

THE DEPOSIT

By Daniel Rutman

Purchasing a home involves making many important financial decisions. Once you find the right home, you will quickly realize the financial implications involved. Once you have signed on the dotted line, you will have to provide the seller with a deposit. The deposit plays an important role in every residential real estate transaction. This column attempts to answer some common questions about this important, albeit often misunderstood concept.

When an offer to purchase a home is made, the purchaser will provide the seller with a deposit towards the purchase price of the home. This deposit assures the seller that the purchaser intends to complete the transaction if their offer is accepted. The amount of the deposit will vary and is usually determined by negotiation between the real estate agents.

The deposit is not paid directly to the seller, but is paid to the seller's real estate agent, in trust. The agent retains this money in a special bank account until the closing date. On closing, several things will take place. The deposit is deducted from the total purchase price, thus lowering the final amount owing to the seller. As well, the real estate agent for the seller will usually take its commission for the sale from the deposit. The seller's agent will pay the purchaser interest on the deposit monies which have been in a special bank account. Because the money is not held for too long and the interest rate on the money is quite low, this will not amount to a great deal of money.

When purchasing a new home, the deposit is paid to the builder. To pay for building costs, the builder often requires a larger deposit than one made for a resale home. To protect purchasers from builders going bankrupt or failing to complete the purchased property, the Ontario New Home Warranty Program (now called Tarion Warranty Corporation) insures deposits on both new freehold properties and new condominium properties. Since deposit protection is limited, purchasers should be careful when providing builders with more than the insured amount. Purchasers should ask their lawyer about having a large deposit held in trust by the builder's lawyers or arranging for excess deposit insurance.

As a purchaser, it is best to provide the seller with the lowest possible deposit. The reason for this is simple: If an unforeseen problem arises and the transaction does not close on time, the purchaser stands to lose less if they have provided the seller with a relatively low deposit. On the other hand, if they provided the seller with a higher deposit, they stand to lose more. Remember that if a dispute between purchaser and seller arises, the seller may not release the deposit until the matter has been resolved. In such a case, the purchaser is in a very compromised bargaining position because the seller has their money. Moreover, the seller may use the deposit the purchaser gave them to force a settlement of the dispute.

The deposit represents a financial commitment to complete a real estate transaction. The seller should always attempt to extract from the purchaser the largest deposit possible, while the purchaser should adopt the opposite view. Normally, negotiating these terms of the offer are best left to an experienced real estate professional.

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