

### Sign Here, Please

Your man on the legal corner is frequently asked whether the omission of a signature is fatal, potentially fatal, or just a flesh wound (any Monty Python fans?). This question usually arises out of two basic fact patterns:

In the typical first scenario the agent (and usually the client) writes and signs a contract with just one name only to later learn that a necessary party, and that party's signature, is missing. As we have often noted, this can arise when a spouse thinks he or she got the house in a divorce only to find out the property was never deeded to them, but it can also arise with unknown heirs, business partners you didn't think needed to sign, etc.

The second scenario involves a situation where you know about both (or all) parties, and so both (or all) names appear on the contract (or listing agreement), but then one of them refuses to sign at the last minute. This too often arises with a separating or divorcing couple. The distinction from the first scenario is that it is understood from the beginning that you need all parties to sign and all are listed.

*G & M Homes II, Inc. v. Pearson*, 263 Va. 107 (2002) involved the second fact pattern: mom owned one-half of the property and her daughter owned the other half. Mom accepted the buyer's offer, daughter refused. The buyer sued claiming that mom was obligated to sell her half (they tried to get daughter too, but that failed as well). The Virginia Supreme Court said she was not on the ground that since both sellers were listed in the contract it was clear *both* had to accept the offer – there was no evidence whatsoever mom was agreeing to sell her one-half.

*Wright v. Bryan*, 226 Va. 557 (1984) involved the first scenario: in *Wright* only the husband, who held title as tenants by the entirety with his wife, had accepted the buyer's offer and he was the only party listed in the contract. The wife was neither named in the contract nor did she sign. When the buyer refused to close for reasons

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unrelated to the state of title the seller husband sued the buyer for breach, and the Virginia Supreme Court ruled in favor of the seller. In doing so the court discussed the rule that despite the wife's omission on the contract, which meant that wife was not contractually bound to sign a thing, there was in fact a valid contract between the husband and the buyer, and the buyer breached it. Had the buyer waited until closing and the seller's wife then refused to sign then the seller would have been in breach. This rule is why a builder can agree to sell a lot they do not yet own – on the basis that all they do is promise to acquire title by the time they are obligated to sell to their buyer.

So, in summary, make sure you always find out who owns an interest in the property. List them. And get everyone to sign. But if you need help on that or any other matter, please feel free to email me at [bdlytle@lytlelaw.com](mailto:bdlytle@lytlelaw.com) where I am still chuckling over the Monty Python "it's only a flesh wound" scene.