

E-Mail Delivery

Working with Consumer Consents to Deliver Electronic Documents

BY DEBBI CONRAD

The process for obtaining consent to electronic delivery and signatures in consumer real estate transactions was discussed in the February 2008 *Legal Update*, "Electronic Commerce and E-Mail Delivery," which can be found online at www.wra.org/LU0802. The following practical implementation tips supplement that discussion. The Consent for Use of Electronic Documents and Signatures in Consumer Real Estate Transactions (Consent) and the Addendum D – Electronic Document Delivery needed in this process are available on the WRA E-Commerce Resource page (www.wra.org/ecommerce).

Using Consumer Consent with Listings

Laptop
When the listing agent visits the seller to take the listing, the agent should bring a laptop along, if possible. If the seller also has a computer, the agent can e-mail the Consent to the seller and the seller can complete/sign the Consent and immediately e-mail it back.

Complete ASAP

If the seller's electronic consent cannot be obtained on the spot, the agent should explain that the agent will e-mail the Consent to the seller and that the seller should complete the Consent and e-mail it back as soon as possible.

Using the Addendum D with Listings

Form Information

The listing agent should complete the top of the Addendum D for use with the Listing Contract (cross off Offer to Purchase and Buyer Agency Agreement and fill in the date of the listing and the property address or description).

Broker E-Mail

The listing agent should fill in the e-mail address that will be used for electronic delivery to the listing broker with respect to the listing contract and then initial the form.

Seller's E-Mail

The seller should fill in the e-mail address the seller wants to use for electronic delivery with respect to the listing contract and then initial the form and check the box to indicate that the seller has given electronic consent.

Attach

The listing agent should then incorporate the Addendum D into the listing contract to make it part of the contract. (Make certain to reference the Addendum D in the listing contract.)

Amend

If there will be a delay in obtaining the seller's Consent, the Addendum D may be added to the listing later by attaching the Addendum D to a WB-42 Amendment to Listing Contract.

Prepare the Addendum D for Offers

Form Information

The listing agent should complete the top of the Addendum D for use with offers (cross off Listing Contract and Buyer Agency Agreement, and fill in the property address or description).

Seller's E-Mail

The seller should fill in the e-mail address the seller wants to use for electronic delivery with respect to any offers and then initial the form and check the box to indicate that the seller has given electronic consent.

E-Mail Address for Delivery

The e-mail address the seller fills in may not be the seller's own e-mail address – it may be the e-mail address for the listing agent or someone else, similar to when the parties' fax numbers or mailing addresses are filled in on lines 22-33 of the WB-11 Residential Offer: the mailing address, fax number in the offer and (now) the e-mail address on the Addendum D do not have to be the seller's own personal contact information.

Optional

The listing agent may fill in the listing broker's e-mail address and initial the form, but this is optional and purely informational because the listing broker is not a party to the offer to purchase.

Make the Addendum D Available to Buyer Prospects

MLS

The Addendum D the listing agent and the seller have prepared for offers may be mentioned in MLS remarks and posted in "Associated Documents" or "Other Documents" if that feature is available.

Open House

The Addendum D the listing agent and the seller have prepared for offers may be copied so that copies may be left at the property so that prospects attending showings or open houses may pick up a copy to use when they write an offer.

Inquiries

The listing agent should make sure that any agent or buyer calling to inquire about the property is told that the seller has completed the Addendum D and consents to the use of electronic delivery with offers.

Offer

Buyers should complete the Addendum D (that has already been completed by the seller) and incorporate it into any offers they write on that property.

Using Consumer Consent and the Addendum D with Buyer Agency Agreements

1. Use the same procedure outlined above for *Using Consumer Consent with Listings* to obtain the buyer's electronic consent.
2. Use the same procedure outlined above for *Using Addendum D with Listings* to prepare an Addendum D to use with the WB-36 Buyer Agency Agreement.

Using Consumer Consent with Buyer Customers

1. Use the same procedure outlined above for *Using Consumer Consent with Listings* to obtain the buyer's electronic consent when the Broker Disclosure to Customers is executed.

Using Addendum D for Offers When Not Furnished by Seller (Buyer Clients and Customers)

Form Information

The cooperating agent should complete the top of the Addendum D for use with offers (cross off Listing Contract and Buyer Agency Agreement).

Buyer's E-Mail

The buyer should fill in the e-mail address the buyer wants to use for electronic delivery with respect to any offers and then initial the form and check the box to indicate that the buyer has given electronic consent.

E-Mail Address for Delivery

The e-mail address the buyer fills in may not be the buyer's own e-mail address – it may be the e-mail address for the cooperating agent or someone else, similar to when the parties' fax numbers or mailing addresses are filled in on lines 22-33 of the WB-11 Residential Offer: the mailing address, fax number in the offer and (now) the e-mail address on the Addendum D do not have to be the buyer's own personal contact information.

Condition of Acceptance

The Addendum D then can be used with the offer, which may be written to require the seller to complete the seller's portion of the Addendum D as a condition of the seller's acceptance of the offer.

Methods for Sending the Consent to the Party

Broker Information

In all cases the agent should complete the broker's contact information on the Consent and save it so it is ready to send to clients and customers.

PDF Attachment

If the agent sends the consumer a PDF Consent document as an attachment, the consumer must print the Consent, complete it and scan it in so that it can be saved on the consumer's computer and returned to the listing agent as an attachment to an e-mail.

Word Attachment

If the agent sends the consumer a Word Consent document as an attachment, the seller can complete the Word Consent, save it on the seller's computer and return it to the listing agent as an attachment. Note: Just because a Word Consent document is used does not mean that the party is not consenting to the delivery of PDF documents.

Copy Form into E-Mail

The EASIEST way for an agent to obtain electronic consent is to copy and paste the Consent language into the body of an e-mail, send it to the party, have the party click on "reply," type in the party's name and e-mail address and send it back to the agent.

Two Attachments

Another approach is to attach both the Word and PDF Consent documents to an e-mail and ask the party to open both and to complete and return one of them.

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