



## 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:

- 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:**

The Board found that Mr. Poe failed to provide in a timely manner to all principals to the transaction written notice that the EMD was not deposited according to the contract terms. The Board issued him a fine of \$600 and ordered him to complete at least three classroom hours of Board-approved Post-License education pertaining to Legal Updates and Emergency Trends within six months.

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