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[What Are Some Damages in Breach of Real Estate Sales Contract?](#)

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It often happens parties fail to fully perform their contractual obligations in sale of real estate. Often, the most immediate consequence of such contractual breach is the nature and amount of damages, if any, PLUS other conceivable remedies available at law and in equity. Let us explore, to some extent, some detail of such damages.

1. "GENERAL" LOSS OF BARGAIN DAMAGES

The standard measure of loss of bargain damages, for a TOTAL BREACH, would encompass the difference between the agreed contract price and the market value of the property on the date of breach. For instance, if a property was sold for \$100,000 and at the time of the total breach by buyer, the property was worth \$60,000, then the seller - as the non-breaching party - would presumably be entitled to \$40,000 in losses. Likewise, if the value of the property had risen to \$140,000 on the date of breach, if the seller is in total breach, the buyer is entitled to \$40,000.

SOME NOTES FOR LOSS OF BARGAIN DAMAGES

Loss of bargain damages is not as straightforward as it seems. In fact, the following scenarios illustrate the gulf of opinion on some seemingly straightforward situations.

A. Future Market Fluctuations, Generally, Irrelevant in Loss of Bargain Damages

What is astonishing in loss of bargain damages is the irrelevance of future real estate fluctuations, generally, in a total breach by a seller. This means, generally, if the purchaser in the above example has to purchase a property after the seller's total breach for \$150,000, the purchaser - the non breaching party - would be out of luck. The purchaser, generally under loss



of damages principle, would be entitled to only \$40,000, the difference between the contract price and the market value of the property on the date of the breach.

B. Seller's Good Faith But Inability to Convey Good Title Could Impact Recovery of Loss of Bargain Damages

Courts are sharply divided as to whether a purchaser can recover loss of bargain damages when the seller acted in good faith but was unable to convey satisfactory title. Almost half of the cases - in such situation - limit purchaser's recovery to return of earnest money or other payments with interest PLUS other incidental damages such as abstract, title examination and loan application costs.

2. "SPECIAL" DAMAGES

There are two categories of special damages which non-breaching party could recover. Both of these damages **MUST** satisfy **foreseeability** test. Foreseeability in this context means such damages were within the contemplation of the contract when made.

A. EXPENSES IN RELIANCE ON THE CONTRACT

The first category is those expenses non-breaching party incurred in reliance on the contract. Such expenses could include but is not limited to:

- Seller's Eviction of an Actual Tenant
- Refurbishment of the Premises in Accordance with Contract's Specifications
- Broker's Commissions
- Title Search
- Examination Fees
- Surveys
- Document Drafting Expenses
- Appraisals
- Traveling to and from the Property
- Moving In or Out of the Property
- Expenses for Arranging Financing

B. LOSS OF PROFIT

Often, purchasers tend to acquire real estate hoping to make profits from sale, rental, and development or even flipping it. In such circumstances, the purchaser might be able to recover loss of profit in addition to loss of bargain damages and expenses, articulated above. Nonetheless, purchaser **MUST** overcome several obstacles, including but not limited to:



1. **FORESEEABILITY:** The loss of profit incurred by the purchaser **MUST** be foreseeable, i.e. within the contemplation of parties. This requirement is extremely important and argued and contested extensively.
2. **REASONABLE CERTAINTY:** The loss of profit must be proven with reasonable, not total, certainty. Courts are typically cynical of such claims. Nonetheless, if proof is cogent, recovery might be possible.

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