

Exceeding the Scope of Access

This case highlights the importance of confirming that your clients have the authority to access property and that you do not provide access in excess of the scope allowed. In addition, it demonstrates the importance of providing honest and reliable testimony to the Virginia Real Estate Board when facing a potential violation.

THE SITUATION:

On June 2, 2006, May Wind was issued a real estate salesperson license and became affiliated with Best Realty, Inc.

On September 14, 2018, Richard and Julie Puttnam, as Buyers, and Corey and Erica Harrid, as Sellers, entered into a Contract for the purchase of a property in Ashville, Virginia. Christopher Dean represented the Sellers as the Listing Agent. Another agent from Best Realty, Inc., Patricia Redman, represented the Buyers.

On December 22, 2018, the Department of Professional and Occupational Regulation received a written complaint from Corey and Erica Harrid ("the Harrids").

THE INVESTIGATION:

Investigators learned that the contract specified a closing date of Wednesday, October 31, 2018. The Puttnams had closed on the sale of their previous home and were living in a hotel while waiting for the closing date of the subject property. The parties had scheduled a walkthrough in two parts. The first portion of the walkthrough was scheduled for Friday, October 26, 2018, and the second portion was scheduled for Tuesday, October 30, 2018.

Ms. Redman conducted the first portion of the walkthrough by herself on Friday, October 26, 2018. The purpose of the walkthrough was to test the propane appliances before the buyer switched to a new propane provider upon settlement. When Ms. Redman arrived at the subject property, she discovered that the sellers, Mr. and Ms. Harrid, had moved out. Ms. Redman told the listing agent, Christopher Dean, that she was disappointed by the lack of notification because her clients could have requested an earlier closing date and asked him to let the buyers be allowed to drop off a small load of items during the second walkthrough on Tuesday.

Mr. Dean did not immediately respond, and Ms. Redman followed up with him on Saturday at 8:17 a.m. to request access to the garage for that day, Sunday. She explained that the buyers wished to begin storing their belongings in the garage to get a jump start on their moving process. Mr. Dean responded indicating that the sellers were concerned about potential liability. He later responded at 10:23 a.m., stating that the sellers had agreed to the buyers' request. Mr. Dean's email stated, "...storing in the garage is fine but nothing in the home and if we can get a limited access agreement that would be great."

Shortly after receiving his response, Ms. Redman left for a showing in Tappahannock and requested that her colleague, May Wind, handle the arrangements with the limited access agreement.

On Saturday at 1:52 p.m., Mr. Dean send a follow up email to Ms. Redman and Ms. Wind which stated:

I spoke to my clients. They are requesting the final walkthrough done prior to the limited access. They will give the access code to the garage after that is complete. We need the limited access agreement completed and signed. Because of their liability concerns, they are okay with furniture and boxes, but nothing flammable.

We were not aware they were wanting or intending on going today. We were under the impression that your clients wanted access on Tuesday, per your earlier email. They are okay with today so long as the final walkthrough is completed with you and the limited access is sent over to us in advance of dropping the first load.

This is all a bit last minute, but we are willing to work with you. I was not planning on being accessible today as I have family plans. Please handle what you need to do in order for them to drop and store.

Thank you,
Chris

Ms. Wind told investigators that she conducted the walkthrough with the buyers on Saturday at approximately 3:30 p.m. She stated that because she did not have a code to the garage door, she gave the key to the subject property from the lockbox to the buyers at the time. She told the buyers that they were only allowed access to the garage. Ms. Redman told investigators that there was no other way to allow the buyers to access the garage other than giving them the lockbox key.

Ms. Wind left the property and at 5:14 p.m. she emailed the walkthrough and limited access agreement to Mr. Dean.

On Saturday night, the sellers visited their house and discovered the buyer's personal property was already in the garage, the HVAC units were running, and all the keys and garage door openers were missing. Ms. Harrid took a photograph of the buyers' items in the garage. Mr. Dean texted Ms. Redman to request that the keys be returned immediately. He stated that the Limited Access Agreement was for the garage and not the house.

Ms. Redman stated that when she returned from Tappahannock on Saturday night, she learned that the sellers wanted the keys to be returned. She met with the buyers on Sunday morning to retrieve the keys. She was very apologetic to investigators for involving Ms. Wind.

During the investigation, Ms. Wind explained that the key to the garage was not separate from the key to the house. She also stated that she turned on the HVAC to test it during the walkthrough and may have forgotten to turn it back off. She also noted that Mr. Dean had said to get the agreement signed, which she did. Ms. Wind stated that understood that she needed to have the final walkthrough

completed and get the Limited Access Agreement signed. She did not realize that she needed the Limited Access Agreement to be ratified before providing the buyers with access.

THE RESULT:

The Board found Ms. Wind to have allowed the Buyers unsupervised access to the subject property without the sellers' authorization. The Board found Ms. Wind's testimony to be credible and that she appeared to have made a mistake resulting from a miscommunication. Although they found her to be in violation of the regulations, the Board did not impose a monetary penalty.