FROM THE IUSTORIA BLOG

“Your Deposit Is Forfeited.” When You Really Do Lose the Money

> *An advance payment comes back, earnest money can be forfeited, and an estate agency usually cannot keep a reservation fee because you did not buy. Who loses the money when a deal collapses.*

IUSTORIA TEAM

5 November 2026 · 10 min read

A buyer pays a hundred thousand crowns "for the reservation" of a flat, the bank then turns down the mortgage, and the seller announces that the money has been forfeited. Sometimes it is the other way round: the seller gets a better offer and writes to the buyer that the deposit will "of course be returned". We see disputes like these at the firm regularly. Almost always it turns out that each side had something different in mind when they used the word deposit.

Who loses the money is decided neither by how the payment was described nor by who happens to be holding it. What decides is what the parties actually agreed and who caused the deal to fall through. An advance payment (*záloha*) is returned; earnest money (*závdavek*) can be forfeited or returned double; a court can reduce a contractual penalty (*smluvní pokuta*); and a reservation fee (*rezervační poplatek*) paid to an estate agency is a chapter of its own.

Advance payment: money paid up front that comes back

The Czech Civil Code starts from a simple presumption: whatever one party gave the other before the contract was concluded is an advance payment (Section 1807). Nothing more. An advance payment punishes no one and secures nothing; it is simply part of the price paid early.

If the contract is never concluded, or one party validly brings it to an end, for example by withdrawing from it, the advance payment loses its legal basis. The recipient must return it as unjust enrichment (Section 2991(2) and Section 2993 of the Civil Code). This applies regardless of who caused the deal to fall through.

That does not mean the party at fault always gets off scot-free. Anyone who breaches a concluded contract must compensate the other party for the damage (Section 2913(1)). Even before signing, a party that breaks off negotiations without just cause at a point when the conclusion of the contract seemed highly likely is liable for the damage (Section 1729). The other party can then set off its claim for damages against its obligation to return the advance payment (Section 1982). But it must actually have suffered the damage and be able to prove it, for example a valuation report or a loan fee paid for nothing. Keeping the whole advance payment just because the other side "got cold feet" is not an option.

Watch out for contracts that say an advance payment is "forfeited". A legal act is assessed by its content, not by its label (Section 555(1)). An advance payment that is to be forfeited if the payer breaches an obligation is in reality a contractual penalty or, depending on the circumstances, earnest money, and their rules then apply. A different case is a contract under which the payer may withdraw from it and then forfeits the advance payment. That is a withdrawal fee (*odstupné*, Section 1992): the price of a permitted exit, not a punishment for breaching an obligation, and the rule on reducing a contractual penalty (Section 2051) does not apply to it.

Earnest money: security that you will see the deal through

Earnest money has sharper consequences than an advance payment. The law gives it two functions: it confirms that the contract has been concluded, and through it the payer provides security that the obligation will be performed (Section 1808(1)). It must be handed over no later than when the contract is concluded. Anything you

pay only after signing is not earnest money.

The consequences are symmetrical (Section 1808(2)):

- **If the party who gave the earnest money fails to perform**, the other party may keep it.
- **If the party who received the earnest money fails to perform**, the payer may claim either double the earnest money or performance of the contract and, if performance is no longer possible, damages.

An example: the buyer and the seller sign a preliminary contract for the purchase of a flat (*smlouva o smlouvě budoucí kupní*) at a price of CZK 5,000,000, and on signing the buyer pays earnest money of CZK 200,000. If the buyer refuses without good reason to sign the purchase contract, the seller keeps the CZK 200,000. If the seller sells the flat to someone else, the buyer can claim CZK 400,000.

What matters here is on whose side the cause of the failure to perform lies. If the buyer does not get a mortgage, the cause usually lies on the buyer's side, because arranging the financing is the buyer's own responsibility. The seller can then keep the earnest money, unless the contract provides for what happens if the bank does not approve the loan.

Buying with a mortgage? Before you pay earnest money, insist that the contract deals with what happens if the bank has not approved the loan by a certain date. Without such a clause, the financing risk is as a rule borne by the buyer, and the earnest money may be forfeited. The solution is a condition on which the contract lapses and the money is returned (Section 548 of the Civil Code). It is better to place the money in escrow than to send it directly to the seller; the escrow terms must then say who is paid out if the buyer causes the deal to fall through, if the seller does, and if the bank does not approve the loan.
Two details that are often overlooked in practice. If the contract also provides for a right to withdraw from it and you do not agree any withdrawal fee for that right, the earnest money is treated as the withdrawal fee: if the payer withdraws, they lose the earnest money; if the recipient withdraws, they pay back double (Section 1809). And unlike a contractual penalty, the law does not provide for a court to reduce the amount of earnest money. So agree it at a reasonable level.

Any lack of clarity counts against the party that wants to keep the money: if earnest money has not been demonstrably agreed, the payment is an advance payment under Section 1807. Disputes are most reliably ruled out by calling the payment earnest money (*závdavek*) in the contract and referring to Section 1808.

Reservation fees charged by estate agencies

The law does not recognise a reservation fee. The Czech Real Estate Brokerage Act (Act No. 39/2020 Coll.) does not even use the word reservation. That is why courts examine, for each reservation agreement, what it actually contains.

The decisive step was taken by the Supreme Court in its judgment of 13 June 2023, file no. 33 Cdo 1507/2022. The buyers in that case had signed a three-party “reservation agreement” with an estate agency and the owners of a plot of land, paid the agency CZK 72,600 and undertaken to conclude a preliminary contract. That never hap-

pened, according to the courts' findings because the agency had not secured the promised entry of the plot in the Land Registry or the utility connections. The buyers withdrew from the reservation and the agency kept the fee as a contractual penalty. The Supreme Court concluded that even a three-party reservation agreement is a real estate brokerage contract if the agency undertakes in it, for a fee, to broker the purchase for the buyer. Section 14 of the Real Estate Brokerage Act therefore applies to it, and under that provision a prospective buyer who is a consumer cannot be obliged to conclude a purchase contract or a preliminary contract. The Supreme Court added that only the future parties to a contract, that is the buyer and the seller, can undertake to conclude it, not a prospective buyer towards an estate agency. No penalty arises for breaching an obligation that does not exist, and the agency had to return the fee as unjust enrichment.

Some estate agencies try to get round the ban in Section 14 by calling the fee a commission "for finding the opportunity". The law allows such a commission if the contract informs the client that its due date is not tied to the purchase (Section 19(2)). In one Prague case, however, the buyer was to pay a commission for brokering the purchase if the purchase went ahead, and a commission for finding the opportunity only if it did not. The courts held this to be a disguised penalty circumventing Section 14, and the Supreme Court rejected the agency's appeal on a point of law (*dovolání*), stating that this conclusion was in line with its settled case law (order of 22 October 2025, file no. 33 Cdo 2779/2024, paragraph 14). So what matters is whether the commission for the opportunity is payable in every case, or only as a punishment for not buying.

This does not hold without exceptions, however:

- **The law protects consumers.** A company buying property for its business cannot rely on Section 14. But under settled case law, an estate agency cannot validly oblige a company to buy from a third party either, because only the future parties to a contract can undertake to conclude it. The dispute then turns on the interpretation of the particular contract, not on a statutory ban.
- **It depends on what the penalty secures.** In its judgment of 16 July 2024, file no. 33 Cdo 625/2024, the Supreme Court reviewed an older two-party contract, concluded before the Real Estate Brokerage Act took effect. The penalty in it secured not the purchase but the obligation not to frustrate the agency's work and to cooperate with it. The Supreme Court faulted the appellate court for treating it as a penalty for not concluding the purchase and sent the case back to it for further proceedings.
- **The commission itself is not prohibited.** It falls due no earlier than the day the purchase contract is concluded. It can fall due earlier only if the brokerage contract expressly informs the client that it is not tied to the conclusion of the purchase contract, and even then no earlier than when the opportunity to buy has been found (Section 19(1) and (2)). An advance on the commission taken from a consumer may not exceed two thirds of the agreed commission (Section 19(3)).

In practice: if an estate agency refuses to return your fee, read what exactly the contract says it is holding the fee for. If it is a penalty for not buying, as a consumer you are in a strong position.

Agreements made directly with the seller

The situation is different when the money goes directly to the seller. The buyer and the seller are the future parties to the purchase contract, so they can validly undertake to conclude it, typically in a preliminary contract (Section 1785). That obligation can be secured by earnest money or by a contractual penalty. But if the seller is a business, typically a developer, and you are buying as a consumer, the contract must not, contrary to the requirement of good faith, create a significant imbalance in rights and obligations to the buyer's detriment (Section 1813). A penalty or forfeiture of a "reservation fee" that applies only to the buyer, with no comparable sanction for the developer, or that is disproportionately high, may therefore not stand up; an unfair term is disregarded (Section 1815).

Here too, though, there is an important limit. In its judgment of 31 March 2026, file no. 23 Cdo 491/2025, the Supreme Court dealt with an "agreement on the payment of a blocking deposit" for a family house, with a contractual penalty of CZK 100,000. If the parties set out the content of the future purchase contract only in general terms, the buyer cannot be penalised for refusing terms that the seller added only later, such as payment deadlines or further sanctions. Under the law, a dispute over such terms is for the court to resolve by determining the content of the contract on application (Section 1787(1)). Nor is it a breach of obligation if the buyer does not sign a contract in which the seller has named someone else as the buyer, such as the buyer's company (paragraphs 36 and 38).

This leads to a practical piece of advice. Before you pay the seller anything, have everything essential written into the preliminary contract: the price, the dates, the method of payment, the escrow, the handover of the property and the condition covering a loan that is not approved. The less there is left "to be finalised later", the easier it is to tell who caused the deal to fall through.

Contractual penalty: when "forfeited" means a penalty

A contractual penalty is an amount agreed in advance for the breach of a specific obligation. The creditor can claim it whether or not it has suffered any damage (Section 2048(1)). Unless the contract provides otherwise, the creditor is not entitled to damages for the same breach on top of the penalty (Section 2050). The penalty also survives withdrawal from the contract if it had already fallen due (Section 2005(2)).

A court may, at the debtor's request, reduce a disproportionately high penalty, but not below the amount of the damage incurred up to the time of its decision (Section 2051). In its judgment of 11 January 2023, file no. 31 Cdo 2273/2022, the Grand Chamber of the Supreme Court explained that the court does not assess whether the agreement itself was disproportionate, but whether the specific claim is disproportionate in view of how and in what circumstances the breach occurred (paragraph 53). For a "forfeited deposit", paragraph 54 is the important one: the debtor keeps the right to ask for the penalty to be reduced even if the creditor has already kept it by unilateral set-off.

If you receive a message saying "we are keeping your deposit as a penalty", you can sue for the return of the money and, in the proceedings, ask the court to reduce the penalty. The court will not do so of its own accord.

Before you pay, have the contract state whether the payment is an advance payment, earnest money or a penalty, and what happens to the money if you cause the deal to fall through, if the other side does, and if the bank does not approve the loan.

Do not write off a reservation fee paid to an estate agency. If you are a consumer and the agency kept it because you did not buy, ask for it back in writing, citing Section 14 of the Real Estate Brokerage Act.

Place the money for a property purchase in escrow with a lawyer, a notary or a bank, not in the seller's personal account. An estate agency may provide escrow only at your written request made in a separate document (Section 4(2) of the Real Estate Brokerage Act).

How escrow with a lawyer works and when the seller receives the money is explained in the article Purchase price escrow with a lawyer. Before you sue, send a written demand setting a deadline for repayment; the template demand for payment in our debt collection guide (in Czech) can help. A claim for the return of money becomes time-barred three years from the day you learned that the other party is holding it without right (Section 621 and Section 629(1)), and as a rule ten years at the latest (Section 638); how these periods run is discussed in the article Limitation: the silent claim killer.

At a glance

Question	Answer	Provision
What is a payment made before the contract is concluded?	In case of doubt, an advance payment	Section 1807 of the Civil Code
Contract not concluded or ceased to exist	The advance payment is returned; only a proven claim, such as damage, can be set off	Sections 2991, 2993 and 1982 of the Civil Code
Earnest money, and the payer does not perform	The recipient may keep it	Section 1808(2) of the Civil Code
Earnest money, and the recipient does not perform	Double the amount, or performance and, where applicable, damages	Section 1808(2) of the Civil Code
Reservation fee kept by an estate agency as a penalty because a consumer did not buy	No penalty arises; the fee is returned	Section 14 of Act No. 39/2020 Coll.; 33 Cdo 1507/2022
Reservation made directly with a developer (consumer)	A disproportionate or one-sided sanction may not stand up	Sections 1813 and 1815 of the Civil Code
Advance on commission taken from a consumer	At most two thirds of the commission	Section 19(3) of Act No. 39/2020 Coll.
Can a contractual penalty be reduced?	Yes, at the debtor's request, even if the creditor has already set it off	Section 2051 of the Civil Code; 31 Cdo 2273/2022

Is the other side refusing to return your deposit or reservation fee, or are you about to sign a reservation and don't know what you are risking? We will read the contract, tell you what kind of payment it is and how much of it can be recovered, and enforce repayment if need be. We handle reservations and property purchases as part of our real estate law practice. Get in touch.

Conclusion

The words "the deposit is forfeited" settle nothing on their own. Without a clear agreement, the payment is an advance payment and it is returned; you lose the money mainly if you agreed earnest money or a penalty and you were the one who caused the deal to fall through. Most disputes can be avoided by spending ten minutes before you pay reading what you are sending the money for and on what terms it comes back.

Sources

- Act No. 89/2012 Coll., the Civil Code, Sections 548, 555, 621, 629, 638, 1729, 1785, 1787, 1807 to 1809, 1813, 1815, 1982, 1992, 2005, 2048 to 2051, 2913, 2991 and 2993 (as in force from 1 January 2026).
- Act No. 39/2020 Coll., on Real Estate Brokerage, Sections 2, 4, 14 and 19 (as in force from 1 July 2021).
- Judgment of the Grand Chamber of the Supreme Court of 11 January 2023, file no. 31 Cdo 2273/2022.
- Supreme Court judgment of 13 June 2023, file no. 33 Cdo 1507/2022.
- Supreme Court judgment of 16 July 2024, file no. 33 Cdo 625/2024.
- Supreme Court order of 22 October 2025, file no. 33 Cdo 2779/2024.
- Supreme Court judgment of 31 March 2026, file no. 23 Cdo 491/2025.

This article is for information only and does not constitute legal advice. It reflects the law as at the date of publication; whether a payment is an advance payment, earnest money or a contractual penalty always depends on the wording of the specific contract and on who caused the deal to fall through.

"Your Deposit Is Forfeited." When You Really Do Lose the Money

IUSTORIA team · Published 5 November 2026

https://www.iustoria.cz/en/blog/deposit-or-earnest-money/

This text is protected by copyright. Sharing the document whole and unaltered is welcome; reuse of parts in other texts requires attribution. © IUSTORIA, advokátní kancelář, s.r.o.