

Hot Topics Contracts



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Outline

I. Contract Basics

- Definition
- Elements

II. The Contract and Addenda

- One to Four Family Residential Contract (Resale)
- Seller's Disclosure Notice
- Third Party Financing Addendum
- Addendum Concerning Right to Terminate Due to Lender's Appraisal
- Addendum for Sale of Other Property by Buyer
- Addendum for Back-Up Contract
- Amendment of Contract
- Buyer's and Seller's Notice of Termination
- Release of Earnest Money

Contract Basics

What is a contract?

A contract is an agreement between at least two parties creating obligations, the performance of which the law in some way recognizes as a duty and the breach of which the law gives a remedy.



A contract for the *purchase and sale of real property* is an agreement that binds the seller to sell the property and the purchaser to buy the property in accordance with the terms of the contract.

Contract Basics

Elements of a Real Estate Contract

1. **Mutual assent:** All parties must voluntarily agree to same terms. An offer has been made by one party, which has been accepted by another party.

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- 2. Consideration:** Each party must receive a benefit from the contract. It's the reason the parties have entered into a contract.
- 3. Must be in writing and signed by the parties.**

Contract Basics


Can emails and text messages create a binding Contract?

- Short Answer: Yes, it's possible!
- The Texas Uniform Electronic Transaction Act (UETA) allows for electronic signatures in real estate transactions.
 - The parties must agree to conduct the transaction through electronic communications (can be verbal or written).
 - The **parties** must electronically "sign" the contract.
- To avoid inadvertently creating a binding contract:
 - A party could state they don't want to conduct a transaction electronically.
 - Include a disclaimer on emails.

The Contract

One to Four Family Residential (Resale) (TAR 1601, TREC 20-14)

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 2-12-18
ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)
NOTICE: Not For Use For Condominium Transactions

TREC 

1. PARTIES: The parties to this contract are _____
(Seller) and _____ (Buyer).
Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements and accessories are collectively referred to as the "Property".

A. **LAND:** Lot _____ Block _____, County of _____
Addition, City of _____, Texas, known as _____
(address/zip code), or as described on attached exhibit.

B. **IMPROVEMENTS:** The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.

C. **ACCESSORIES:** The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories.

D. **EXCLUSIONS:** The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____

E. **RESERVATIONS:** Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ _____

B. Sum of all financing described in the attached: Third Party Financing Addendum,
 Loan Assumption Addendum, Seller Financing Addendum \$ _____

C. Sales Price (Sum of A and B) \$ _____

4. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: _____

5. EARNEST MONEY: Within 3 days after the Effective Date, Buyer must deliver \$ _____ as earnest money to _____ as escrow agent, at _____ (address). Buyer shall deliver additional earnest money of \$ _____ to escrow agent within _____ days after the Effective Date of this contract. If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. **Time is of the essence for this paragraph.**

6. TITLE POLICY AND SURVEY:

A. **TITLE POLICY:** Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.

Initialed for identification by Buyer, _____ and Seller _____

TREC NO. 20-14
TAR 1601

The Contract

Effective Date

EXECUTED the _____ day of _____, 20____ (Effective Date).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

The Contract

Effective Date

How important is it for the effective date to be filled in correctly?

- Most crucial date in the contract.
- Date from which most, if not all, performance periods are measured.
- The Date the parties are officially bound to the terms of the contract.

The Contract

Effective Date

Who determines the effective date?

EXECUTED the _____ day of _____, 20____ (Effective Date).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

The contract instructs the Broker, in large conspicuous print, to fill in the “Date of Final Acceptance”. The date of final acceptance is the “Effective Date”.

The Contract

Effective Date

Date of final Acceptance

“Final Acceptance” means the day the last party to accept (sign) the contract **communicates** this acceptance to the other party or the other party’s agent.

In a typical transaction the buyer submits an offer to the seller. If the seller accepts the offer, they must communicate their acceptance to the buyer. The date the communication occurs is the date the broker fills in as the effective date of the contract.

The Contract

Effective Date

Under the following example, what is the effective date?

Jan. 1st - Buyer's agent sends a written offer to the listing agent.

Jan. 2nd - Listing agent delivers the offer to the seller.

Jan. 3rd - Seller signs the offer.

Jan. 4th - Listing agent emails executed contract to the buyer's agent

Jan. 5th - Buyer's agent informs buyer that seller accepted the offer.

The effective date is Jan. 4th. The Seller was last party to accept the contract, and communication that the contract was finally accepted (signed) occurred when the listing agent emailed the buyer's agent.

The Contract

Effective Date

If the effective date is not filled in, does that mean that there is no contract?

No. The parties have already executed the contract. It becomes binding upon final acceptance.

The Contract

Effective Date

Are the days referred to in the TREC contracts calendar days or business days?

Calendar days. Count everyday, even holidays!

How do I calculate the time for performance under the TREC contracts?

“within X days after the effective date” - The period for performance would be calculated by starting with the first day after the effective date and counting the number of days specified in the contract.

The Contract

Par. 2: Property

What seller is conveying to buyer!

2. PROPERTY: The land, improvements and accessories are collectively referred to as the "Property".

- A. LAND: Lot _____ Block _____, _____
Addition, City of _____, County of _____,
Texas, known as _____
(address/zip code), or as described on attached exhibit.
- B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.
- C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories.
- D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____.
- E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

The Contract

Par. 2: Property

Paragraph 2.B: "Improvements"

How do you determine what a "permanently installed and built-in item" or fixture is?

Three factors are examined:

1. Intent: What was the intent of the person who originally installed it?
2. Annexation: How is it actually installed or attached?
3. Adaptation: Was the item adapted to the uses or purpose of the property?

Paragraph 2.C: "Accessories"

Accessories DO NOT have to be "permanently installed".

The items listed under paragraph 2.C will convey as part of the "property".

The Contract

Par. 5: Earnest Money

5. EARNEST MONEY: Within 3 days after the Effective Date, Buyer must deliver \$_____ as earnest money to _____, as escrow agent, at _____ (address). Buyer shall deliver additional earnest money of \$_____ to escrow agent within _____ days after the Effective Date of this contract. If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. **Time is of the essence for this paragraph.**

Contract Notice

Notice of Seller's Termination

8-13-18[5-7-18]



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

NOTICE OF SELLER'S TERMINATION OF CONTRACT



CONCERNING THE CONTRACT FOR THE SALE OF THE PROPERTY AT

Seller notifies Buyer that the contract is terminated pursuant to the following:

- (1) Buyer failed to deliver the earnest money within the time required under Paragraph 5 of the contract and before the time Seller delivered this notice to Buyer.
- (2) Other (*identify the paragraph number of contract or the addendum*):

The Contract

Par. 5: Earnest Money

Is payment of earnest money required to make a contract effective?

No. Earnest money is not necessary to make an otherwise accepted offer into a valid contract. Earnest money is a buyer performance item that is required to be deposited within three days after a contract is executed. A contract could become effective even if no earnest money is required in the agreement.

The Contract

Paragraph 6.C: Survey

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

- (1) Within _____ days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date.
- (2) Within _____ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within _____ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

The Contract

Par. 7.A: Access, Inspections, Utilities

7.PROPERTY CONDITION:

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Any hydrostatic testing must be separately authorized by Seller in writing. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

Contract Addendum

Addendum for Authorizing Hydrostatic Testing (TAR 1949, TREC 48-0)

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

2-12-18



ADDENDUM FOR AUTHORIZING HYDROSTATIC TESTING



Consult a licensed plumber about the risks associated with hydrostatic testing before signing this form.

- A. **AUTHORIZATION:** Seller authorizes Buyer, at Buyer's expense, to engage a licensed plumber to perform a hydrostatic plumbing test on the Property.
- B. **ALLOCATION OF RISK:**
- (1) Seller shall be liable for damages caused by the hydrostatic plumbing test.
 - (2) Buyer shall be liable for damages caused by the hydrostatic plumbing test.
 - (3) Buyer shall be liable for damages caused by the hydrostatic plumbing test in an amount not to exceed \$_____.

The Contract

Par. 7.B: Seller's Disclosure Notice

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):

(Check one box only)

- (1) Buyer has received the Notice.
- (2) Buyer has not received the Notice. Within _____ days after the Effective Date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
- (3) The Seller is not required to furnish the notice under the Texas Property Code.

Contract Notice

Seller's Disclosure Notice (TAR 1406)



TEXAS ASSOCIATION OF REALTORS® SELLER'S DISCLOSURE NOTICE

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Section 5.008, Property Code requires a seller of residential property of not more than one dwelling unit to deliver a Seller's Disclosure Notice to a buyer on or before the effective date of a contract. **This form complies with and contains additional disclosures which exceed the minimum disclosures required by the Code.**

CONCERNING THE PROPERTY AT _____

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, OR ANY OTHER AGENT.

Seller is is not occupying the Property. If unoccupied (by Seller), how long since Seller has occupied the Property? _____ (approximate date) or never occupied the Property

Section 1. The Property has the items marked below: (Mark Yes (Y), No (N), or Unknown (U).)

This notice does not establish the items to be conveyed. The contract will determine which items will & will not convey.

Item	Y	N	U
Cable TV Wiring			
Carbon Monoxide Det.			

Item	Y	N	U
Liquid Propane Gas:			
-LP Community (Captive)			

Item	Y	N	U
Pump: <input type="checkbox"/> sump <input type="checkbox"/> grinder			
Rain Gutters			

Contract Notice

Seller's Disclosure Notice (TAR 1406)

Section 2. Are you (Seller) aware of any defects or malfunctions in any of the following?: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)

Item	Y	N
Basement		
Ceilings		
Doors		
Driveways		
Electrical Systems		
Exterior Walls		

Item	Y	N
Floors		
Foundation / Slab(s)		
Interior Walls		
Lighting Fixtures		
Plumbing Systems		
Roof		

Item	Y	N
Sidewalks		
Walls / Fences		
Windows		
Other Structural Components		

If the answer to any of the items in Section 2 is yes, explain (attach additional sheets if necessary): _____

Section 3. Are you (Seller) aware of any of the following conditions: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)

Condition	Y	N
Aluminum Wiring		
Asbestos Components		
Diseased Trees: <input type="checkbox"/> oak wilt <input type="checkbox"/> _____		
Endangered Species/Habitat on Property		
Fault Lines		
Hazardous or Toxic Waste		
Improper Drainage		
Intermittent or Weather Springs		
Landfill		
Lead-Based Paint or Lead-Based Pt. Hazards		
Encroachments onto the Property		
Improvements encroaching on others' property		
Located in 100-year Floodplain (If yes, attach TAR-1414)		
Located in Floodway (If yes, attach TAR-1414)		
Present Flood Ins. Coverage (If yes, attach TAR-1414)		
Previous Flooding into the Structures		
Previous Flooding onto the Property		
Located in Historic District		

Condition	Y	N
Previous Foundation Repairs		
Previous Roof Repairs		
Previous Other Structural Repairs		
Radon Gas		
Settling		
Soil Movement		
Subsurface Structure or Pits		
Underground Storage Tanks		
Unplatted Easements		
Unrecorded Easements		
Urea-formaldehyde Insulation		
Water Penetration		
Wetlands on Property		
Wood Rot		
Active infestation of termites or other wood destroying insects (WDI)		
Previous treatment for termites or WDI		
Previous termite or WDI damage repaired		
Previous Fires		

The Contract

Par. 7.D: Acceptance of Property Condition

D. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

(Check one box only)

- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

The Contract

Par. 7.D: Acceptance of Property Condition

My seller is adamant that she won't do any repairs to her property. She wants me to indicate in the MLS that she will only consider offers that the words property sold "as is" in the blank in Paragraph 7D(2) of the TREC contract. The seller also insists that the buyer not be permitted to have the property inspected under Paragraph 7A nor have a termination option under Paragraph 23. Can the seller require these things?

These conditions are inadvisable:

- 7D(1) already says the buyer accepts the property "as is".
- Contract would have to be modified to prohibit a buyer from inspecting the property.
- Seller could face liability if buyer did not have ability to inspect the property.
- Most buyers would be reluctant to purchase a property without inspection and without the ability to terminate should they find the property unacceptable.

The Contract

Par. 8: Broker's Fees

8. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

The Contract

Page 9: Broker Information

BROKER INFORMATION (Print name(s) only. Do not sign)

Other Broker Firm License No.

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Listing Broker Firm License No.

represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

The Contract

Page 9: Broker Information

On several occasions, a cooperating broker has written in a different amount of compensation in the ratification section on page 9 of the residential contract than the compensation amount I had offered in the MLS. When I called the matter to the attention of the other broker, she informed me that she always was paid that amount and would neither change the amount nor alter her practice for doing that. Can she do that?

No. The Listing Broker sets the compensation being offered to cooperating MLS participants.

The Contract

Par. 9: Closing

9. CLOSING:

- A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
 - (5) If the Property is subject to a residential lease, Seller shall transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has acquired the Property and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

The Contract

Par. 9: Closing

The lender is taking longer than anticipated to approve the buyer's loan. It is the day before closing and the lender says it may take several more days to get an approval. What will happen if the parties do not close on the date specified in the contract?

The contract does not include an automatic extension to allow the lender additional time to complete his role. A seller would generally have two choices:

1. Agree to amend the contract to extend the closing date, or
2. The seller can consider the buyer in default.

The Contract

Par. 11: Special Provisions

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

The Contract

Par. 11: Special Provisions

What should be written in Special Provisions?

- Rule of thumb: Don't write in special provisions. Writing in special provisions could constitute the unauthorized practice of law.
- Don't draft language that affect the rights, obligations, or remedies of the parties.
- Only write in Special Provisions at the direction of your client or your client's attorney. Document the instructions in writing for your records.

The Contract

Par. 15: Default

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

The Contract

Par. 15: Default

If a party defaults, does the contract automatically terminate?

No. There are two ways to formally terminate a contract. The parties can agree to terminate and sign a document like a Release of Earnest Money form (TAR 1904) that releases both parties from further obligations under the contract. The other way is for a judge to order a contract termination.

If the buyer defaults, can the seller put the property back on the market without a Release of Earnest Money?

The seller's primary goal should be to have formal termination of the contract. That ensures he can put the property back on the market and sell it to someone else without risk of a lawsuit that could stop a subsequent sale of the property.

The Contract

Par. 21: Notices

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

To Buyer
at: _____

To Seller
at: _____

Phone: () _____

Phone: () _____

Fax: () _____

Fax: () _____

E-mail: _____

E-mail: _____

The Contract

Par. 21: Notices

My Buyer client wants to offer an amendment for repairs for the seller to consider. Since the Seller's email address is listed in Paragraph 21, can I email the amendment to that address?

No. An amendment is not a notice.

The Contract

Par. 23: Termination Option

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$_____ (Option Fee) within 3 days after the Effective Date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

The Contract

Par. 23: Termination Option

Can a buyer's agent just mail the option check to the seller?

Yes, but remember that there the buyer must pay the seller within three days after the effective date of the contract. Therefore, overnight delivery may be necessary.

How does Paragraph 21, which states that notices can be effective when mailed, affect payment of the option fee under Paragraph 23?

It doesn't. Payment of the option fee is not a notice.

The Contract

Par. 23: Termination Option

After the buyer finished his inspection, the parties signed an amendment reflecting several items the seller agreed to repair. Three days later, the buyer sent the seller a notice that he was terminating the contract under his termination option.

The seller is upset because he already repaired two of the five agreed-upon repair items. Can the buyer still exercise his right to terminate the contract under the termination option even after the seller has agreed to repair the items the buyer wanted?

Yes, the buyer can still exercise his right to terminate the contract. A buyer does not automatically give up his right to terminate the contract under the termination option because the seller has agreed to make repairs in an amendment.

The Contract

Par. 23: Termination Option

Although the buyer did not send the option fee until four days after the effective date, the seller receipted the fee and deposited it. The buyer wants to terminate the contract during the option period, but now the seller is claiming there is no option period. Does the buyer have an option period?

The Contract

Par. 23: Termination Option

I represent a buyer who wants to make an offer on a home. If the buyer tenders a check for the option fee with the offer when I present the offer to the seller's agent, has the option fee been tendered to the seller? And could the seller's agent sign the receipt for the option fee on the last page of the contract?

Yes! It's a great idea for Buyers to tender their option fees with their offers to ensure that the termination option becomes part of the binding contract.

The Contract

Par. 23: Termination Option

My buyer still has some concerns about the condition of the property even after the property was inspected and the seller has agreed to repair several items listed in the report. We are now past the option period and my buyer wants to conduct additional inspections. The seller is refusing to allow any more inspections because he says the buyer doesn't have the right to inspect the property after the option period. Is the seller right?

No. Under Paragraph 7A the buyer has the right to access and inspect the property throughout the contract which is not tied to the termination option found in paragraph 23.

Contract Addendum

Third Party Financing Addendum (TAR 1901, TREC 40-7)



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

THIRD PARTY FINANCING ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

A. TYPE OF FINANCING AND DUTY TO APPLY AND OBTAIN APPROVAL: Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain approval for the financing, including but not limited to furnishing all information and documents required by Buyer's lender. (Check applicable boxes):

1. Conventional Financing:

- (a) A first mortgage loan in the principal amount of \$ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.
- (b) A second mortgage loan in the principal amount of \$ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

Contract Addendum

Buyer Approval v. Property Approval

B. APPROVAL OF FINANCING: Approval for the financing described above will be deemed to have been obtained when Buyer Approval and Property Approval are obtained.

1. Buyer Approval:

This contract is subject to Buyer obtaining Buyer Approval. If Buyer cannot obtain Buyer Approval, Buyer may give written notice to Seller within _____ days after the effective date of this contract and this contract will terminate and the earnest money will be refunded to Buyer. If Buyer does not terminate the contract under this provision, the contract shall no longer be subject to the Buyer obtaining Buyer Approval. Buyer Approval will be deemed to have been obtained when (i) the terms of the loan(s) described above are available and (ii) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history.

This contract is not subject to Buyer obtaining Buyer Approval.

2. Property Approval: Property Approval will be deemed to have been obtained when the Property has satisfied lender's underwriting requirements for the loan, including but not limited to appraisal, insurability, and lender required repairs. If Property Approval is not obtained, Buyer may terminate this contract by giving notice to Seller before closing and the earnest money will be refunded to Buyer.

3. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

Contract Addendum

Buyer Approval v. Property Approval

The time has already passed for the buyer to give notice to terminate the contract for Buyer Approval under the Third Party Financing Addendum. Afterwards, the lender does not approve the loan based on problems with insurability of the property. Can the Buyer terminate the contract?

Yes. The timeframe for the right to terminate under Property Approval goes all the way to closing.

What if the lender is non-responsive?

It depends. If the reason the lender is non-responsive is due to an issue with the Buyer, the termination must occur during the Buyer Approval timeframe.

Contract Addendum

Buyer Approval v. Property Approval

A buyer signed a contract for a home, agreeing to pay \$450,000. The appraisal came back \$30,000 below the sales price. The lender still approved the loan, however. Can the buyer terminate the contract?

No. While a low appraisal value is certainly a reason a lender can decide to deny a loan, it does not necessarily mean a lender will automatically deny the loan.

- What if Buyer wanted to require that property appraise for sales price?

Contract Addendum

Addendum Concerning Right to Terminate Due to Lender's Appraisal (TAR 1948, TREC 49-0)



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

**ADDENDUM CONCERNING RIGHT TO TERMINATE
DUE TO LENDER'S APPRAISAL**
Not for use in transactions involving FHA insured or VA guaranteed financing

2-12-18



CONCERNING THE PROPERTY AT: _____
(Street Address and City)

Contract Addendum

Addendum Concerning Right to Terminate Due to Lender's Appraisal

The financing described in the Third Party Financing Addendum attached to the contract for the sale of the above-referenced Property does not involve FHA or VA financing. *(Check one box only)*

- (1) Buyer may not terminate the contract under Paragraph B(2) of the Third Party Financing Addendum if Property Approval is not obtained because the opinion of value in lender's appraisal does not satisfy lender's underwriting requirements for the financing described in the addendum. If Buyer's lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is automatically increased by the amount the loan is reduced.
- (2) Buyer may not terminate the contract under Paragraph B(2) of the Third Party Financing Addendum if: (i) Property Approval is not obtained because the opinion of value in lender's appraisal does not satisfy lender's underwriting requirements for the financing described in the addendum; and (ii) the opinion of value is \$_____ or more. If Buyer's lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is automatically increased by the amount the loan is reduced.
- (3) In addition to Buyer's right to terminate under Paragraph B(2) of the Third Party Financing Addendum, Buyer may terminate the contract within _____ days after the Effective Date if:
 - (i) the opinion of value in the lender's appraisal is less than \$_____;
 - (ii) Buyer delivers a copy of the appraisal to the Seller. If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer.

Texas Realtor Magazine

April 2018

How to use TREC's new appraisal contingency addendum

This new form can be used as an addendum to the contract when the *Third Party Financing Addendum* is used and the transaction does not involve FHA or VA financing.

Paragraph B(2) of the *Third Party Financing Addendum* allows a buyer to terminate the contract before closing and receive the earnest money if the property fails to satisfy the lender's underwriting requirements, like if the appraisal is too low for the lender's comfort.

But in some situations, a buyer might want to gain or even waive a right to terminate because of the appraisal. TREC's new form—*Addendum Concerning Right to Terminate Due to Lender's Appraisal* (1948, TREC 49-0)—has three different options that can change a buyer's ability to terminate because of an appraisal.

BOX 1

If your client selects this choice, she waives the right to terminate if the appraisal doesn't satisfy the lender's underwriting requirements. The form says if the lender reduces the amount of the loan, the buyer covers the difference between the loan and the sales price.

Your client may be interested in selecting this box if she ... has the cash to make up any difference between the loan offer and the sales price, and

- She really wants the property.
- She's competing against multiple offers and wants to show the seller she's serious.

Make sure your client ... understands the financial consequences.

Example 1: The sale price of the property is \$200,000, your client is making a \$40,000 downpayment, and seeking \$160,000 in financing. The appraisal comes in at \$170,000, so now the lender will only loan \$130,000.

Ex. 1

(1) Buyer may not terminate the contract under Paragraph B(2) of the Third Party Financing Addendum if Property Approval is not obtained because the opinion of value in lender's appraisal does not satisfy lender's underwriting requirements for the financing described in the addendum. If Buyer's lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is automatically increased by the amount the loan is reduced.

Your client cannot terminate because ...

The appraisal doesn't satisfy the lender's underwriting requirements and your client will have to pay an extra \$30,000 on top of her \$40,000 downpayment.



Contract Addendum

Addendum for Sale of other Property by Buyer (TAR 1908, TREC 10-6)

- A.** The contract is contingent upon Buyer's **receipt of the proceeds** from the sale of Buyer's property at _____ (Address) on or before _____, 20____ (the Contingency). If the Contingency is not satisfied or waived by Buyer by the above date, the contract will terminate automatically and the earnest money will be refunded to Buyer.

NOTICE: The date inserted in this Paragraph should be no later than the Closing Date specified in Paragraph 9 of the contract.

- B.** If Seller accepts a written offer to sell the Property, Seller shall notify Buyer (1) of such acceptance **AND** (2) that Seller requires Buyer to waive the Contingency. Buyer must waive the Contingency on or before the _____ day after Seller's notice to Buyer; otherwise the contract will terminate automatically and the earnest money will be refunded to Buyer.
- C.** Buyer may waive the Contingency only by notifying Seller of the waiver and depositing \$_____ with escrow agent as additional earnest money. All notices and waivers must be in writing and are effective when delivered in accordance with the contract.
- D.** If Buyer waives the Contingency and fails to close and fund solely due to Buyer's non-receipt of proceeds from Buyer's property described in Paragraph A above, Buyer will be in default. If such default occurs, Seller may exercise the remedies specified in Paragraph 15 of the contract.
- E.** For purposes of this Addendum time is of the essence; strict compliance with the times for performance stated herein is required.

Contract Addendum

Addendum for Back-Up Contract (TAR 1909, TREC 11-7)

- A. The contract to which this Addendum is attached (the Back-Up Contract) is binding upon execution by the parties, and the earnest money and any Option Fee must be paid as provided in the Back-Up Contract. The Back-Up Contract is contingent upon the termination of a previous contract (the First Contract) dated _____, 20_____, for the sale of Property. Except as provided by this Addendum, neither party is required to perform under the Back-Up Contract while it is contingent upon the termination of the First Contract.
- B. If the First Contract does not terminate on or before _____, 20_____, the Back-Up Contract terminates and the earnest money will be refunded to Buyer. Seller must notify Buyer immediately of the termination of the First Contract. For purposes of performance, the effective date of the Back-Up Contract changes to the date Buyer receives notice of termination of the First Contract (Amended Effective Date).
- C. An amendment or modification of the First Contract will not terminate the First Contract.
- D. If Buyer has the unrestricted right to terminate the Back-Up Contract, the time for giving notice of termination begins on the effective date of the Back-Up Contract, continues after the Amended Effective Date and ends upon the expiration of Buyer's unrestricted right to terminate the Back-Up Contract.
- E. For purposes of this Addendum, time is of the essence. Strict compliance with the times for performance stated herein is required.

The Contract

Amendment of Contract (TAR 1903, TREC 39-8)

Seller and Buyer amend the contract as follows: (check each applicable box)

- (1) The Sales Price in Paragraph 3 of the contract is:
- A. Cash portion of Sales Price payable by Buyer at closing \$ _____
 - B. Sum of financing described in the contract \$ _____
 - C. Sales Price (Sum of A and B) \$ _____
- (2) In addition to any repairs and treatments otherwise required by the contract, Seller, at Seller's expense, shall complete the following repairs and treatments:
- (3) The date in Paragraph 9 of the contract is changed to _____, 20____.
- (4) The amount in Paragraph 12A(1)(b) of the contract is changed to \$ _____.
- (5) The cost of lender required repairs and treatment, as itemized on the attached list, will be paid as follows: \$ _____ by Seller; \$ _____ by Buyer.
- (6) Buyer has paid Seller an additional Option Fee of \$ _____ for an extension of the unrestricted right to terminate the contract on or before 5:00 p.m. on _____, 20____. This additional Option Fee will will not be credited to the Sales Price.
- (7) Buyer waives the unrestricted right to terminate the contract for which the Option Fee was paid.
- (8) The date for Buyer to give written notice to Seller that Buyer cannot obtain Buyer Approval as set forth in the Third Party Financing Addendum is changed to _____, 20____.
- (9) **Other Modifications:** (Insert only factual statements and business details applicable to this sale.)

The Contract

Amendment of Contract (TAR 1903, TREC 39-8)

Buyer sent an amendment to the Seller which provided that the Seller would do several repairs to the property. Seller responded by sending his own amendment to the Buyer which provided that the Seller would do one repair item, that the sales price would be raised by \$2,000, and that if the Buyer did not sign this amendment within 24 hours, the contract would terminate. Can the Seller terminate the contract if the Buyer doesn't accept the amendment?

No. If an amendment is not accepted, the existing terms of the agreement remain in effect.

Contract Notice

Notice of Buyer's Termination of Contract



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
NOTICE OF BUYER'S TERMINATION OF CONTRACT

8-13-18[5-7-18][11-2-15]



CONCERNING THE CONTRACT FOR THE SALE OF THE PROPERTY AT

Buyer notifies Seller that the contract is terminated pursuant to the following:

- (1) the unrestricted right of Buyer to terminate the contract under Paragraph 23 of the contract.
- (2) Buyer cannot obtain Buyer Approval in accordance with the Third Party Financing Addendum to the contract.
- (3) the Property does not satisfy Property Approval in accordance with the Third Party Financing Addendum to the contract.
- (4) Buyer elects to terminate under Paragraph A of the Addendum for Property Subject to Mandatory Membership in a Property Owners' Association.
- (5) Buyer elects to terminate under Paragraph 7B(2) of the contract relating to the Seller's Disclosure Notice.
- (6) Buyer elects to terminate under Paragraph (3) of the Addendum Concerning Right to Terminate Due to Lender's Appraisal. Buyer has delivered a copy of the Appraisal to Seller.
- (7) Buyer elects to terminate under Paragraph 6.D. of the contract (6.C. for Residential Condominium Contract) because Buyer's or Lender's timely objections were not cured by the end of the Cure Period.
- (8) [~~(6)~~] Other (identify the paragraph number of contract or the addendum): _____

Release of Earnest Money (TAR 1904)

RELEASE OF EARNEST MONEY

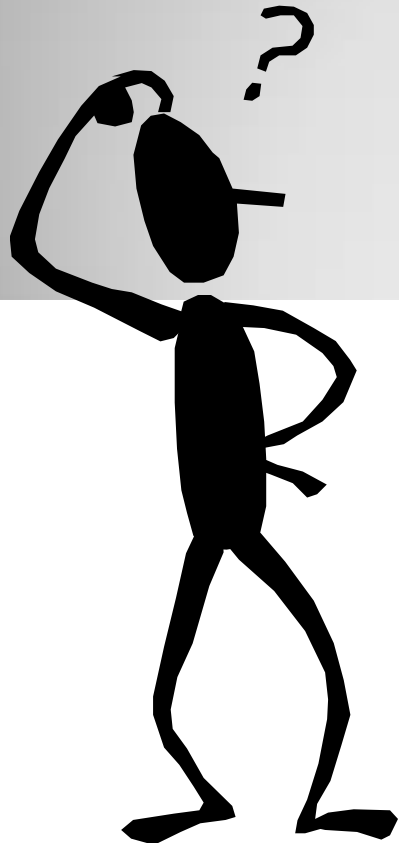
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RELEASE OF EARNEST MONEY BETWEEN THE UNDERSIGNED BUYER AND SELLER CONCERNING THE PROPERTY AT

NOTICE: This form provides for the release of the parties, brokers, and title companies from all liability under the contract (not just for disbursement of earnest money). Do not sign this form if it is not your intention to release all the persons signing this form from all liability under the contract. **READ THIS RELEASE CAREFULLY.** If you do not understand the effect of this release, consult your attorney **BEFORE** signing.

- A. The undersigned Buyer and Seller release each other, any broker, title company, and escrow agent from any and all liability under the aforementioned contract.
- B. The undersigned direct _____ (escrow agent) to disburse the earnest money as follows:

Questions



Still have questions?
Call the Legal Hotline
(512) 480-8200