



Escrow: The Rules Have Changed

February 19, 2008

By Pamela J. Anselmo

panselmo@becker-poliakoff.com

3111 Stirling Road
Ft. Lauderdale, Florida 33312-6525
Tel: 954.364.6062

As of Dec. 6, 2007, a rule change places new responsibilities on real estate sales agents and brokers when a deposit is "placed or to be placed" with an attorney or title company according to the terms of a sales contract.

The First New Responsibility

This requires the licensee who prepares or presents the sales contract to include in the contract the name, address and telephone number of the attorney or title company that will serve as escrow agent. Previously, Rule 14.008 required only the name and address of the title company or attorney to be included in the sales contract.

The Second New Responsibility

Now, the broker of the licensee who prepares or presents the sales contract is required to make written request to the attorney or title company identified as the escrow agent, within three business days after a deposit is due under the sales contract, seeking that entity's written verification of its receipt of the deposit.

Previously, Rule 14.008 stated that "the licensee shall obtain and retain written verification of said deposit upon delivery of the funds to the title company or attorney." The new version of Rule 14.008 mandates that the broker make a written request, that the written request seek written verification from the attorney or title company of its receipt of the deposit and that it be made within three business days after each deposit is due.

The Third New Responsibility

This rule requires the broker of the licensee who prepares or presents the sales contract to provide to the seller's broker (or the seller directly if the seller is not represented by a broker) a copy of the written verification of the escrow deposit provided by the attorney or title company within 10 business days from making the written request of the attorney or title company acting as the escrow agent. If the broker does not receive written verification of receipt of the deposit from the attorney or title company within 10 business days of making the request, the rule requires that the broker provide written notice within the 10 business days to the seller's broker (or to the seller directly if the seller is not represented by a broker) that the broker did not receive the verification of receipt.

As stated earlier, the requirements set forth in the Rule 61J2-14.008, Paragraph 2(b), Florida Administrative Code, as recently changed by the Florida Real Estate Commission, apply when a deposit is placed or to be placed with an attorney or title company pursuant to the terms of a sales contract. ■

Pamela J. Anselmo is an attorney in Becker & Poliakoff's Real Estate Group. She has close to twenty years of experience in corporate business transactions with a focus on real estate development. Contact: panselmo@becker-poliakoff.com or 954.364.6062