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Earnest Money Deposit (EMD)

1) *What is it?*

The Nevada Law and Reference Guide (Fourth Edition, 2014) says “*Earnest money is not consideration - it is an inducement to negotiate. Earnest money is presented with an offer to indicate the genuineness of the offer.*”

2) *If the buyer is turned down for a loan does the buyer get his earnest money back?*

Generally, yes. If the buyer has fully complied and done everything within his power to obtain the loan but still doesn't qualify, he would be entitled to his EMD back.

3) *If the buyer cancels during the Due Diligence period, is he entitled to his EMD back?*

Yes. If the buyer finds something adverse in the property inspection, he is generally entitled to cancel the agreement and have his EMD returned.

4) *If the buyer defaults prior to the close of escrow (COE), is the EMD refunded?*

Barring unusual circumstances, the buyer's cancellation for no reason prior to the COE would allow the sellers to properly retain the EMD.

5) *What should be done if there is a dispute about who is entitled to the EMD?*

The first step would be mediation. Most standard purchase agreements have a mediation clause to allow the parties to resolve their differences. Your local association has a mediation program available for disputes regarding earnest money.

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