















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# Earnest Money Deposits - Protect Your Good Faith Deposit



From [Elizabeth Weintraub](#),  
Your Guide to [Home Buying / Selling](#).  
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## What is an Earnest Money Deposit?

Buyers always ask how much of an [earnest money deposit](#) is required. Typically, there is no set requirement. In California, contracts must contain consideration to be valid, but that amount can be as little as one dollar. Laws in your state may be different. Bear in mind, however, that the amount of your earnest money deposit depends primarily on your marketplace and local custom.

### What is an Earnest Money Deposit?

It's a good faith deposit but not to be confused with a down payment. When buyers execute a [purchase contract](#), the contract specifies how much money the buyer is initially putting up to secure the contract, to show "good faith," and how much money all together will be deposited as a down payment.

The balance is generally financed as a mortgage or a combination of mortgages. An earnest money deposit says to the seller: *"Yes, I am serious enough about buying your house that I'm willing to put my money where my mouth is."*

### So, How Much is Enough?

Because there is no set amount, it varies from market to market and across the country. Where I work in California, deposits are generally 1 to 3 percent of the sales price. Buyers here do not often put down more than 3% since most sign a liquidated damages clause that limits the seller to 3% of the purchase price as damages in the event of a default. But it's not unusual for a buyer purchasing a \$300,000 home to put down \$1,000, especially if the buyer is obtaining 100% financing. In those scenarios, the deposit is most often refunded to the buyer and subsequently used as a credit toward closing costs because the financing makes up the entire purchase price.

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If it's a seller's market, with many buyers fighting over limited inventory, it makes logical sense for the buyer to put down a much larger earnest money deposit to entice the seller to accept the offer. In buyer's markets, a larger earnest money deposit might entice a seller to accept a much lower purchase price. So you see, it all depends.

### Be Careful to Whom You Give Your Earnest Money Deposit

A reader from New Brunswick, Canada, Sylvie Schriver, claims she lost her \$2,500 earnest money deposit by handing it over to an individual who professed to be a real estate broker. She says the broker stole a brokerage's logo and business supplies to make it appear that he was legitimate; however, he vanished when Sylvie called to ask questions about her mortgage. When she reported the crook to the police, she then discovered that others had filed complaints. Sadly, at that point, Sylvie's money was gone.

- Never give an earnest money deposit to the seller.
- Make the deposit payable to a reputable third party such as a well known real estate brokerage, legal firm, escrow company or title company.
- Verify that the third party will deposit the funds into a separately maintained trust account.
- Obtain a receipt.
- It is unadvisable to authorize a release of your earnest money (or a pass-through) until your transaction closes.

### Is Your Earnest Money Deposit Refundable Upon Cancellation?

First, read your contract. Laws vary from state to state. In California, standard C.A.R. purchase contracts allow for the return of the earnest money deposit to the buyer within a specified time period, by default 17 days, should the buyer elect to cancel the transaction. If, at that point, the seller refused to return the deposit without cause, the seller could end up paying a \$1,000 civil penalty to the buyer.

Upon cancellation, the sellers and buyers are asked to sign mutual release instructions. If an agreement cannot be reached, the party holding the earnest money deposit will continue to hold it until an agreement is reached. If no agreement has been reached after a few years, escrow companies then send the parties a certified letter asking for mutual instructions. The letter says if nobody responds within a certain time period, then escrow will return the money to the buyer. If the seller contests the action then, after 3 years, escrow will send the money to the state of California, presumably to help balance our budget deficit.

### Case in Point

A buyer's \$1,000 was deposited into escrow two years ago. Unknown to the seller or real estate agent, a week before closing escrow, the buyer decided to buy another property and entered escrow at a different title company. A few days before she was scheduled to close on the first property, the buyer completed her [final walk-through](#) and declared there were water stains on the ceiling. There was no evidence of water stains on the ceiling. But that didn't stop the buyer from canceling the escrow. The sellers believe the buyer has forfeited her deposit. The buyer believes it should be returned. Two years later, the money is still sitting in escrow.

[Money Pit](#)

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