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Ouch! Three Times You Can Kiss Your Earnest Money Goodbye

By

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(<http://www.realtor.com/advice/buy/here-are-3-times-when-can-kiss-your-earnest-money-goodbye/>)

The earnest money deposit—the cash you offer to essentially call dibs on a house—is one of the most important *and* misunderstood parts of the home-buying process.

Depending on where you live, you can expect to put down anywhere from 1% to even 10% of the home's purchase price as earnest money. (In some highly competitive markets, buyers are making *even larger deposits* in an effort to stand out.) An earnest money deposit tells a seller you are serious about closing. Without earnest money, you could theoretically make offers on multiple homes (<http://www.realtor.com/advice/writing-simultaneous-offers-multiple-homes-competitive-real-estate-market/>), essentially taking them off the market until you decide which one you like best.

Don't worry—the seller isn't going to run off to Aruba with your cash. It remains in an escrow account or with the title company until the sale closes. And, if everything goes off without a hitch, that earnest money is put toward your down payment and closing costs. So there's nothing to lose, right?

Probably not, except these three scenarios where your earnest money could end up financing the seller's trip to Aruba.

1. You waived your contingencies

In highly competitive markets, it's becoming more common for buyers to waive contract contingencies regarding financing or an inspection. You might be tempted to do the same—it *will* make you a more attractive buyer. But it also comes with serious risks. You guessed it: You might lose your earnest money deposit.

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The financing contingency guarantees that you'll get your money back if for some reason your mortgage doesn't go through and you're unable to purchase the house. The inspection contingency allows you to renegotiate the price or demand repairs if serious defects are found during the inspection.

If your contract doesn't have such buyer protections and you run into trouble with the inspection, you won't be able to get your money back if you abandon the deal. Most experts recommend that you not waive the inspection contingency (<http://www.realtor.com/advice/dont-be-tempted-to-waive-the-home-inspection-when-buying-a-home/>), unless you're planning on tearing the property down.

As for the mortgage-financing contingency, waiving it may be the only way to compete with all-cash buyers. But you've got to be **absolutely sure** that you'll be able to get approval from your bank.

"I strongly encourage my clients to obtain a conditional approval before signing a noncontingent contract," says **Ivona Perecman** (<http://streeteasy.com/profile/840149-ivona-m-perecman>), a New York City (http://www.realtor.com/realestateandhomes-search/New-York-City_NY) real estate broker and lawyer. "Otherwise, it may turn out that the bank that pre-approved you will not give you financing or offer a lot less worse terms and, consequently, you may lose the deposit."

2. You ignored the timeline outlined in the contract

Your contract usually sets out a specific time frame in which you'll need to secure financing, get the home inspected, and be available for the closing. Generally speaking, as long as you've made a good-faith effort to adhere to the timeline, sellers will grant a reasonable extension if a lender drags his feet or there are other extenuating circumstances that delay things.

However, in some cases sellers may include a "time is of the essence" clause in the contract. Watch out for this phrase in your paperwork—it means the closing date for the sale is binding. If you can't make it to close for any reason, you've breached the contract and could lose your deposit.

3. You get cold feet

If you have a change of heart about the home you're buying—but there's no problem with the property or the financing—you likely will not get your money back.

"If a buyer changes her mind and was able to request the down payment be returned without consequence then the whole idea of a contract would no longer be worth much," says **Marc Kaufman** (<http://wlklegal.com/attorney-profile/>), a real estate attorney with Wexler Lehrer & Kaufman in New York City. "One party cannot simply walk away and default on a whim."

The earnest money deposit serves a protection for the sellers when they take their home off the market. If late in the game you decide that you no longer want to make the purchase, they get to keep it as compensation for the time and money they have to spend on listing their home again and looking for another buyer.

When it comes to real estate, a case of buyer's remorse could be even more painful than a lost deposit. To avoid both, really make sure the home you're bidding on is "the one (<http://www.realtor.com/advice/open-houses-are-just-like-first-dates/>)."



Beth Braverman, an award-winning journalist and content producer, covers real estate, personal finance, and careers. When she's not writing, she tries to find time between yard work and paying bills to experience the joys of being a new homeowner.

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