

## EMD 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 31<sup>st</sup> 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:**

The Board determined that Ms. Craig has misrepresented that she received the EMD from the Buyers when she submitted the offer to the Seller. The Board required her to pay a fine of \$500, placed her on probation, and required to complete two classroom hours of Board-approved continuing education pertaining to Real Estate Contracts. In their evaluation, the Board determined that there were several mitigating factors in determining sanctions. Ms. Craig was a new agent and had not received adequate training. Since the incident, she completed a one-on-one training. In addition, during the process she provided sincere testimony and took complete responsibility for her actions.