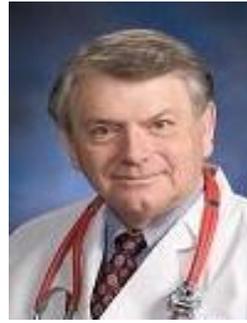


# EarlNotes:

From: Alabama's Real Estate Doctor



## How Much Earnest Money?

*Dear RE Doctor: I have been thinking about buying a home. How much binder money will I need to put down to make the contract legal? What happens if the deal falls apart? Will I get my earnest money back?*

Most people, including most real estate agents, think that some sort of down payment (earnest money) is required to make a contract **legal** or **valid**. As you did, they often call it a **binder** to imply that it **binds** the parties. Not true.

What is true is that common law does require some sort of good, and/or valuable, consideration to make a contract valid. But it is not absolutely required that the consideration be in the form of money. The mutual promises made in the contract by the parties, one to the other, are often adequate "good" consideration to make the agreement "legal."

Earnest money is simply a **good faith deposit**, a tool for you to use to let the owner of the property know you are a serious buyer and to encourage the owner to work with you to negotiate the transaction. The more earnest money you deposit, the more likely the seller is to work with you and give serious consideration to the terms of your offer.

While earnest money can be given directly to the seller (usually on a non-refundable basis) in most transactions, once the contract is signed, the earnest money is placed with a licensed real estate brokerage.

That broker, unless instructed otherwise by the terms of the contract, has to place the money in an insured bank trust account until the deal closes.

If the deal doesn't close, usually because one of the buyer's contingencies hasn't been met, the earnest money can be returned to the buyer - ***if the seller agrees.***

But here's something you should know...just suppose the deal collapses, doesn't close and ***the parties can't agree*** on what to do with the earnest money.

The broker, by law, ***cannot*** release the funds to either the buyer or the seller ***until*** he or she has a written agreement signed by both parties with instructions on how and to whom to disburse the money.

Failure to get that written agreement can really cause a headache for all parties.

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If **you** have any concerns regarding **your** real property  
Contact Earl L. Martin, Jr. at [www.earlnotes.com](http://www.earlnotes.com)