



Are All Sellers Required to Acknowledge Receipt of the Due Diligence Fee?

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Bill Gifford, Martin & Gifford, PLLC

QUESTION: My firm listed a property for sale for a husband and wife. After the property went under contract, I received a due diligence check from the buyer's agent. I gave that agent the "listing agent acknowledgement" which confirmed my receipt of that fee. The next day, one of the sellers (the wife) picked up the check at my office and signed the "seller acknowledgement" portion of page 15. The closing coordinator at the buyer agent's firm asked me for a copy of that form and I sent it to her. The coordinator is now insisting that the husband-seller also needs to sign the seller acknowledgement. Is she correct?

ANSWER: She is not. Back in 2018, we wrote a Q & A on the reason why listing firms should always ask their seller clients to sign the seller acknowledgement when they deliver a due diligence check. A copy of that Q & A can be found [here](#). What we did not discuss in that Q & A is whether the seller acknowledgement is an absolute requirement or whether, even if the form is not mandatory, whether all sellers should be asked to sign it.

While completing the Acknowledgement of Receipt of Monies section of Form 2-T is strongly recommended, it is not required. In paragraph 20 of Form 2-T, Seller and Buyer actually agree that the Acknowledgement section at the end of the contract does not constitute a material part of the contract. As a result, failure to complete that section will not invalidate the contract.

Real Estate Commission Rule A.0116(b)(4) states that brokers may accept custody of a check made payable to a seller as payment of a due diligence fee but only for the purpose of delivering the check to the seller. That rule also states that brokers are responsible for the safe delivery of such checks. The seller acknowledgement portion of page 15 was designed to provide listing firms with evidence that they complied with this statutory duty.

The bottom line is that the purpose of the seller acknowledgement is to prove that the seller actually received the referenced due diligence fee. The signature of one seller accomplishes that purpose. There is no need to have all sellers sign the seller acknowledgement.

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