

This case examines an escrow case where the agent neglected to turn in an Earnest Money Deposit (EMD) and failed to notify all principals to the transaction in writing of changes made to the contract. It remains of the upmost importance to verify the status of the deposit and communicate changes to all principals. Further, it demonstrates that agents must adhere to contract requirements and the Virginia rules and regulations governing real estate licensees, regardless of any outside factors.

THE SITUATION:

On October 9, 2021, the Board received a written complaint from the Principal Broker of Best Real Estate, Inc. regarding Eloise Rocket, alleging a violation of the escrow regulations.

Ms. Rocket was issued a real estate salesperson license in February 1997.

THE INVESTIGATION:

Investigators learned that on September 17, 2021, Wes McGrady and Julie McGrady (collectively, "the McGradys"), as buyers, and Grey Blackwell, as seller, entered into a Residential Contract of Purchase of 3190 Randolph Road, Roanoke, Virginia ("subject property"). Best Real Estate, Inc. was both the listing and selling firm. Ms. Rocket was a disclosed Dual Agent. The contract was ratified on September 18, 2021.

The Contract stated in part:

4. **DEPOSIT:** Purchaser shall make a deposit of \$5,000 to be held by Best Real Estate, Inc. (the "Escrow Agent") in the form of: ☒ check ☐ cash ☐ other (the "Deposit"). Purchaser ~~select one:~~ ☐ has paid the Deposit to the Escrow Agent OR ☒ will pay the Deposit to the Escrow Agent within 7 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. ~~If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.~~

THE INVESTIGATION:

Investigators learned that upon receiving the EMD, Mr. Rasid provided the EMD to Gloria Emit, the closing coordinator for South Realty, Inc. Mr. Rasid reported that he and Ms. Kaan did not turn in the ratified contract. He told investigators that neither he nor Ms. Kaan turned in the ratified Agreement because they immediately knew the agreement would be released, due to the buyers expressing concerns about the subject property.

Once the release was ratified, Mr. Rasid and Ms. Kaan requested Ms. Emit release the EMD on July 9, 2018, and at that point realized that the EMD was never deposited in escrow.

Pursuant to South Realty's office policies, Ms. Emit will not deposit an EMD without a ratified agreement. She stated that she does not keep a ledger or a log book when she receives an EMD check because it is not her responsibility to remind the selling agents to turn in the ratified agreement. Mr. Laris told investigators that it is office policy to keep an EMD check locked up until a ratified agreement is delivered to Ms. Emit and that checks cannot be deposited to escrow without a ratified agreement. He conceded that there is not a log or ledger in place to log the receipt of EMD checks or ratified agreements that Ms. Emit receives.

Mr. Rasid admitted that neither he nor Ms. Kaan notified any party in writing that the EMD was never deposited into the firm's escrow account. Ms. Kaan explained that she and Mr. Rasid were made aware that Ms. Emit did not deposit the EMD check when they turned in the Release to Ms. Emit. Mr. Rasid stated that he did not believe the parties to the Agreement were active in the transaction once the Release was ratified and, therefore, he had no need to notify the parties.

THE RESULT:

Published February 2020



On September 16, 2021, the McGradys had provided Ms. Rocket with a \$5,000 EMD. On October 2, 2021, the \$5,000 EMD check was received by Best Real Estate, Inc. from Ms. Rocket via United States Postal Service Mail (postmarked September 30, 2021).

On October 5, 2021, the \$5,000 EMD check was deposited into Best Real Estate, Inc.'s escrow account.

Initially, Ms. Rocket told investigators that for several days following the McGradys' offer, the seller could not respond due to power outages from a storm in New Orleans. She then noted that on September 20, 2021, she was admitted to a local hospital for a procedure under anesthesia, and that she received a signed contract on September 21, 2021.

She also told investigators that during this time period, her scanner and DocuSign account were not working, and the local UPS Store was closed due to COVID. In addition, she reported that the seller and purchasers omitted signatures and initials on the contract and related documents, meaning there was a lot of back and forth for corrections.

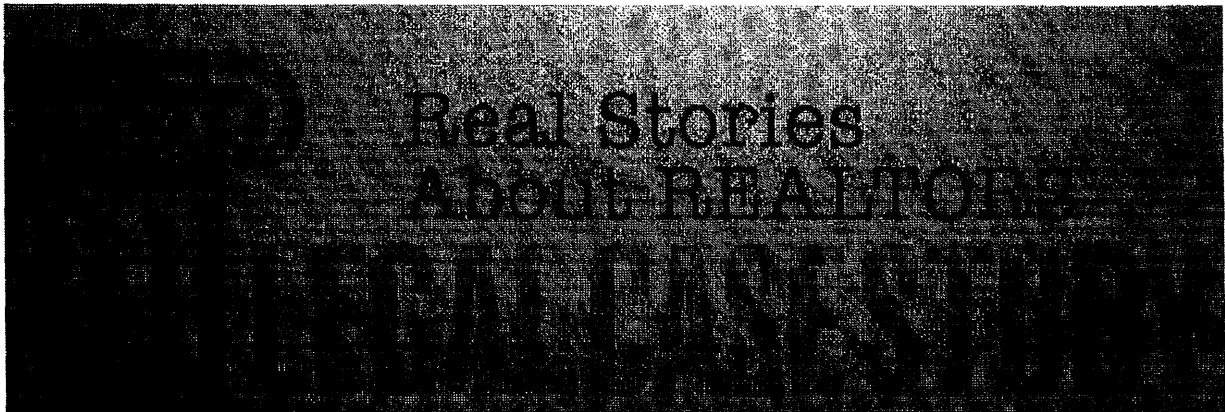
Ms. Rocket also reported that the EMD check had been paper clipped to the original contract offer, dated September 17th, in back of the file. She stated that she did not recall the date on which she mailed the contract to Best Real Estate, Inc. Ultimately, she attributed the error to multiple aspects of the transaction, including: a confusing transaction, an incorrigible seller, a hospital stay, and undue stress.

Later, Ms. Rocket told investigators that she did not realize the EMD was late because she was so busy with her customers and satisfying contracts. She received a call from her broker after the check was mailed and deposited. Her broker notified her that the check was late for the deposit. Ms. Rocket told investigators that she did not notify anyone in writing that the EMD check was late for deposit.

THE RESULT:

Published March 2022





Improper Delivery of Instruments

In this case study, an agent is found to have failed to provide written notice of material changes to all principals to the transaction when he did not inform the parties to the contract that the buyer delivered the earnest money deposit late. Even though his brokerage firm was not holding the earnest money deposit, the principals to the transaction need to be informed in writing when there are material changes to the transaction – including the late deposit of the earnest money deposit.

THE SITUATION:

On March 13, 2021, the Department of Professional and Occupational Regulation received a written complaint from Mariana Otani regarding Emmanuel Poe.

Mr. Poe was issued a real estate salesperson license on April 10, 2010.

On February 3, 2021, Levi Poe, as Buyer, and Nora and Jay Berk, as Sellers, entered into a Residential Sales Contract for the purchase of 3140 Riverside Road, Falls Church, Virginia. In the contract, Ms. Otani represented the sellers, and Mr. Poe represented the buyer.

THE INVESTIGATION:

Investigators learned that the contract specified:

4. **DEPOSIT:** Purchaser shall make a deposit of \$2,000 to be held by Best Title Company (the "Escrow Agent") in the form of: ☒ check ☐ cash ☐ other (the "Deposit"). Purchaser (select one): ☐ has paid the Deposit to the Escrow Agent OR ☒ will pay the Deposit to the Escrow Agent within 5 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.

On February 3, 2021, the contract was ratified.

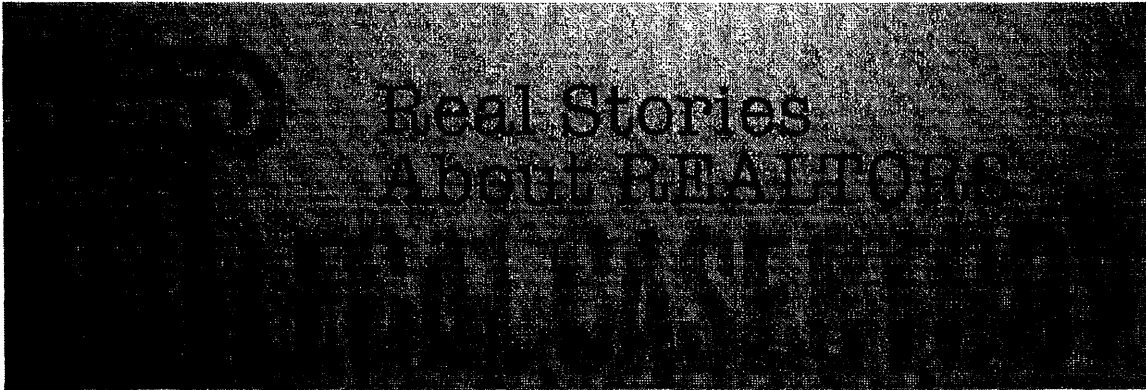
On February 15, 2021, Mr. Poe obtained the earnest money deposit ("EMD") check from Mr. Levi Poe and delivered it to Best Title Company. On February 17, 2021, Best Title Company deposited the EMD into its escrow account.

Mr. Poe told investigators that he called Levi Poe multiple times to remind him of the EMD deadline, and had requested that the EMD be provided to him by February 7, 2021. Mr. Levi Poe told investigators that Mr. Poe tried to get the EMD from him "many times". He stated that he did not mean to give the EMD to Mr. Poe late, but he became sick and "could not worry" about the EMD at the time.

Mr. Poe stated that the "in the midst of being out of town and urging the buyer to provide me with the EMD, it slipped my mind" to notify Ms. Otani that the EMD had not been submitted within the required timeframe.

THE RESULT:





EARNEST MONEY DEPOSIT

This case study highlights the importance of following the real estate regulations when holding earnest money deposits.

THE SITUATION:

On June 7, 2019, the Board received a written complaint from Samantha Hogue regarding Marco Usamov.

Mr. Usamov was issued a real estate salesperson license on August 18, 1997. On February 17, 2002, Mr. Usamov received his Broker License and became the Principal Broker for Usamov International Incorporated.

THE INVESTIGATION:

Investigators learned that on March 23, 2019, Mr. Usamov was contacted by Dominique Perez to prepare an offer for her to purchase 6178 Business Way, McLean, VA 22101 from Ms. Hogue, as seller. Ms. Perez and Ms. Hogue had already agreed upon their terms, and Ms. Perez told Mr. Usamov that there were no contingencies.

On March 28, 2019, Mr. Usamov met with Ms. Perez and Ms. Hogue after preparing the offer, based on the terms Ms. Perez had reported. Mr. Usamov told investigators that Ms. Perez and Ms. Hogue declined representation for the transaction. He said that at the meeting he reviewed the full offer with the parties to the contract. Ms. Perez and Ms. Hogue entered into the Residential Contract of Purchase that same day. The contract required a \$5,000 earnest money deposit. Settlement was scheduled for April 15, 2019.



In reviewing the contract, investigators noted that Mr. Usamov failed to identify Usamov International Incorporated as the Escrow Agent. He told investigators that he did not know why he did not complete the deposit holder information in the Residential Contract of Purchase.

On March 30, 2019, Ms. Hogue wired the \$5,000 earnest money deposit into the business operating account of Usamov International Incorporated. Mr. Usamov told investigators that the earnest money deposit was wired into the firm's business account because the funds were coming from an international account.

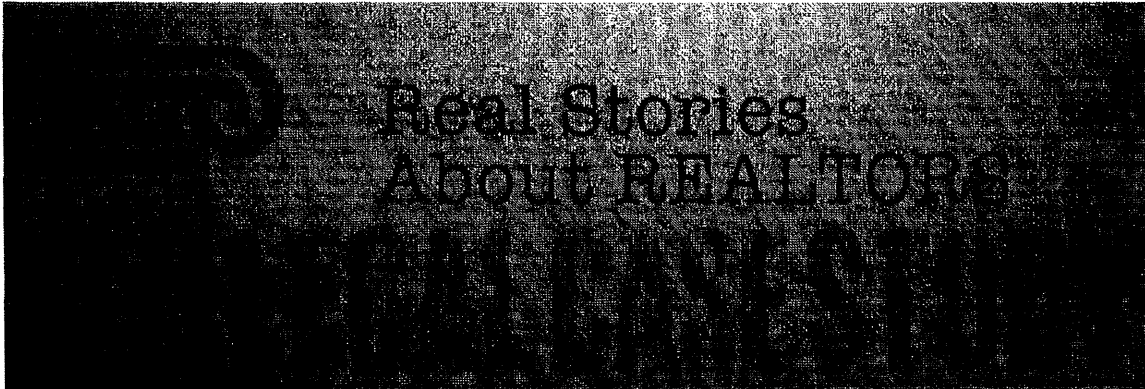
Mr. Usamov stated that he wrote a check to transfer the funds to the firm's escrow account on April 2, 2019; however, he went on vacation later that day and forgot about the check. He deposited the \$5,000 earnest money deposit into the firm's escrow account on April 22, 2019. He failed to deposit the earnest money deposit within five business banking days of contract ratification.

The contract failed to close because Ms. Perez was unable to secure the funds to go to closing.

THE RESULT:

Published July 2020





EARNEST MONEY DEPOSIT STATUS

This case highlights the importance of accurately representing the status of the Earnest Money Deposit when holding escrow for a transaction. In addition, it shows the importance of honesty throughout a Board investigation.

THE SITUATION:

Ms. Shana Craig was issued a real estate sales person license on April 14, 2018. Since her licensure, she has been associated with the firm, At Home Realty, Inc. Ben Hosts is the managing broker for At Home Realty, Inc. In July 2018, Adam and Anita White entered into a contract for the purchase of 491 31st Street, Newport News, Virginia with Victoria Edmonson as the seller. Ms. Craig represented the buyers in the transaction. Ms. Edmonson was an unrepresented party. The terms of the contract included a \$500 earnest money deposit (EMD) to be held by At Home Realty, Inc.

In August 2018, Adam and Anita White and Ms. Edmonson signed a release for the transaction. On August 5, 2018, Mr. Hosts reported an escrow violation to the Board regarding this transaction pertaining to the EMD.

THE INVESTIGATION:

Investigators learned that Ms. Craig met the buyers through a lead provided by her firm, At Home Realty, Inc. The buyers lived in Oregon and wanted a property in Virginia to use as a rental. They viewed the details of the property online and Ms. Craig escorted the buyer's handyman to the property to determine the condition. Following his review, they decided to make an offer.



The buyers provided Ms. Craig a photograph of the EMD check to include with their offer. Ms. Craig told investigators that she was aware of the five-day requirement to deposit the EMD. She requested that the buyers send the EMD check overnight in order to meet the five-day requirement and they agreed. Ms. Craig also reported that the unrepresented seller was aware that she did not physically have the EMD.

On July 17, 2018, Ms. Craig emailed an offer to the unrepresented seller for the buyers to purchase the property and included a copy of the EMD check with the offer. On July 20, 2018, the contract was ratified. On July 22, 2018, Ms. Craig said the buyers admitted that the EMD check was not overnighted but sent by regular mail. Ms. Craig reported that she had daily conversations with the firm's office administrator, Evan Robinson to be on the lookout for any mail. On July 24, 2018, Ms. Robinson told Ms. Craig that the EMD check was received. However, Ms. Craig was unable to get to the office that day and assumed that Ms. Robinson would place the check in the EMD box that was on her desk, but this did not happen.

Ms. Robinson told investigators that she does not put the EMDs in the EMD box because it is the agent's responsibility to send a group email once the EMD has been placed in the EMD box. Once she receives the email, she will take the check from the EMD box and deposit it into the appropriate escrow account.

On July 30, 2018, Ms. Craig checked her mail slot and there was no new mail. On August 1, 2018, Ms. Craig found the EMD check on her desk in the agent interoffice mailbox. The EMD check was deposited into an escrow account the following day.

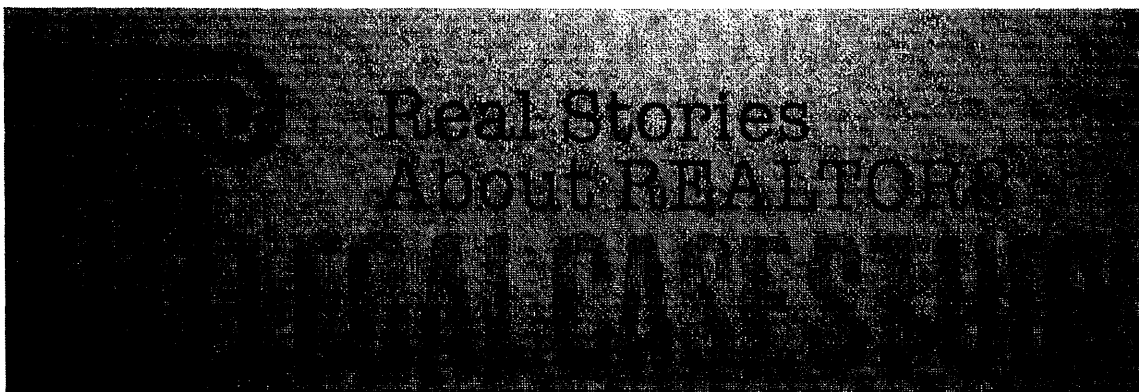
Ms. Craig said that she made her broker, Mr. Hosts, aware of the situation. He compiled the complaint as per DPOR's guidelines. In addition, he provided her with additional training and told her that she should never ratify a contract without having an EMD in hand. She apologized for the error and noted that she changed her protocol to make sure that she has the check in hand when she writes the offer and to make sure that she personally puts it into the earnest money deposit box as soon as it is ratified.

THE RESULT:



Published September 2019





FAILURE TO SAFEGUARD THE INTERESTS OF THE PUBLIC

This case highlights not only the importance of adhering to the Board's regulations through actions such as depositing the earnest money deposit in a timely manner and notifying all parties of material changes to the transaction, but also the importance informing the Board of escrow violations.

THE SITUATION:

Mr. Archer Bastien was issued a real estate broker license in January 1991 and became affiliated with Bastien Realty, Inc. ("Bastien Realty") as the Principal Broker. There are two other agents affiliated with Bastien Realty, Inc., Mr. Randall Dowd and Ms. Alicia Rigby. Both Mr. Dowd and Ms. Rigby received their real estate salesperson licenses in September 2017.

On December 17, 2018, Danielle Silver, as buyer, and Richard and Bonnie Kimpton, as sellers, entered into a contract for the purchase of a property located in Danville, Virginia. Bastien Realty was both the Listing and Selling Firm. Mr. Dowd, as Designated Agent, represented the Kimptons. Ms. Rigby, as Designated Agent, represented Ms. Silver.

The Board received a written complaint from the Kimptons regarding Mr. Bastien in February 2019.

THE INVESTIGATION:

Investigators learned that the contract required Ms. Silver to deposit the earnest money deposit ("EMD") within three days of contract ratification. The contract stated:



4. **DEPOSIT:** Purchaser shall make a deposit of \$300 to be held by Bastien Realty, Inc. (the "Escrow Agent") in the form of: ☒ check ☐ cash ☐ other (the "Deposit"). Purchaser (select one): ☐ has paid the Deposit to the Escrow Agent OR ☐ will pay the Deposit to the Escrow Agent within 3 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.

The contract was ratified on December 17, 2018, but Ms. Silver did not provide her EMD to Ms. Rigby. Investigators noted that the contract did not indicate whether Mr. Silver "has paid" or "will pay" the EMD.

Ms. Rigby told investigators that she received information that Ms. Silver had experienced some health issues on December 19, 2018. When Ms. Rigby shared the information with Mr. Bastien, she reported to investigators that he said, "we will accept deposit as late as December 26, 2018, when she is medically cleared." Ms. Rigby then texted Ms. Silver to inform her of the extension, and told Mr. Dowd of the delay in paying the EMD.

During an interview with investigators, Mr. Bastien denied that he granted Ms. Silver an extension but instead told Ms. Rigby to keep trying to get Ms. Silver to pay the EMD.

On December 26, 2018, Ms. Silver did not pay the EMD to Bastien Realty.

On December 27, 2018, a home inspection was performed at the property, and the Kimptons made the identified repairs, which cost approximately \$400. Mr. Bastien stated that the Kimptons were not required to make the repairs identified during the home inspection nor was Bastien Realty even aware that they were making those repairs.

On December 30, 2018, Ms. Silver provided her EMD check to Bastien Realty. On January 2, 2019, the office manager deposited her EMD check into Bastien Realty's escrow account. On January 6, 2019, Bastien Realty received notice that Ms. Silver's EMD check was being returned for insufficient funds. Ms. Rigby mailed a Release of Contract to Ms. Rigby following her failure to pay the EMD and her lack of communication with Ms. Rigby. Ms. Rigby did not receive a signed release from Ms. Silver.

Ms. Rigby acknowledged that she did not provide the Kimptons with written notice that the EMD had not been paid.

Mr. Bastien told investigators that the transaction was difficult from the start, but that he and Ms. Rigby were repeatedly misled by Ms. Silver on practically a daily basis. Further, he reported Mr. Dowd was kept updated, but was "as confused as we were regarding Ms. Silver's status." He also noted that Mr. Dowd had frequent text and phone communications with the Kimptons.



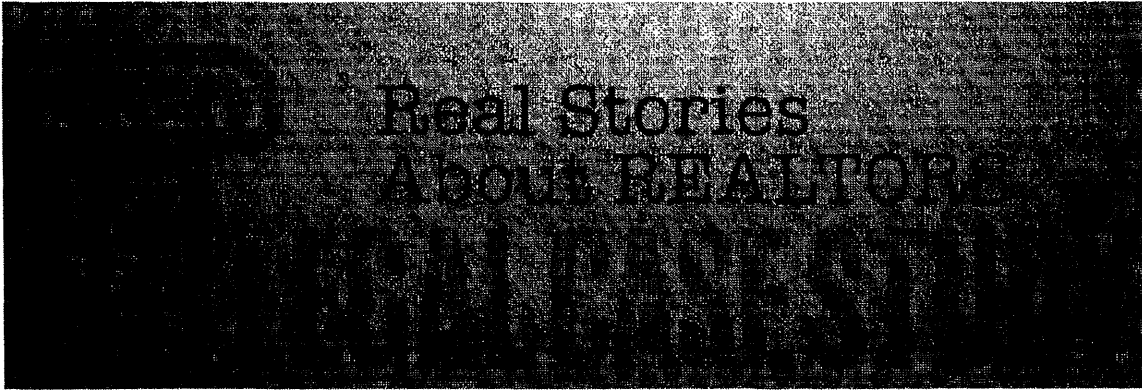
Mr. Bastien stated that he did not review the ratified contract, and that Bastien Realty has never notified sellers when deposits have not been paid in accordance with contracts. Further, that even though Ms. Rigby did not notify Mr. Dowd in writing that the EMD had not been paid, they did discuss the matter verbally and by email.

Mr. Bastien also told investigators that he did not report to the Board that Ms. Rigby failed to provide written notice to all principals to the transaction that the EMD had not been collected. He stated that he did not believe he was required to report the matter to the Board.

THE RESULT:

1.

Published March 2020



EMD – CONTRACT DETAILS

This case examines an escrow case where the agent neglected to check certain boxes on the contract. While this does not void the contract, it does create an escrow violation for the real estate licensee. It highlights the importance of verifying the completeness of contracts and paying attention to details.

THE SITUATION:

On June 7, 2019, the Department of Professional and Occupational Regulation received an email from April Maze, Principal Broker, for A-Maze-ing Real Estate, Inc., which reported an earnest money deposit violation by Tricia Morningstar, a real estate licensee affiliated with her firm.

THE INVESTIGATION:

On May 17, 2019, James Waldorf, as Buyer, and Bank One U.S.A. as trustee for Property Participation Trust, as Seller, entered into a contract for the purchase of 124 Old Stage Road, Winchester, Virginia. James Waldorf was represented by A-Maze-ing Real Estate, Inc., and Tricia Morningstar as the Buyer's Agent.

On May 17, 2019, Ms. Morningstar drafted the contract on behalf of Mr. Waldorf. Paragraph four of the contract indicated the terms and conditions of the EMD. It started:

4. **DEPOSIT:** Purchaser shall make a deposit of \$2,600 to be held by Real Estate Law Firm (the "Escrow Agent") in the form of: ☐ check ☐ cash ☐ other (the "Deposit"). Purchaser [select one]: ☐ has paid the Deposit to the Escrow Agent OR ☐ will pay the Deposit to the Escrow Agent within 3 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.

Ms. Morningstar told investigators that she did not know why she did not check the boxes in this paragraph. She did confirm that when she drafted the contract, she was not sure what type of payment the bank would require.

THE RESULT:

Published January 2021



Late EMD

In this case study, the agent failed to make a timely deposit of the escrow funds. Despite having signed an acknowledgment of the Broker's Policy and Procedure Manual, the agent still failed to input the contract and timely deposit the funds. Nevertheless, because of these policies and procedures, the Principal Broker was still able to discover the error and report the escrow violation to DPOR, ensuring that she properly supervised the agents in the firm.

THE SITUATION:

On March 26, 2019, The Board received a written complaint from Jenny Peck, Principal Broker for Tree Top Realty, Inc. regarding their agent, Antonio Rafa.

Mr. Rafa received his real estate license on April 10, 2009.

THE INVESTIGATION:

Mr. Rafa became affiliated with Tree Top Realty, Inc. in March 2012 and signed an Acknowledgement of Receipt for the Policy and Procedure Manual for Tree Top Realty, Inc.

On February 12, 2019, Rebecca and Andrew Bello, as Buyers, and Simone Tripp, as Seller, entered into a Sales Contract for Unimproved Land ("Contract") for the purchase of land located in Petersburg, Virginia. Mr. Rafa was listed as the Selling Agent, representing the Buyers. In the contract, closing was scheduled to occur on April 1, 2019.

Investigators learned that Tree Top Realty, Inc. uses a paperless system where agents are required to submit a contract to the system once the contract is ratified, which then allows for alerts to the agent and other staff if there are any discrepancies.

Section 4 of the Contract required the Buyer to make a deposit ("EMD") in the amount of \$4,500 to be held by Tree Top Realty, Inc. in the form of a check within five days after the date of ratification. It further stated that the EMD was to be placed in an escrow account by the end of the fifth business banking day following receipt or following the Date of Ratification, whichever is later.

On February 12, 2019, the Contract was ratified. Mr. Rafa failed to submit the Contract to the paperless system used by Tree Top Realty, Inc.

Mr. Rafa told investigators that the Buyers lived out of the area and, therefore, all communication was through text, phone, and email. The parties negotiated for approximately two to three weeks. Once the Contract was ratified, Mr. Rafa forgot to submit the Contract to the paperless system and forgot to have the Buyers send in the EMD check. Mr. Rafa stated that he was not used to working with clients with whom he cannot meet personally to collect the EMD.

The Buyer later provided the EMD with a check dated March 15, 2019. The check was deposited by Tree Top Realty, Inc. on March 15, 2019. On April 14, 2019, Mr. Rafa sent an email to the Listing Agent stating that the EMD for the transaction was deposited late.

Mr. Rafa told investigators that he was not aware that he needed to notify those on the other side of the transaction until Ms. Peck told him. Once he became aware of this requirement, he sent the email to the Listing Agent.

THE RESULT:

_____ /

EMD

This case looks to an escrow violation, where the agent failed to timely deposit the EMD check by one day. Even a late deposit of only one day is an escrow violation. However, the brokerage firm had clear policies regarding escrow and the agent took full responsibility for his actions, which the board took into consideration.

THE SITUATION:

Mr. Michael Horn was issued a Real Estate Salesperson License in Virginia in March 2015 and was a licensed real estate salesperson at Southwest Realty, Inc ("Southwest Realty").

On April 3, 2019, the Board received a written complaint from Trina Russo, Broker for Southwest Realty, which stated that Mr. Horn had turned in a late earnest money deposit (EMD) check.

THE INVESTIGATION:

Investigators learned that in February 2019, Ms. Camilla Beck entered into an Exclusive Right to Represent Buyer contract with Southwest Realty, which commenced on February 3, 2019, and is set to expire on June 30, 2019. Mr. Horn is listed as the Buyer's agent.

On March 21, 2019, Mr. Horn submitted a Standard Purchased Agreement offer ("contract offer") on behalf of Ms. Beck for the purchase of 100 Main Street, Roanoke, VA ("100 Main Street"). The contract listed Southwest Realty as holding the escrow deposit.

On March 22, 2019, Mr. Horn received a \$500 EMD check from Ms. Beck and placed the check in an envelope slot near his desk, as the seller had not yet signed the offer. Mr. Horn then continued to show Ms. Beck another property that was listed for sale at 31 West Ave, Roanoke, Virginia ("31 West Ave"). After viewing this property, Ms. Beck decided to withdraw her offer on 100 Main Street, and instead submit a new contract offer to purchase 31 West Ave. Mr. Horn notified the seller via email that Ms. Beck was withdrawing her offer.

Ms. Beck's offer on 31 West Ave. was accepted and the contract was ratified on March 25, 2019. The contract required the EMD to be deposited within five business days of ratification and Southwest Realty was listed as the escrow agent. Mr. Horn stated on April 2, 2019, he was in the process of retrieving a personal check from the envelope slot near his desk when he found the EMD check. He immediately notified the front desk staff of his error and submitted the check for deposit. It was deposited into the escrow account on April 2, 2019, six business days after ratification. He also notified the listing firm representing the sellers that the EMD was deposited on the sixth business day after ratification.

Mr. Horn stated that he intended to use the \$500 EMD check from the previous offer as the EMD for the ratified contract. He also told investigators that instead of selecting the "submit" option on DotLoop, he selected the "shared" option. This meant that the front desk staff did not receive the contract documents to review. Mr. Horn stated that if the front desk staff would have received the contract documents, they would have asked him for the \$500 EMD check. Finally, he stated that he was

the licensee responsible for the EMD check as he was the licensee that handled the buyer responsibilities for the transaction.

Investigators received the Southwest Realty policy regarding EMD, which stated in part:

1. Sales Associates must hand in any contract file and earnest money deposit (EMD) check within one business banking day from the date of ratification of Contract of Purchase, or in accordance with the written terms set out in the Contract.
2. Sales Secretaries must process the contract file and deposit the EMD check into the company escrow account within one business banking day from the receipt of the contract file from the Sales Associate.
3. In the event a Sales Associate is asked by a client to hold money in the company's escrow account and there is no Contract of Purchase to which the money is attached, there must be a written escrow agreement in place and reviewed by company management before the money can be deposited into the company's escrow account.

The transaction closed on May 10, 2019.

THE RESULT:

EMD & Timing—Legal Case Study—February 2020

[DOWNLOAD](#)

EMD & TIMING

This case again looks at an escrow violation, where the agent provided the check to the brokerage but not the ratified contract, and due to firm policies, the check was not deposited in a timely manner. Further, the agent failed to inform the parties that the earnest money deposit was not deposited.

THE SITUATION:

Mr. Ari Rasid was issued a Real Estate Salesperson License in Virginia in September 2015 and began working at South Realty, Inc.

On June 28, 2018, Richard and Christina Grey, as buyers, and Ryan and Isabelle Yang, as sellers, entered into a contract for the purchase of a property located in Blacksburg, Virginia. Mr. Rasid represented the buyers with his fellow associate, Erica Kaan. T

he agreement was ratified on June 29, 2018. The contract required the purchaser to pay a \$5,000 earnest money deposit (EMD), which Mr. and Ms. Grey had provided to Mr. Rasid on June 28, 2018. On July 7, 2018, the buyers executed their right to terminate the contract, and on July 9, 2018, both parties signed the Release of Contract of Purchase.

On July 11, 2018, the Board received information from Hudson Laris, Broker for South Realty, Inc. regarding Mr. Rasid. Mr. Laris alleged that Mr. Rasid failed to submit an EMD and ratified contract in a timely manner.

THE INVESTIGATION:

Investigators learned that upon receiving the EMD, Mr. Rasid provided the EMD to Gloria Emit, the closing coordinator for South Realty, Inc. Mr. Rasid reported that he and Ms. Kaan did not turn in the ratified contract. He told investigators that neither he nor Ms. Kaan turned in the ratified Agreement because they immediately knew the agreement would be released, due to the buyers expressing concerns about the subject property.

Once the release was ratified, Mr. Rasid and Ms. Kaan requested Ms. Emit release the EMD on July 9, 2018, and at that point realized that the EMD was never deposited in escrow.

Pursuant to South Realty's office policies, Ms. Emit will not deposit an EMD without a ratified agreement. She stated that she does not keep a ledger or a log book when she receives an EMD check because it is not her responsibility to remind the selling agents to turn in the ratified agreement. Mr. Laris told investigators that it is office policy to keep an EMD check locked up until a ratified agreement is delivered to Ms. Emit and that checks cannot be deposited to escrow without a ratified agreement. He conceded that there is not a log or ledger in place to log the receipt of EMD checks or ratified agreements that Ms. Emit receives.

Mr. Rasid admitted that neither he nor Ms. Kaan notified any party in writing that the EMD was never deposited into the firm's escrow account. Ms. Kaan explained that she and Mr. Rasid were made aware that Ms. Emit did not deposit the EMD check when they turned in the Release to Ms. Emit. Mr. Rasid stated that he did not believe the parties to the Agreement were active in the transaction once the Release was ratified and, therefore, he had no need to notify the parties.