



What if I accept less than 10% deposit when selling my property?

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When selling a property, the usual sum for a deposit is 10% of the agreed purchase price. However, in recent years 5% deposits, or an agreed dollar amount, are becoming more frequent especially as property prices have increased. In this blog, we look at the risks and benefits associated with accepting a lower deposit than has been traditionally accepted.

Risk associated with accepting a deposit which is less than 10%?

The main risk associated with accepting a deposit less than 10% is that if the purchaser defaults, you may not be able to claim the full 10% deposit as compensation.

When preparing your property transaction documents, we include a Special Condition in the Contract for Sale, to protect the seller in the event the final transaction does not proceed. That condition states that if the deposit is less than 10% and if the purchaser, by its default, fails to complete the purchase, the deposit is forfeited to you and the purchaser must also pay to you the balance of the agreed 10% deposit. This is a common provision used by most [lawyers and their conveyancing teams](#).

However, by virtue of a High Court decision, there is a doubt that you can insist on the purchaser, after their default, paying to you the balance of the 10% deposit figure if they have, in fact, paid a lesser deposit to you. There is no doubt though that the deposit actually paid can be forfeited to you (subject to the Supreme Court's overriding discretion not to allow forfeiture in certain circumstances).

In summary, if you are asked to accept less than a 10% deposit on exchange of a Contract for Sale, then you need to appreciate that the agreed lesser deposit is all that you are likely to retain in the event that the purchaser defaults under the contract.

You should also be aware that out of all the matters this firm handles in a year, our experience is that a default by a purchaser, leading to a forfeiture of the deposit, is an absolute rarity.

Benefits of accepting less than a 10% deposit

There are certain benefits of accepting a less than 10% deposit in your Contract for Sale.

- You may have a purchaser that has offered the best purchase price but has a cash deposit available of less than 10%. As it is rare for a purchaser to default under a Contract, it may be worth accepting the highest offer available even though the deposit is less than 10% rather than accepting a lower offer but receiving a 10% deposit. In doing this, you are removing the risk of not achieving that higher sale price again.
- If it is known that you may accept a deposit of less than 10%, this increases the number of potential purchasers that may make offers on your property. In turn, this can result in achieving a higher purchase price, particularly at auctions. The more people making offers or bidding at auction for your property, the greater chance of securing a great sale price

I have accepted a deposit less than 10%. Why does the Contract for Sale say the deposit is 10%?

If you accept a deposit that is less than 10%, it is very normal to see that the front page of the Contract, notes that a 10% deposit has been paid.

This comes back to common practice of solicitors and conveyancers.

Get help from a property lawyer

The property team at E&A Lawyers are highly skilled and experienced in residential and commercial conveyancing. We are fastidious with all aspects of your property transaction to ensure a smooth and stress-free experience.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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