



Dave Windsor's 'Alaska Real Estate'

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EARNEST MONEY - MYTHS AND LEGENDS

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Earnest Money is the amount paid to demonstrate that someone is so intensely serious about entering into a contract that they will put money on the table. Actually, it can be something other than money too:- jewelry, your boat, or some other physical item. Earnest Money is not an essential element to make a contract valid. If your Realtor says you must put down earnest money, this is a myth. If the seller would agree, though unlikely, earnest money can be zero.

What is true is that, in order for a contract to be valid, it must contain certain elements. There are at least 10 such elements, one of which is that the contract must involve an exchange of value, or "Consideration".

So, you don't buy a house for zero dollars, or for nothing at all, though it could be for 200 sets of waders, 60 boxes of chocolates, or even a Bristol Bay fishing license. So long as there is an exchange of value (and that consideration

is legal), a binding contract can exist. Earnest money is not the consideration in a real estate transaction. The purchase price is the consideration. Earnest money simply shows good faith on behalf of the buyer.

The issue is one of how to evoke enough trust from the other party that they will enter into a contract and assure its performance.

All kinds of commercial contracts can require similar deposits but legend has it that 'earnest money' has mostly been a real estate matter. In other contracts, it would simply be described as a 'deposit'.

Once earnest money is deposited, the contract should stipulate its disposition in the event of certain events transpiring. This is why the MLS Purchase and Sale Agreement has a multitude of references to it. What happens

to the earnest money if the transaction does or does not close is what the fuss is all about. If closing happens, the earnest money is treated as part of the buyer's down-payment or, at least, as a credit towards his closing costs. If the sale does not close, that is when the fireworks begin.

Typically, the buyer puts down earnest money, held in trust by someone (does not have to be the Broker – could be your local Pastor, or the Seller himself) and, if the contract terminates, the disposition of that money is usually determined by who is at fault. Provided the buyer is not at fault, the contract generally provides for its return to the buyer. You should be very sure about how the earnest money is going to be handled before writing your check.

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