

What Does 'Two Business Days' Actually Mean In Real Estate?



Joshua Stein Contributor ⓘ

Real Estate

I write about commercial real estate negotiations, deals and legal issues.



Time flies when you're closing a deal! (Photo by Sebastian Kahnert / dpa / AFP)

A commercial purchase and sale contract required the seller to obtain estoppel certificates from building tenants and deliver them to the buyer “two business days” before the Closing Date for the deal. The Closing Date

was Friday. So when exactly did the seller have to deliver the estoppel certificates to the buyer?

The buyer interpreted the contract to mean the buyer had the right to two full business days to review the estoppels and, if they were satisfactory, proceed to closing. To give the buyer that time, the seller would need to deliver the estoppel certificates by 9 a.m. on Wednesday. The buyer would then have all of Wednesday and Thursday – two business days – to consider the certificates before Friday's Closing Date.

The seller disagreed, of course. If the Closing Date was Friday, it argued, then the first business day before the Closing Date was Thursday. And the second business day before the Closing Date was Wednesday. The seller thought it could deliver the estoppel certificates any time on Wednesday – the day two business days before the Closing Date – even at the very end of the day, and even though this would give the buyer only one business day to review the certificates and prepare for closing.

Naturally, the seller delivered the estoppel certificates sometime during the course of the business day on Wednesday, well after 9 a.m. The contract went into litigation. (It didn't help that half the tenants had stopped paying rent or were about to file bankruptcy because of Covid-19.)

The court endorsed the seller's method of counting business days, declaring that there was no reasonable argument to the contrary. So by delivering the certificates at some point during the day on Wednesday, the second business day before the Closing Date, the seller had delivered them on time. The buyer couldn't walk from the deal.

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In making its decision, the court relied in part on New York's General Construction Law, Section 20, which declares, somewhat inscrutably: "A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made." From this the court reasoned that if the seller delivered the estoppel certificates at any time on the second business day before the Closing Date, then the seller satisfied the requirement to deliver the documents two business days in advance.

That interpretation does not seem intuitive. If the documents were to be delivered two business days before a date, an ordinary speaker of English might count days backwards and conclude that the deadline arose at the beginning of the two-day period.

Never mind that. Here the court decided what two business days meant. Anyone who counts days in administering future contracts may want to keep

this decision in mind. And anyone who negotiates deadlines like this one in future contracts might want to make the wording clearer than necessary to avoid arguments like the one that prevailed here.

Two caveats: (1) to avoid some excitement about weekends, the above discussion slightly adjusts timing; and (2) the buyer has filed a notice of appeal of the trial court's decision. To read that decision, [click here](#).



Joshua Stein

I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals. **Read Less**

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