

General information when using alternative deposits in real estate

Q: What are alternative forms of deposits?

A: Traditionally, deposits in real estate transactions have been monetary. More recently, certain new forms of deposits are becoming available. Some new forms of deposits include cryptocurrency and deposit bonds:

Cryptocurrency is a decentralized digital or virtual currency. Unlike traditional currencies, it is not managed and controlled by a central authority, such as a government or bank.

A deposit bond is a document which guarantees payment (usually by an insurance company) of the deposit on settlement or default. No cash is exchanged when using a deposit bond. The full purchase price is paid at settlement. If circumstances arise where the deposit would be forfeited, the insurance company pays the deposit to the vendor and then seeks payment from the purchaser for the amount paid.

Q: What is FCNB's perspective for accepting cryptocurrencies and deposit bonds?

A: Due to the lack of regulation and the volatile nature of cryptocurrencies, FCNB does not recommend using cryptocurrencies as a form of deposit in real estate transactions. Should our recommendations not be followed, FCNB would strongly recommend seeking legal advice for anyone considering the use of cryptocurrency in a real estate transaction.

Deposit bonds should be used with caution, ensuring the seller and buyer fully understand the intention of the bond and the risks involved. There is no exchange of money, and the amount due upon closing will be for the total purchase price. Agents must ensure that their clients fully understand the risks should a transaction be void and a dispute remains concerning the deposit.

Documentation and proper record keeping are important in all transactions and especially so with alternative deposits. It is essential to remain informed in this area and educate licensed salespeople within your agency about the various expectations.



Q: What are the risks of accepting alternative deposits:

A: There are risks when accepting alternative deposits.

Cryptocurrencies are highly volatile, meaning their value could change significantly at any given moment. The cryptocurrency value at the time of the agreement may be much higher or lower in the weeks following the payment. In addition, due to their decentralized nature, cryptocurrencies can be used by scammers or as a means to spend funds received through illegal or criminal activities. Agents should recommend that their clients seek legal advice to ensure that they understand the implications and risks of using an alternative deposit.

While deposit bonds still come with risks, they are generally more secure than cryptocurrencies, as they are usually backed by large insurance companies. It's important to ask about and understand any fees associated with a deposit bond.

Funds held outside an agent's trust account are not subject to the protections provided in the *Real Estate Agents Act* and can easily be misappropriated by a third party despite what is provided in the contract. If a deal using an alternative deposit were to collapse, your client may have to sue the other party in court to recover the funds.

Q: What are the professional implications of using alternative deposits?

A: Licensed agents must provide skilled and conscientious service.¹ As part of this, an agent must ensure that their clients fully understand how using an alternative form of deposit varies from a traditional cash deposit. Licensees should take extra steps to access, provide, and document clear advice if a client is considering using an alternative deposit in a real estate transaction.

¹ Realtors must provide skilled and conscientious service as per Article 12 of the Realtor Code of Ethics.
<https://www.nbrea.ca/realtors-code-of-ethics/>



Q: How to accept an alternative deposit?

A: Most traditional trust accounts cannot hold cryptocurrencies at this time. Because of this, it's recommended that both parties seek legal advice if accepting cryptocurrencies, as they may need to be held by a third party.

Using or accepting an alternative deposit for a down payment in a real estate transaction should be captured in the Agreement for Purchase and Sale. Agents should advise the parties may seek legal advice to ensure both sides of the transaction are protected and understand the risks.

The *Real Estate Agents Act* contains requirements that agents must meet when dealing with trust funds. Agents should consult the legislation to ensure they meet these requirements when using alternative deposits.

Q: What are the record-keeping expectations if accepting alternative deposits?

A: There is an expectation that agents will keep proper records when accepting or paying alternative deposits. All information to support the use of the alternative deposit transaction should be maintained. The record-keeping requirements would remain the same as they would for monetary deposits should the seller and buyer agree to convert the cryptocurrency to dollars before payment.

If using a deposit bond, a copy of the deposit bond certificate should be kept on file by the seller's agent and any other relevant documents that would relate to the transaction.

There are FINTRAC reporting requirements when receiving virtual currency worth \$10,000 or more in Canadian dollars². Representatives should familiarize themselves with all regulatory reporting requirements.

² FINTRAC virtual currency reporting requirements

<https://www.bing.com/search?q=Fintrac+virtual+currency+reporting&cvid=969a7e7d4c4d4304baa80fa4ed9c0440&aqs=edge..69i57j0l8j69i11004.7324j0j4&FORM=ANAB01&PC=U531>