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WHAT IS AN EARNEST MONEY CONTRACT: TYPES AND TERMS FOR SIGNING IT

The deposit contract consists of an agreement that is made between the seller and the buyer of a house in which the reservation of the property is committed, paying an amount of money agreed between the parties, which is delivered at the time of signing it.

Generally, the deposit contract is made when a buyer is interested in acquiring a home or property and wishes to prevent another person interested in acquiring the property from appearing and going ahead, while they are solving the financing procedures through a mortgage or another type of loan in a calmer way.

It is recommended that this type of contract be executed by a lawyer or by the real estate agency in charge of managing the sale of the property, which on many occasions already includes the cost of this management in the commission. However, it can be done by an individual, either the buyer or the seller, simply based on another deposit contract.

We must not confuse a deposit contract with a purchase contract, because with the deposit it is not possible to transfer the property, and it can be cancelled, while with the signing of a purchase contract, the transfer of the property is definitive and there is no way to go back.

How many types of deposits are there?

To carry out a sale of a property, there are three types of earnest money contracts, which are the following:

- **confirmatory deposit**

This type of deposit contract is when the buyer gives the seller an advance of money to reserve the property, this amount will be deducted from the final sale price.

It should be noted that the buyer must bear in mind that this type of deposit is not regulated in the Civil Code, in this sense, in the case of non-compliance there is no way to solve the contract, nor can any compensation be requested for damages and damages.

- **penal deposit**

With this type of deposit contract, compliance with the purchase contract signed by both parties is guaranteed. In the event of non-compliance, the injured party may request compensation for damages. If the breach is on the part of the buyer, the seller may keep the amount delivered or a percentage of it, to compensate the damage, he may also request compliance with the contract.

In the event that the breach is on the part of the seller, the buyer may request that double the amount paid in deposit be returned to him, or he may also request compliance with the contract.

This type of deposit contract is not regulated by the Civil Code either, so the contract cannot be terminated.

- **penitential earnest**

With this type of deposit, any of the parties could withdraw from the purchase contract because they are regulated in the Civil Code.

What is the most recommended type of deposit contract?

The most used deposit contract is the penitential one, since it is the only one that accepts that any of the parties, either the buyer or the seller, can renounce the contract.

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The penitential deposit contract is specifically recommended when the signing of the purchase-sale contract depends on the mortgage being approved by the bank, also when there is no certainty that said contract is actually formalized.

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This type of deposit contract is the most convenient for both the seller and the buyer when they are fully sure of what they want to do, since the money deposited by the buyer will really serve as a guarantee for both parties involved.

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Chicago
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Dallas
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Dubai
Dubrovnik
Eilat
Ferdinand

In the event that the buyer wishes to dissolve the contract, the seller will keep all the money deposited, and if it is the seller who backs down from the negotiation, the buyer will receive double what he has paid for this concept.

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Hull
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London
Los Angeles

It should be noted that the seller must take into account that in the case of renouncing the contract for whatever reason, he must return double the money paid by the buyer.

Aspects to take into account before signing

Before proceeding to sign a deposit contract, the following aspects must be taken into consideration:

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Los Angeles

1. Verify the state of the property, visit the house in the company of an inspection technician in order to confirm that it is in good condition.

Go to the Property Registry, in order to request a simple note where you can verify the charges imposed on the property, as well as the ownership to know who the owner is.

Verifies that the IBI tax payments have been made, asking the owner to present proof of payment of that tax, in order to verify that there are no non-payments of the same.

Look for information on the housing cadastre.

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Lagos
Lima
London
Los Angeles
Madrid
Manila
Miami
Moscow
New York
New York

2. Check the information inherent to the expenses of spills and the community.

Carefully review the deposit contract, and make any necessary modifications.

Give the final deposit contract one last review before proceeding to sign, confirming that it is the final version.

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Moscow
New York
New York

3. Finally, for the deposit contract to be valid, it must be signed by both parties, seller and buyer, with which it is understood that both agree with everything agreed.

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Moscow
New York
New York

The deposit contract must contain at least the following information:

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New York
New York
New York
New York

1. *Personal data of both parties: Name, surname, DIN, home address, among other things.*

Description of the home or property: Data on the registry, location address, habitability certificate number, and if it has pending charges must also be reflected.

You must indicate the form of payment and the final price of the sale: If it is by check or transfer, this payment can also be made in cash. In any way it is done, the means of payment used must be recorded, this must be reflected in the deposit contract, as well as the total amount of the sale.

This amount of money should only be paid at the time of signing.

Rabat
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Rabat

“...Amount of money for the down payment: This is the agreed amount to be able to reserve the property while some type of financing is being processed, it must be noted that this amount of money will be deducted from the final sale price.

This amount is between 10% to 15% of the sale price of the property.

Singapore
Singapore
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Singapore

Procedure expenses: Indicate how the expenses generated by all the procedures that must be carried out will be distributed.

Type of earnest money contract: (confirmatory, penal or penitential) Indicating the expiration date.

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Maximum period:

This is the maximum time for the purchase-sale contract to be signed.

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New York
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Tientsin
Tokyo
Toronto
Wangshui
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Wellington
Zagreb

How to distribute the expenses of the sale?

There is no rule that regulates how the expenses incurred in carrying out the earnest money contract should be distributed.

Normally, an agreement is reached between the buyer and the seller, which is regulated, is when it comes to a sales contract where it is indicated that the main deed and the first copy will correspond to the seller.

On many occasions, the services of a private lawyer or a group like ours, Legaliza Abogados, specialists in real estate matters, are hired.

This in order to take into account all the legal basis and avoid incurring omissions, in addition to being the earnest money contract a document that operates as resolving power when they are penitential earnest money, or compensatory power when they are criminal earnest money.

Also with a deposit contract, the delivery of money by the buyer is verified, and, generally, in cases in which the property is being sold by a real estate agency, it will be in charge of drafting said contract.

The costs generated by this lawyer service for the preparation of the deposit contract are generally divided 50%, half is paid by the seller and the other 50% by the buyer.

There is the possibility that the seller writes the earnest money contract based on some other contract, however, you must be very careful in writing it, but it is best to seek help from a professional.

Deadlines for signing the purchase contract

Once the deposit contract is made, the term agreed between the buyer and the seller is usually about 90 days to finalize the sale of the property, with a maximum validity of six months after its signing.

This does not mean that it cannot be modified, since it frequently happens that one of the parties, either the seller or the buyer, requests to extend the agreed term due to different circumstances.

When the six months have elapsed and the earnest money contract has expired, both parties may agree to extend the term, provided that the purchase-sale intention remains the same, for which another document must be prepared indicating the modification of the term, also indicating the reasons for the extension, and will be attached to the original document.

The reasons why an extension must be requested are usually due to the buyer being awaiting approval of a mortgage. It should be noted that providing a good foundation for the extension request is very important, because a new date will depend on that.

Meeting deadlines is very important. If one of the parties considers that they will not be able to comply for any reason, they must immediately agree a new date with the other party, because otherwise it is considered a violation of the contract, and they will have to abide by the sanctions, which could be losing the payment made or its return, but duplicated.

How to pay the deposit?

When the deposit contract is to be signed, the corresponding down payment must be made. This payment may be made as agreed between the seller and the buyer by check, bank transfer or cash.

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Vienna
Vladivostok
Warsaw
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