

WSJ Print Edition

How to Save a Canceled Sale

COUNTING HOUSE |

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There are several ways you can prepare yourself in the event a buyer pulls out of a home purchase

One week before the closing on a 5,300-square-foot condominium in New York City's Upper East Side, Beth Benalloul, a broker at the Corcoran Group, got a frantic call from the buyer's agent. It seems the buyer had found another apartment he liked better, so he had decided not to move ahead with the \$6 million purchase.

"Everything was going smoothly, and the sellers had moved out of the apartment already," said Benalloul. "Then the buyer changed his mind, and since he knew he didn't have a legitimate way to get out of the contract, he tried to claim that since he couldn't use the building's gym due to Covid restrictions in effect then, he was entitled to get his money back."

There were no contingencies at that point that the buyer could leverage, so he had no legal right to get out of the contract. The sellers, hoping to avoid litigation, offered to refund half of his deposit, but the buyer refused and filed a lawsuit to recover the entire \$600,000.

He ultimately lost and forfeited his deposit. "It was a very stressful few months," said Benalloul.

Concerns about the economy, job insecurity and high insurance premiums are causing some home buyers to have second thoughts about their home purchases, and some are even walking away from hefty deposits. According to Redfin, roughly 53,000 U.S. home-purchase agreements were canceled in October, equal to 15.1% of homes that went under contract that month, up from 14.3% a year earlier. Those statistics include deals where buyers canceled pursuant to contingencies and also where they backed out without the right to do so.

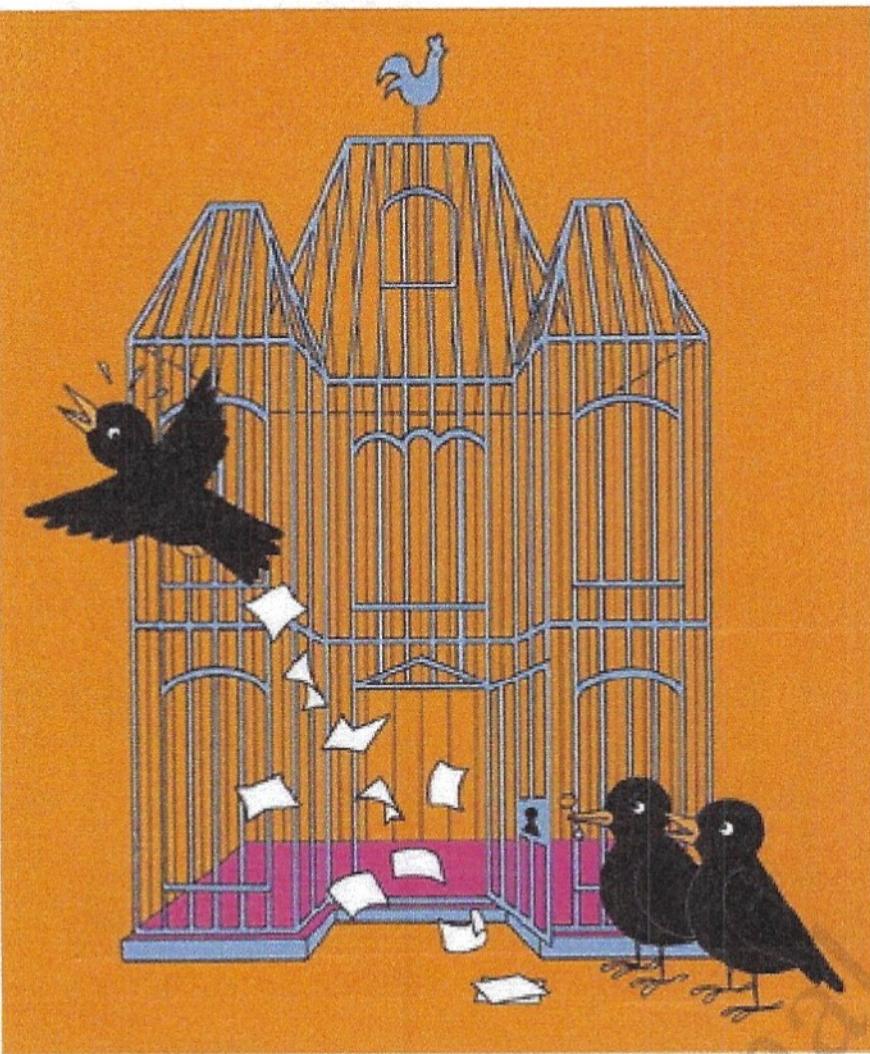
What happens when a buyer tries to back out? That depends when it happens. Cancellations before mortgage or home-inspection contingencies are met are allowable and buyers can safely exit the contract without losing their deposit. But when buyers cancel after the contingencies are satisfied, that may constitute a breach of contract. In that case, Stephanie Goldstein, a real estate attorney and partner at Schorr Law in Los Angeles, said that most purchase agreements allow the seller to retain the deposit as liquidated damages.

A seller who tries to walk away may face a different prospect—a suit for specific performance, where the court is asked to force the sale of the property to the buyer, Goldstein said. "A seller cannot back out if the buyers have fully performed their obligations," she said.

Here are some things you can do to avoid losing a deal to a buyer with cold feet.

Make sure the buyer has serious skin in the game.

When Laura Heigl represented the buyers of a home in Carmel, Ind., in 2023, she got a call the morning



PETE GAMLEN FOR WSJ

of the closing saying that the buyers no longer liked the house and weren't closing. The seller immediately got her attorney involved, and the buyers ultimately closed, even though they had only posted 1% of the purchase price, or \$7,050, as a deposit.

"The standard deposit in Indiana is only 1%, so it's easy for a buyer to give that up," said Heigl, broker and team leader at Century 21 Scheetz in Zionsville, Ind., a suburb of Indianapolis. "If I had been on the listing side, I would have required additional earnest money that was non-refundable so there was more of a risk to the buyer."

In New York City, buyers typically post a deposit of 10% when --they sign the purchase agreement, according to Benalloul, and for new construction, many developers require even more, she said. "That way, you're heavily invested, and it's not so easy to walk away," she said.

Use an insurance contingency.

To avoid having buyers back out because they are unprepared for the cost of insurance—or because they can't get insurance at all—include a contingency in the purchase contract allowing the buyers a specific amount of time in which to confirm that insurance is available. Goldstein, the attorney, said that in California, a standard purchase agreement gives buyers 17 days from full execution of the agreement to confirm they can get insurance and at what price. After that, a seller needs to be sure that the buyer removes the insurance contingency to lock in the buyer and eliminate their right to cancel.

"When buyers discover that premiums are far higher than expected, or that private coverage isn't available at all, they sometimes decide they can't afford the home," said Loretta L. Worters, a vice president at the Insurance Information Institute. "In today's market, insurance can make or break a transaction."

Offer concessions.

If nothing else has worked, and it looks like the buyers are going to walk, consider offering some type of nonprice concession, like offering to pay the buyer's first year of insurance premiums, to entice them to move ahead with the purchase. A recent survey of brokers at The Agency found that more than 60% reported seeing more concessions this

year than in 2024. A concession is preferable to ending up in court in an attempt to retain the deposit or, worse, having to put the home back on the market and hope another comparable offer comes in soon.

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