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Dave Windsor's 'Alaska Real Estate'

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Is Earnest Money Really Necessary?

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Dear Dave: Why do you have to pay earnest money to purchase a home?

Answer: You don't, but a seller will probably not accept your offer without it. A lot of people, including some real estate licensees, mistakenly think that earnest money is the 'consideration' that makes the contract valid.

It is true that, in contract law, 'consideration' is a vital element, but the consideration (money or anything of value) in a real estate contract is the price being paid for the property, not the earnest money.

The earnest money is a deposit (can also be money or anything of value) lodged by the buyer to show he or she is 'earnest', or sincere, in their offer. The Purchase and Sale Agreement continues to state under what circumstances that deposit will either be part of the purchase price or, in the event of default, be returned

to the buyer or given to the seller as compensation.

In most commercial transactions no 'earnest money' is ever contemplated but, in real estate sales between a buyer and seller, it has become traditional, though not a legal necessity.

In Alaska, earnest money on a real estate transaction is typically 1% of the purchase price, often rounded to the nearest \$1,000. Consumers should also know that who holds this deposit is negotiable. While this has typically been the Broker of the buyer's real estate representative, it does not have to be. The other Broker, a Title Company, or even your local pastor or gas station attendant could hold the earnest money if agreed by buyer and seller in the real estate contract.

The point is that you should discuss such matters with your real estate professional, and remember that you may always consult an Attorney for

advice before signing any legally binding document.

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