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When Home Buyers Change Their Minds

Home buyers who back out of a contract face losing their earnest money—and could possibly pay brokers' commissions.

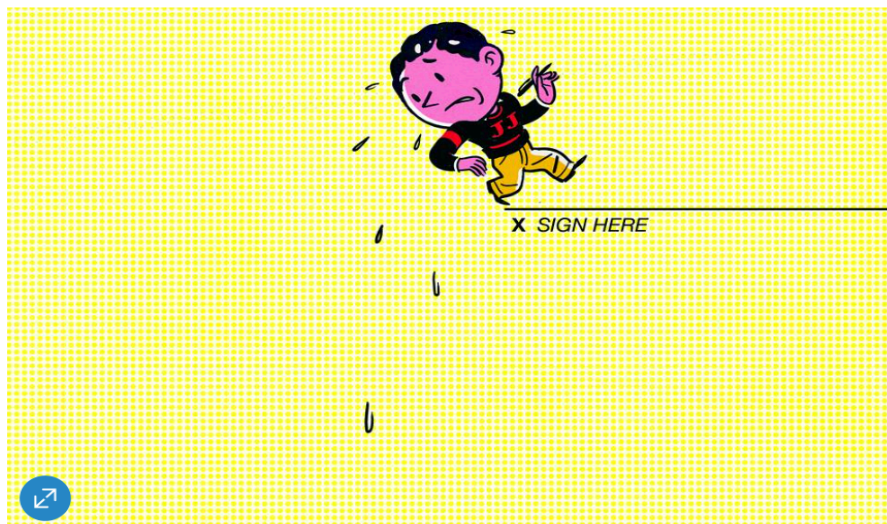


ILLUSTRATION: CHRIS GASH

By **ROBYN A. FRIEDMAN**

April 5, 2017 10:43 a.m. ET

The offer was accepted. The mortgage was approved. What happens when the buyer gets cold feet and wants to back out of the deal?

Jason Michael faced this issue about 18 months ago when he listed his three-bedroom home in St. Louis. Mr. Michael, a 36-year-old public-relations executive, asked \$130,000 for his home and accepted an offer for \$127,000. The buyers posted a \$1,000 deposit of “earnest money,” completed inspections, negotiated repairs and were approved for a mortgage.

Then they told Mr. Michael that they had found another house and didn’t want to move ahead with the purchase.

While the contract allowed Mr. Michael to pocket the deposit if the buyers defaulted, they refused to authorize their agent to release it. Only after Mr. Michael threatened to sue did they surrender the \$1,000.

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JUMBO JUNGLE TIPS

Here are a few things to consider if you might want to back out of your real-estate contract. Buyers and sellers should consult a qualified real-estate attorney for advice.

- **Craft carefully.** Rather than having a mortgage contingency allowing you to obtain a mortgage “at prevailing rates,” specify that the mortgage rate can be no more than 4%, for example. Or, consider making the contract contingent on the mortgage actually being funded by the lender. “This extends the contingency all the way to the closing,” says David Reiss, a Brooklyn Law School professor who specializes in real estate.

- **Sharpen your negotiation skills.**

Even if you can’t back out legally, try to negotiate a reduction or return of the deposit with the seller. In a market where prices are rising and the homeowner can get a higher price for their home, there might be a chance to come to terms.

- **Remember the broker.** Even if the seller lets the buyer off the hook, he may still be liable to the broker for the commission. Contracts state that the commission is due when the broker finds a ready, willing and able buyer. Many brokers will work with the seller in this situation, Mr. Haber says, but it is an issue that needs to be addressed.

“My agent had said that people don’t back out of house purchases—that this won’t happen,” Mr. Michael says. “But now I approach it as if the buyer can back out until the very last minute.” He ultimately decided to rent out the house.

According to an online survey of 2,241 adults conducted for finance website Nerdwallet.com in January, home-buyer’s remorse isn’t uncommon. Nearly half (49%) of homeowners who responded said they **would do something differently** if they had to go through the process again. Broken down by age group, 61% of Generation Xers (the mid-1960s through the 1970s) and 57% of millennial homeowners (born in the early 1980s through about 2004) indicated they had regrets. Many wished they had bought a bigger home or saved more money before buying.

Standard real-estate contracts contain inspection and mortgage contingencies that allow buyers a limited time to back out of the contract and receive a refund of their deposit. They also spell out the terms of the deposit and where the money is held in escrow—with the buyers’ agent, the title company, an attorney or the developer.

But once all contingencies are satisfied, the contract “goes hard” and the buyers are locked in.

“The real turning point in any real-estate deal is the buyers’ removal of their contingencies,” says Zachary D. Schorr, a real-estate attorney in Los Angeles. “This is a point of no return.”

Kenneth Haber, executive vice president and general counsel of Douglas Elliman Real Estate in New York,

says that in New York it isn’t uncommon for buyers to back out. But, he says, it is more likely that the buyer would negotiate and attempt to reach an amicable settlement with the seller for less than the entire deposit.

The amount of the deposit can determine what leverage the buyer or seller has in the transaction. A buyer who makes a \$1,000 deposit might be willing to forego it. But substantial deposits tend to lock in the deal. For example, Fernbrook Florida, the developer of Sabbia Beach condominiums in Pompano Beach, requires a 35% deposit on purchases. Prices there start in the \$900,000s, so buyers stand to lose a substantial sum if they unilaterally decide not to proceed.