Counting the “days” for Cashing the Deposit

By Brian Madigan LL.B.

An issue that appears to occur on a regular basis is the proper computation of the number of days to cash the purchaser’s deposit.

Let’s assume that the parties enter into an agreement of purchase and sale on Wednesday, and one day later, on Thursday the purchaser’s sales representative delivers the deposit cheque to the vendor’s brokerage. That means the listing brokerage has received the deposit and now has “5 business days” to cash it, by depositing it into the statutory trust account.

The **key day** is the **day of receipt**. The day of the agreement is not relevant.

So, when do you start counting? Thursday or Friday? Always, Friday! It is the first day, Thursday doesn’t count. The broker has five days. The cheque could be delivered late on Thursday and that would eat up one of the days. If it arrives early on Thursday, then, that’s a bonus.

The final day for placing the cheque in the account would be the following Thursday. That is the end of the five day period.

Saturday and Sunday don’t count because they are not business days. And, if there were a holiday on Monday, that day wouldn’t count either.

Here’s what the day computation looks like:

0.....Wednesday, the date of the agreement (A)

0.....Thursday, the date of receipt (R)

1.....Friday

x.....Saturday

x.....Sunday

2.....Monday

3.....Tuesday

4.....Wednesday

5.....Thursday

6.....Friday

The following Friday is day 6, so that is too late.

It is important to know that the date of the agreement (A) does not trigger an obligation on the part of the brokerage. It is only the receipt (R) of the cheque.

Why would the agreement be important as noted by RECO? It is only important to determine whether in fact the cheque is a deposit in accordance with the terms of the agreement.

Suppose a purchaser was required to pay two deposits one ($10,000) when the agreement came into force and a further deposit ($20,000) upon satisfaction of certain condition, 30 days later. The purchaser is leaving on holidays, and chooses to leave two cheques with the brokerage. The first cheque is to be deposited within 5 business days. The second cheque is to be deposited "within 5 business days" of it actually becoming a deposit within the meaning of the agreement of purchase and sale.

The **rules** with respect to the **computation of time** are as follows:

Except where a contrary intention appears,

(1) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;

(2) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

So, while it is always advisable to do things as quickly as possible, if it's Thursday and you have the cheque in your possession, you need to know that it must be deposited before midnight.

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