



Is an Additional EMD due by any particular time of day?

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QUESTION: I'm representing a seller who has a property under contract using the Offer to Purchase and Contract (form 2-T). The contract calls for the payment of an Additional Earnest Money Deposit. I know that time is "of the essence" regarding delivery of the Additional EMD. There's a date in the blank but no time of day. My question is, does the buyer have to deliver the Additional EMD by any particular time of day on the agreed-upon date?

ANSWER: Since there is no time of day specified, we believe that delivery up until midnight on the specified date would be considered timely. There are some obvious potential practical issues with delivery of an Additional EMD after business hours. For that reason, effective July 1st, all versions of the Offer to Purchase and Contract (forms 2-T, 12-T and 800-T) have been amended to provide that an Additional EMD must be delivered by 5 p.m. on the specified date. In addition, times of day have been added to several other provisions where time is "of the essence," namely, in paragraphs 1(e) and 2(c) of form 800-T (respectively, expiration of Pre-Construction Evaluation Period and expiration of buyer's right to terminate if seller cannot obtain a Report), paragraph 11 of the Back-Up Contract Addendum (form 2A1-T), (automatic termination date) and paragraph 1 in both the Possession Before Closing Agreement (form 2A7-T) and the Possession After Closing Agreement (form 2A8-T) (term of possession).

A detailed summary of all the residential forms changes that went into effective July 1, 2018 is available on the members only side of the NC REALTOR website. Once you sign in, click on the Q&A "Quick Link" at the top, and then on "Forms" and "Forms Changes" to access the summary, which includes links to marked-up copies of the forms that have changed.

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