

**By Phil Hunt**

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***We are selling our property and it is not going well. Escrow is about two months late in closing and it looks like it may never close because the buyer does not have enough money down. The buyer signed the liquidated damages clause that said they were liable for 3 percent of the sales price for not closing. They deposited \$2,000 initially and an additional \$48,000 into escrow which was most of the down payment. The buyer removed all of the contingencies and is now not able to close. Are we entitled to 3 percent of the sales price or just the \$2,000?***

I am not an attorney and can not give legal advice but from the experience I have had as a broker, I can give you the knowledge I have. The liquidated damages clause is in the contract to, hopefully, hold the buyer in the contract and to guarantee to the seller that the buyer will close or forfeit the deposit. It is, however, not automatic.

Purchase agreements are chock-full of not-so-obvious, subtle contingencies. And, not until all contingencies are removed, is the buyer's deposit actually in jeopardy of being lost to the seller.

Even if this is one of those cases when all contingencies have been removed in writing, both parties must mutually agree to sign instructions whereby the escrow company is to release the deposit to the seller.

If the buyer refuses to sign the liability release, which cancels the escrow and releases the deposit, the seller may have to go to court to actually get the deposit.

Your question stated that the buyer deposited an initial deposit of \$2,000. Unless the buyer signed another deposit form which states that the additional deposit is subject to liquidated damages, that additional deposit is not up for "grabs;" only the initial deposit is subject to liquidated damages.

I realize this may come as a shock to you but this is how it works.

The wording about 3 percent of the purchase price is a limitation set by state law — if the property is a 1- to 4-unit residential property, and the buyer intends to occupy, the deposit is

limited to 3 percent of the purchase price.

If it is any other situation, there are no limitations as to the amount of liquidated damages.

Don't feel too bad, most deposits are not more than .5 percent to 1 percent of the purchase price. As always, nothing here should be construed as legal advice, contact an attorney for legal advice.

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