

# DEPOSITS & THE PURCHASE CONTRACT-RESIDENTIAL REAL ESTATE

**Purpose:** To explain the importance of the deposit timing and delivery.

**This bulletin applies to all real estate brokerages, brokers, associate brokers, and associates.**

Real estate professionals must ensure they protect the interests of their clients, either a buyer or seller. The deposit is an important component of a purchase contract and the transaction. There are two components to the deposit. The buyer must deliver the deposit according to the terms of the purchase contract. The brokerage must ensure the deposit is in trust according to the terms of the purchase contract, or the contract may be void and may be conduct deserving of sanction.

A brokerage cannot impose a brokerage policy for the handling of a deposit on a transaction between a buyer and seller. This includes certifying a deposit cheque or to require the buyer and seller to agree to a mutual release document. The terms of trust on the offer determine the handling of the deposit.

## INFORMATION BULLETINS

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### **Purchase contract states deposit accompanies the offer**

The standard form residential purchase contract states the deposit shall accompany the offer. If the real estate professional sends the purchase contract by fax or email, the purchase contract must reflect when the buyer's representative will deliver the deposit.

### **Two stage deposit**

A purchase contract may specify an initial deposit with an additional deposit in the future. The purchase contract must be very clear when the additional deposit will occur. If the purchase contract states the additional deposit will be upon removal of conditions, the deposit must accompany the notice removing the conditions. If the notice to remove conditions is by fax or email then the purchase contract must reflect when the buyer's representative will deliver the deposit. If there is a variation from the terms of trust standards in handling the deposit, it may be a breach of the agreement.

### Late deposit

If there is a change in the terms of trust for the timing of the delivery of the deposit, you must amend the purchase contract to reflect the changes. The parties must amend the contract in writing to acknowledge and agree to the late deposit.

### Bank deposit

The brokerage must deposit the money within three business days after acceptance of the purchase contract. The brokerage must deposit any additional trust monies no later than three business days after receipt of the deposit.

### What if there are insufficient funds?

The brokerage must immediately notify in writing the seller and buyer's representative when there is insufficient funds to honour the buyer's deposit. If the deposit of the funds does not comply with the terms of trust, it may be a breach of the contract. The seller should seek legal advice on their options.

### Refund of the deposit to the buyer

The brokerage holding the deposit will immediately refund the deposit to the buyer where:

- the seller does not accept the buyer's purchase contract
- the trust funds clear the brokerage trust account and the buyer is not, and will not, be able to meet a condition on the purchase contract
- the seller fails to complete the contract

The brokerage does not require a mutual release of trust funds form to refund the deposit.

### Interest payable to the buyer or seller

In circumstances where there may be enough interest earned on the deposit and the buyer and seller agree, the brokerage may set up a separate interest bearing trust account. The standard form purchase agreement states that the buyer or seller will earn no interest on the deposit unless they agree otherwise in writing.

Factors to consider if the buyer or seller is to earn interest on the deposit. These include:

- the amount of the deposit
- the length of time the deposit will earn interest
- the amount of interest the deposit will earn
- the cost to set up a separate interest bearing trust account
- conditions on the offer that may delay earning interest on the deposit

## The buyer and seller agree that someone other than the brokerage will hold the deposit

Where the buyer and seller agree in writing that a third party who is not a brokerage will hold the deposit, you should consider a number of factors. These include:

- who initially receives the deposit
- who is responsible to deliver the deposit to the third party
- who is responsible to determine if the trust funds are in trust
- is the third party willing to hold the deposit
- will the third party confirm they hold the deposit
- will the third party agree to the terms of trust
- will the third party agree to hold and disburse the deposit according to the terms of trust
- what are the safe guards in place to protect the deposit

## Related information

### Legislation

- *Real Estate Act*: s.25
- *Real Estate Act Regulation*: s.22
- *Real Estate Act Rules*: s.51

### Information bulletins

- Trust Money Disputes and Disbursements