

DELIVERY

WHAT IS IT?

This outline is a general treatment of the subjects covered and is not intended as legal advice or comprehensive answers to all questions, nuances, etc. that may come up in particular transactions.

BACKGROUND

This course will cover the importance of “delivery” under the NVAR Real Estate Contract. What constitutes delivery including acceptable methods, timing and consequences of the failure to do it properly will be addressed.

I. What does our Contract say about Delivery?

A. Page 12, Provision 31 B. Legal Requirements. All contracts for the sale of real property must be in writing to be enforceable. Upon **ratification and Delivery**, this Contract becomes a legally binding agreement.

1. “Delivery” is capitalized which means it is defined somewhere in the document.
2. The contract itself is not legally binding unless and until it is delivered.

B. Page 13, Provision 33.

1. Subparagraph C says that “Days means calendar days unless otherwise specified in this Contract.”
2. Subparagraph D says “all reference to time of day shall refer to the time of day in the Eastern Time Zone of the United States.”
3. Subparagraph E says “for purposes of computing time periods, the first Day will be the Day following Delivery and the time period will end at 9 p.m. on the Day specified. If the Settlement Date falls on a Saturday, Sunday, or legal holiday, then the Settlement will be on the prior business day.

C. Page 3, Paragraph 6.

1. Delivery methods may include (note check boxes);
 - a. hand-carried;
 - b. sent by professional courier service;
 - c. United States mail;
 - d. facsimile; or
 - e. email.
2. Delivery is deemed to have occurred;
 - a. on the day delivered by hand;
 - b. on the day delivered by a professional courier service;
 - c. on the day delivered by United States mail return receipt requested;
 - d. fax or email, either of which produces a tangible record of the transmission.
3. Deliveries will be sent to the following (at property address unless otherwise specified below for the Seller). Form provides blank lines for both Seller and Purchaser to enter relevant delivery information.
4. Note: Courtesy copies no longer required to be provided to the brokers.

CASE STUDY:

Rost v. Amick:

FACTS: Purchaser and Seller entered into a sales contract for the purchase of real property in Fairfax County. The contract was ratified on **August 17, 2009**, the date the seller signed. The contract included a home inspection contingency as well as the Virginia Jurisdictional Addendum specifying the address to which delivery of documents and communications would be made. **On August 31, 2009**, the Purchaser's real estate agent sent an email attaching a home inspection report to the Seller's real estate agent. **On September 1, 2009**, the Purchaser's agent sent an email to Seller's agent requesting repairs pursuant to paragraph 7, as opposed to repairs pursuant to the inspection addendum.

On **September 6, 2009**, Purchaser signed the Inspection Removal Addendum requesting certain repairs be undertaken and it was sent to the Listing Agent that same day. Seller did not respond to this Addendum. Purchaser did not take any action.

On September 10, 2009, Listing Agent sent a Notice in which Seller claimed the contract was void as a result of Purchaser's failure to remove the inspection contingency upon receiving no response to the Removal Addendum.

FINDINGS: The Court found the date of ratification to be August 17, 2009. The Inspection Addendum required Purchaser to provide Seller with the entire inspection report and requested repairs 14 days after the date of ratification, which would have been August 31, 2009. Therefore, Purchaser's request for repairs was untimely as it was not made until September 6, 2009. **It was also not delivered to the Seller as provided in the Virginia Jurisdictional Addendum.**

Therefore, the Inspection Contingency expired and the Seller had no right to void the contract. Thus the contract is enforceable.

The court ordered that the Purchaser was entitled to specific performance of the contract (giving the Seller 60 days to convey title) and awarded monetary damages in favor of Purchaser in the amount of \$32,169.43 (storage fees, appraisal and inspection fees, home buyer tax credit and attorney's fees of over \$22,000).

Final Thoughts:

Pay attention to the Jurisdictional Addendum regarding delivery issues. Failure to adhere to the contract in this area can have significant consequences.

HOA and Condo delivery is controlled by statute.

QUESTION & ANSWER/NOTES

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real estate transaction, you are entitled to receive a copy of these guidelines from your Settlement agent, upon request, in accordance with the provisions of the Real Estate Settlement Agents Act.

Buyer designates _____ (“Settlement Agent”). Buyer agrees to contact Settlement Agent within 10 Days of Date of Ratification to schedule Settlement. Settlement Agent shall order the title exam and survey if required.

To facilitate Settlement Agent’s preparation of various closing documents, including any Closing Disclosure, Buyer hereby authorizes Settlement Agent to send such Closing Disclosure to Buyer by electronic means and agrees to provide Settlement Agent Buyer’s electronic mail address for that purpose only.

- 5. DOWN PAYMENT** The balance of the down payment will be paid on or before Settlement Date by certified or cashier’s check or by bank-wired funds as required by Settlement Agent. An assignment of funds shall not be used without prior written consent of Seller.
- 6. DELIVERY** This paragraph specifies the general delivery requirements under this Contract. For delivery of property or condominium owner’s association documents see the VIRGINIA PROPERTY OWNERS’ ASSOCIATION ACT and/or VIRGINIA CONDOMINIUM ACT paragraphs of this Contract. Delivery of the Notice pursuant to the Virginia Residential Property Disclosure Act is addressed in the VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT paragraph.

Delivery (“Delivery”, “delivery”, or “delivered”) methods may include hand-carried, sent by professional courier service, by United States mail, by facsimile, or email transmission. The parties agree that Delivery will be deemed to have occurred on the day: delivered by hand, delivered by a professional courier service (including overnight delivery service) or by United States mail with return receipt requested, or sent by facsimile or email transmission, either of which produces a tangible record of the transmission.

Deliveries will be sent as follows:

A. Addressed to Seller at Property address unless otherwise specified below by United States mail, hand delivery or courier service **OR** fax **OR** email (check all that apply):
To Seller: _____

B. Addressed to Buyer by United States mail, hand delivery or courier service **OR** fax **OR** email (check all that apply):
To Buyer: _____

No party to this Contract will refuse Delivery in order to delay or extend any deadline established in this Contract.

- 7. VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT** The Virginia Residential Property Disclosure Act requires Seller to deliver a disclosure statement prior to the acceptance of this Contract unless the transfer of Property is exempt. The law requires Seller, on a disclosure statement provided by the Real Estate Board, to state that Seller makes no representations or warranties concerning the physical condition of the Property and to sell the Property “as is”, except as otherwise provided in this Contract.

If the disclosure statement is delivered to Buyer after Date of Ratification, Buyer’s sole remedy shall be to terminate this Contract at or prior to the earliest of (i) 3 days after delivery