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Q & A; Can a Seller Dictate the Down Payment?

By JAY ROMANO
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Q. *Some apartment sales in New York City require a certain percentage as a down payment — often 10 percent. Isn't this a decision made by the bank providing the mortgage? Does the seller have a say in this?*

A. In New York City, “the down payment, also known as the contract deposit, is commonly 10 percent of the purchase price,” said **Adam Leitman Bailey**, a Manhattan real estate lawyer. There is no legal requirement as to the amount, however, and, in practice, the amount can be negotiated by the buyer and seller, he said.

Mr. Bailey noted that this deposit is forfeited to the seller if the purchaser does not go through with the deal.

In addition, purchasers' lenders set requirements for the percentage of the total purchase price that the purchaser will have to pay out of his or her own funds at the time of closing. For example, if the lender is granting a loan that is 80 percent of the purchase price, the purchaser must provide the remaining 20 percent. So, if the purchaser made a 10 percent down payment when the contract was signed, then the remaining 10 percent would have to be paid at the closing.