



SHOW ME THE [DEPOSIT] MONEY!

By today's standards, most would agree that five days is all but an eternity. With extremely low inventory and buyers willing to pay over asking price for a property the inside of which they haven't even seen, it has become generally accepted that if a property remains on the market for longer than five days, it's either overpriced or there is something else wrong. Knowing this, it's hard to understand why agents habitually fall back on the five day default timeline for a buyer to provide the deposit to the seller's agent.

Paragraph 2(A)(1) of the Pennsylvania Association of Realtors® Agreement of Sale, form ASR, requires the deposit to be paid within a certain number of days of the execution of the Agreement. Five is the default if no other timeline is provided, "if not included with [the] Agreement." In light of recent issues with the United States Postal Service and the delivery, or lack thereof, of mail, several listing agents have found themselves in the same position: a fully ratified Agreement but no deposit money five days later.

The excuses seem just as endless as the seller's and listing agent's wait: "We put it in the mail the day we signed the Agreement", "My client doesn't want to write another check because what if the first arrives and is deposited as well", "It costs \$40.00 to cancel a check", and so on. What happens though when the deposit doesn't arrive? The short answer is the buyer is likely in default and the seller can potentially terminate the agreement. What about the deposit money?

First, read paragraph 26(G). If this box has been checked, the seller has agreed that if the buyer should breach the Agreement the seller's damages are limited to "retaining sums paid by buyer, including deposit monies..." If the buyer hasn't paid any sums, it becomes increasingly difficult for the seller to recover in the event of a buyer default.

Had the buyer actually paid the deposit money to the listing agent as required in the ASR and the seller is successful in litigating the deposit dispute, it is simply a matter of providing that Court Order to the listing agent, who in turn provides it to the seller (in accordance with Paragraph 26(B) of the ASR). If that money is never paid to the listing agent, the seller must likely undertake collection efforts to get those funds directly from the buyer, a much more time-intensive and costly undertaking. With typical residential deposits ranging anywhere from \$1,000 to \$20,000, saving money on any collection efforts is essential.

As a final note, licensees and brokers can rest assured that they are not responsible for unpaid deposits, per paragraph 26(I) of the ASR. Best practice, however, is to make sure that deposit is included with the signed Agreement because without it, your seller may not have an Agreement at all.

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