



— RESIDENTIAL · GUIDE

Deposits: what you get back and what you don't

How deposits work, when they're at risk, and the difference between a deposit and a true penalty.

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The deposit is one of the most misunderstood parts of buying a home. People treat it like a booking fee, or assume it is automatically refundable if the deal does not close, or assume it is automatically gone. None of those is quite right. A deposit in Ontario is a specific legal thing with real consequences, and it is worth understanding before you hand one over.

What a deposit actually is

When you make an offer, you usually include a deposit. It is delivered shortly after your offer is accepted, normally to the listing brokerage to hold in trust, and it does two jobs at once:

- It shows the seller you are serious and gives them something to rely on in taking their home off the market.
- It counts toward your purchase price. On a successful closing, the deposit is credited against what you owe, so it is not an extra cost. It is money you were going to pay anyway, just paid earlier.

That second point is what trips people up. The deposit is not separate from the price. If everything goes to plan, you never "get it back" because it simply becomes part of what you pay for the home.

The happy path

If the deal closes normally, there is nothing to worry about. The brokerage releases the deposit, it is applied to your purchase price, and the rest of the money is handled by the lawyers on closing. Done.

When a deal falls apart on a condition

This is the scenario buyers care most about, and the good news is it usually works in your favour. If your offer has a condition, financing, inspection, a status certificate review, and you properly do not waive that condition before its deadline, the deal does not become firm. In that case the deposit is generally returned to you, because you used a right you bargained for and the contract never became binding.

The mechanics matter here. Brokerages usually need a signed mutual release, a document both you and the seller sign, before trust money can be returned. Most of the time this is routine, but if the seller is being difficult, the money can sit in trust until the release is sorted out. Your lawyer can help move this along.

When you default: the deposit is at real risk

Here is the part people do not expect. If your deal is firm, no conditions left, and you fail to close without a valid legal reason, you can lose your deposit, and the law leans against you here.

A true deposit is treated differently from an ordinary part-payment. The long-standing principle in Ontario is that a deposit can be forfeited when the buyer defaults, even if the seller did not actually lose much money. The deposit is meant to guarantee your performance, so walking away can cost you the whole thing regardless of whether the seller quickly resold for the same price.

There is a limited safety valve. Courts have a narrow power to grant "relief against forfeiture," meaning they can occasionally order some of a deposit returned where keeping it would be genuinely unconscionable, for example where the deposit is so large compared to the deal that forfeiting it would amount to a penalty rather than a fair deposit. But this is the exception, not the rule. You should never count on it. The safe assumption is that defaulting on a firm deal puts your entire deposit on the line, and possibly more if the seller's losses exceed it.

Deposit versus penalty

People sometimes ask whether a deposit is really just a penalty in disguise. The law does distinguish between the two. A genuine deposit, reasonable in amount and clearly intended to secure the buyer's performance, is enforceable and can be forfeited. A sum that is really a disguised penalty, wildly out of proportion to anything the seller could lose, is more vulnerable to challenge. In practice, ordinary residential deposits are treated as genuine deposits. The "it's just a penalty" argument is hard to win and not something to rely on when deciding whether to walk away from a firm deal.

Practical takeaways

- Your deposit is part of your price, not an extra fee. On a normal closing it just gets credited.
- Protect yourself with conditions, and respect their deadlines. A properly unmet condition is the clean way out with your deposit intact. A missed deadline is not.
- Once you are firm, treat the deposit as committed. Defaulting on a firm deal can cost you the entire deposit, and the law does not require the seller to prove a matching loss.
- Get the release sorted. Whether you are getting the deposit back or the deal is closing, the paperwork to release trust money needs both sides' cooperation. Your lawyer can help.

Bottom line

A deposit is a serious commitment, not a refundable hold. If a conditional deal falls through properly, you generally get it back. If you default on a firm deal, you can lose all of it, and the limited power courts have to soften that result is not something to bank on. The cleanest protection is to use your

conditions carefully and to be certain before you go firm. Talk to us before you sign if you are unsure how your deposit is protected.

This is general information about deposits in Ontario real estate, not legal advice for your transaction. Whether a deposit is returned or forfeited depends on your agreement and the specific facts. Talk to us about yours.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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