

# An Unwary Buyer Could Be Blindsided at Closing and Lose Earnest Money

By JIM SMITH, Realtor®

There is a little-noticed provision written into the state-approved real estate contract to buy and sell real estate that could blindside a buyer and cause him or her to lose their earnest money and not get the house they think they're about to purchase.

I'm referring to Section 4.4.2, which reads as follows: *'All funds required to be paid at Closing or as otherwise agreed in writing between the parties shall be timely*

*paid to allow disbursement by Closing Company at Closing OR SUCH PARTY SHALL BE IN DEFAULT.'* [caps in original]

Although I've never seen it happen, a seller has the right to declare a buyer in default if all funds have not arrived at the time of closing. With default thus established, the seller gets to keep the buyer's earnest money and then proceed with a back-up contract.

This has not been a big fear in the past, but now that we're seeing

multiple offers on listings, it could very well happen.

How does a buyer's agent prevent this disaster from happening? It's pretty simple — write into the contract that the time and place of closing is set by the buyer's agent, not the seller's agent and not by "mutual agreement." This would allow the buyer's agent to announce that the closing is postponed and keep postponing it as late as midnight that day. (Only the day of closing is specified in the contract.) If the contract gives the time and place authority to the listing agent, then make sure all funds are wired the day before.

Last fall I represented a buyer in the purchase of a home where the seller tried every trick in the book to terminate the contract. The best of those tricks was to cloud title so that my buyer's lender wouldn't fund the closing. I explain on [JimSmithBlog.com](http://JimSmithBlog.com) how I kept the above scenario from unfolding.

## This Week's Featured New Listing

### Lakewood Townhome Poses Great Opportunity

First-time homebuyers will love this 1,510-sq.-ft., 2-story townhome at 1547 S. Owens St. #46 in Lochwood Chateau, near Kipling and Florida. It's an end unit, providing extra interior light and space. It has 3 bedrooms upstairs, plus a non-conforming 4th bedroom in the basement. Features include a wood-burning fireplace in the living room, a fenced patio, and a 2-car carport. This complex is not approved for FHA/VA loans, but ask about conventional loans with as little as 3% down payment and no mortgage insurance — better than FHA!

Open this Saturday, 2-5 pm.



## Golden Real Estate Welcomes Two New Agents

Having grown up in the construction business, **Mark Spencer** (left) is very knowledgeable about home construction and renovations. This comes in handy with his own residence and investment property. As a Realtor, Mark is able to better serve his clients with his knowledge of home construction. Meanwhile, **Tom Warriner's** (right) educational background in zoning, accountability for school performance, and extensive hands-on renovation skills has provided a diverse skill set that will benefit both his seller and buyer clients.



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