

EMD

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:

The Board determined that Ms. Morningstar failed to include the complete terms and conditions of the real estate transaction by not specifying how the purchaser intended to pay the earnest money deposit, and whether the purchaser had paid or would pay the EMD within three business days of the ratification date. The Board issued a fine of \$600.