

EMD & Safeguarding the Public

This case study highlights how brokers may be held responsible for errors of their employees in the handling of earnest money deposits (EMD). It again demonstrates the importance of following the regulations pertaining to earnest money deposits.

THE SITUATION:

On June 13, 2019, the Department of Professional and Occupational Regulation received a written complaint from Elise Perkins, Principal Broker for West Realty, Inc., regarding Daniella Tram and an alleged violation of escrow regulations.

Daniella Tram obtained her real estate salesperson license on June 4, 2004, and her broker license in February 2012. She also was an associate broker with West Realty, Inc. and the team leader for Tram Realty Group, a team that operated under West Realty, Inc.

THE INVESTIGATION:

On May 25, 2019, Stephanie Young, as Buyer, and Remi Horowitz, as Seller, entered into a Standard Purchase Agreement ("Contract") for the purchase of 1000 Main Street, Tappahannock, Virginia. The seller did not have an agent. The buyer was represented by West Realty Inc., and Eli Mormon represented the buyer. The contract indicated a \$500 earnest money deposit to be held by West Realty, Inc.

Investigators learned that on May 9, 2019, Mr. Horowitz gave the EMD check to Sasha Cleo, Director of Operations for Tram Realty Group. Ms. Cleo placed the EMD check into an envelope for processing.

On May 27, 2019, the Contract was ratified.

On June 6, 2019, Ms. Cleo submitted the EMD check to West Realty, Inc.

On June 9, 2019, the EMD check was deposited into the escrow account for West Realty, Inc.

Ms. Cleo told investigators that she found the EMD check when she was placing an EMD check for another property in the envelope on June 6, 2019. She stated that she put the EMD check in the envelope because she had been working on other contracts at the time.

Ms. Cleo reported that she is responsible for handling EMD checks. Investigators learned that agents for the Tram Realty Group turn in EMD checks to her. They generally turn in the EMD checks at the same time as ratified contracts but may also turn in EMD checks to Ms. Cleo prior to contract ratification. Ms. Cleo stated that when she receives an EMD check, she will put it in an envelope until she processes the ratified contract. Agents provide Ms. Cleo with a physical copy of the ratified contract, the EMD check, and the completed West Realty, Inc. sales checklist.

Upon receipt of a ratified contract, Ms. Cleo stated that she scans and uploads the contract into their electronic records system. She makes a copy of the first page of the ratified contract, reviews the sales checklist for completion, and gathers the EMD check. She provides these documents to the transaction coordinator for West Realty, Inc. Ms. Cleo reported that she generally turns in the ratified

contract, EMD check, and sales checklist to the transaction coordinator on the same day that she receives the information from the agent.

Ms. Tram told investigators that the contract and associated paperwork for this transaction were somehow turned in to the transaction coordinator for West Realty, Inc. without the EMD check. She stated that when Ms. Cleo went to put an EMD check for another property into the awaiting ratification envelope, Ms. Cleo found the EMD check for the subject property. She immediately handed the EMD check over to the West Realty, Inc. transaction coordinator and called Ms. Tram to let her know that the EMD check was not deposited timely.

West Realty, Inc. requires agents to turn in ratified contracts and EMD checks within two days of contract ratification. Ms. Tram stated that agents in the Tram Realty Group are to obtain the EMD check at the time an offer is written. Agents are to place the EMD check into the property folder. Agents provide the property folder to Ms. Cleo, who places the EMD check into an envelope for transactions awaiting ratification. Upon ratification, agents may turn in a physical copy of the ratified contract or e-mail a copy to Ms. Cleo. Ms. Cleo then completes an additional packet of information related to the transaction, uploads the Contract into the electronic records system, attaches the EMD check to the ratified contract, and forwards all documentation to the transaction coordinator for deposit.

Ms. Tram stated that she verbally notified Ms. Perkins that the EMD check for the subject property had not been timely deposited. Ms. Tram also had Ms. Cleo notify Ms. Perkins. Ms. Tram stated that the seller was also notified by e-mail that the EMD check had not been deposited in a timely manner.

Ms. Tram stated that she took it upon herself to review EMD and ratified contract submission policies with the other members of the Tram Property Group.

THE RESULT:

The Board determined that Ms. Tram, as Associate Broker, failed to ensure an unlicensed assistant of West Realty, Inc. delivered the EMD for the subject property so that it could be deposited in the brokerage firm's escrow account within five business banking days of ratification of the contract and therefore failed to safeguard the interests of the public. The Board issued a \$1,000 fine and required Ms. Tram to attend three classroom hours of Board-approved continuing education pertaining to Escrow Management.