

What happens when a real estate deal falls apart?

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It can certainly be disappointing for buyers and sellers when a real estate deal falls apart, but the consequences of the deal falling apart really depends on when and why the deal did not happen. For a contract or an Offer to Purchase to be binding in a real estate deal, there must be consideration which is in the form of the deposit that is paid at the time of purchase.

Typically, when an offer to purchase is first signed it will include conditions that have to be met before the offer is officially binding. Some examples of the types of conditions may include:

- Subject to satisfactory home inspection
- Subject to financing approval
- Subject to the seller obtaining housing
- Subject to the buyer receiving an offer to purchase on their home

If there is a condition in the offer to purchase that is ultimately not met (such as those listed above), then the deal fails and is no longer binding on either party. It is not uncommon for real estate deals to “collapse” due to one or more of the conditions not being satisfied. For this reason, it is important to ensure that the conditions have reasonable deadlines so that you know sooner rather than later whether your transaction is going through. When the deal does not go through, the deposit funds previously paid are returned to the buyers. The sellers are then able to receive and accept new offers again on the property.

Things can become particularly complicated when there are no conditions, or all of the conditions have already been satisfied. If the buyer of a transaction were to back out of the deal after this point, there are some likely consequences that may include but are not limited to:

1. The seller will keep the deposit.
2. The buyer may be liable to the seller for additional losses including, but not limited to carrying costs including the additional interest paid on the mortgage or additional insurance costs for the property until the house sells and the loss that may be incurred on the actual sale price (if the collapsed offer to purchase is lower than the new offer to purchase received).
3. The seller can re-list the property to sale. Not only should they relist promptly but they are also legally required to “mitigate their damages” which means that they must make all reasonable efforts to reduce their losses.

The cost of either party backing out of the deal may range from very little to negotiate the terms of settlement to thousands of dollars to litigate the damage caused. When you enter into an Offer to Purchase, you must do so with the understanding that it is a legally binding contract and that conditions may be included in that offer.

If you are looking to make or accept an offer to purchase and need to include unique or complex conditions, be sure to reach out to your legal counsel prior to signing to ensure the wording provides you the adequate protection and avoids potential litigation in the future.

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