



My deposit: will I lose it if escrow is cancelled?

A: When the escrow period begins, your **good faith deposit** is held by escrow to be applied on closing toward your down payment and transactional closing costs. The deposit is your money, even though it is held in escrow.

However, it also serves as a source of the seller's recovery, upon demand, of any losses you may have caused them to incur. Thus, your deposit may be partially or totally offset when you cancel for any reason not covered by a contingency provision in the purchase agreement — a material breach of contract. In this situation, the seller consents to the release of the escrowed deposit to you less any out-of-pocket money losses the seller actually incurred due to your breach.

To disburse funds, escrow first needs to have mutual instructions signed by both you and the seller. When you or the seller make a demand for the funds and the demand is opposed due to a refusal to consent, the resolution and eventual disbursement depends on who has the right to receive the funds held by escrow. A forfeiture of the deposit is not permitted in spite of wording to the contrary in some purchase agreements.

Within a period of 30 days after escrow's receipt of the first demand for the funds, you and the seller are separately obligated to:

- determine who is entitled to the funds; and

- hand escrow **cancellation and release of funds** instructions to clear the deposit out of escrow.

For a seller to receive any part of your deposit, they need to provide you with evidence of the **money** losses they incurred due to your unexcused failure to close escrow.

Money losses a seller may have incurred on a buyer's breach include:

- lost rental income caused by the terms of the sale;
- a decline in the property's value below the price agreed to by the date of the breach when they remarket the property for sale;
- transactional expenses unrecoverable when the property is resold; and
- other expenditures directly related to the transaction which will go uncompensated (on a resale or retention of the property).

When escrow does not receive mutual instructions to disburse funds within 30 days of a demand by either you or the seller, the escrow company deposits the funds with the court and closes their file. On the deposit with the court, escrow is relieved of any further responsibility to account for the funds.