

How long to return deposits?

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As a broker holding a deposit, how long should it take you to return it pursuant to the terms of a release signed by both parties or when sufficient time has passed (the 180 days or whatever it has been reduced to) and not litigation/mediation has been initiated? I am hearing complaints that listing brokers are taking “too long” to return deposits when buyers are the recipients. I’ve not verified any of these complaints, but they are the focus of a good number of Hotline calls so I thought it merited discussion.

There are times when a deposit cannot be returned despite how evident one party’s entitlement to that deposit may be. We need an agreement between the parties which usually is in the form of a release; or we wait the passage of time and follow the formula for the deposit’s return that is set forth in the agreement of sale. Rarely do we await a court order. These issues, however, are not the subject of the more recent complaints.

What I am hearing is that the escrow holding broker has received a release or has received the buyer’s letter demanding return of the deposit given the passage of time without resolution. In those circumstances, the broker has no skin in the game and the parties have agreed (in the release or have pre-agreed in the agreement of sale) where that deposit is to go.

In most cases, deposits are returned to buyers because of a termination resulting from an inspection contingency, or, because the buyer did not get the necessary mortgage. Sellers, and in many cases listing brokers who hold the deposit, may be suspect that the buyer’s stated reasons for terminating are bogus, or that the buyer did not make a good-faith effort to get that mortgage. To punish the buyer for their pretextual termination sellers may encourage the broker to hold that deposit as long as possible.

So the question frequently is asked: how long does the broker have to return a deposit once entitlement is established? The agreement provides no answer. So we look to what a court would do.

I think just about any lawyer would give you the same answer. The broker has a “reasonable period of time to return the deposit.” What is “reasonable” depends on the circumstances, but it is hard to fathom that it would take a broker more than several days to issue a check. Perhaps if termination happens so early in the transaction, the broker might be justified in waiting until the buyer’s deposit check clears before making the return. A seller who wants a listing broker to drag his or her feet when returning the deposit should be ignored. If a complaint is made to the Real Estate Commission, it’s not the seller who is under the gun.

I understand that there are pockets in Pennsylvania where buyer brokers hold deposits. It is a practice I think that should be considered by those who don’t. Holding a deposit does not give the broker an advantage over the other. The situations when it should be released and the time of release are not dependent on which broker is holding the deposit. The ability to fund a transaction with a deposit, however, is shorter when the buyer broker holds the deposit simply because there is one less step in the process. A buyer makes their check payable to the selling broker and hands it to their agent when close to a decision. Then, even if the contract

is executed via software, the buyer agent merely needs to hear that the offer has been accepted and then place it in his broker's escrow account. Voila! The transaction is funded rather than having to await the additional step of transfer from the buyer broker to the listing broker.

Lastly, and while we are on the subject, why am I still taking Hotline calls involving convoluted facts of the transaction and questions of breach and entitlement to a deposit when the it is only \$1,000? The fight is so greater than the reward and the cost to litigate so much greater than the amount in controversy that nobodies' interests are served!

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Mr. Goldsmith is an attorney with Mette, Evans & Woodside and serves as general counsel to PAR. A substantial portion of his practice is dedicated to providing advice and counsel to real estate licensees. He and his firm represent and defend real estate salespersons and brokers in civil lawsuits and licensing claims across the Commonwealth. Jim also defends Realtors® in disciplinary hearings conducted by the Real Estate Commission. Jim has been one of the voices of the PAR Legal Hotline since its inception in 1992.