



## 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 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<sup>st</sup>. 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:**

The Board determined that Ms. Kahn failed to exercise ordinary care by failing to ensure the EMD for the subject property was delivered to the escrow holder within five days after date of Contract ratification for deposit into their escrow account. She was required to pay a fine of \$500 and complete at least three classroom hours of Board-approved continuing education pertaining to escrow management.

*Published October 2021*

