TREC CONTRACT Changes

REVISED CONTRACT FORMS
- Unimproved Property Contract
- One to Four Family Residential Contract (Resale)
- New Home Contract (Incomplete Construction)
- New Home Contract (Complete Construction)
- Farm and Ranch Contract
- Residential Condominium Contract (Resale)

NEW ADDENDA
- Addendum for Authorizing Hydrostatic Testing
- Addendum Concerning Right to Terminate Due to Lender’s Appraisal

WHEN AND WHERE
- Voluntary use now
- Mandatory use beginning May 15, 2018
- Forms & red-line versions available on trec.texas.gov

SUMMARY OF CONTRACT CHANGES
- Changes apply to all contract forms unless otherwise stated
- Paragraph Number references are from the One to Four Family Residential Contract
- Paragraph 2 is amended to clarify that any reservations of mineral rights must be done in a separate addendum.
- “Effective Date” is made a defined term throughout the contracts but is still tied to the final date of acceptance provided on the signature page.

All information provided by Texas Real Estate Commission. For more information, visit trec.texas.gov.
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PARAGRAPH 5 EARNEST MONEY

- Paragraph 5 is amended to require Earnest Money to be delivered within 3 days after the Effective Date.
- If the 3rd day falls on a Saturday, Sunday or legal holiday, the Earnest Money is due on the next day that is not a Saturday, Sunday or legal holiday.
- Seller may terminate the contract if buyer fails to timely deliver the Earnest Money. Seller must notify buyer of seller’s election to terminate the contract before buyer delivers the Earnest Money.

RACE TO DELIVER/TERRMINATE

Earnest Money is not delivered within 3 days - What happens?
Race is on!
- Seller has to give notice of termination to Buyer before Buyer delivers Earnest Money to Title Company.

TIME FRAME FOR DELIVERY

When is earnest money due?
Think of it as calendar days plus…not business days.
- Contract is fully executed and accepted on Friday
  - Monday
  - What if Monday is a legal holiday?
  - Tuesday
  - What if the Effective Date is Monday and Monday is a legal holiday?
  - Thursday
  - Effective Date is Tuesday?
  - Friday
  - Effective Date is Tuesday and Friday is a legal holiday?
  - Monday
  - Effective date is Saturday?
  - Tuesday

SUMMARY OF CONTRACT CHANGES

- Earnest Money Receipt Page. Separate receipt boxes added for Earnest Money, the Contract and Additional Earnest Money. Space to enter the time received added. Initial boxes for Seller and Buyer were removed.
- Paragraph 6A(9) adds an exception for minerals as approved by the Texas Department of Insurance.
- Paragraph 6B “due to factors beyond Seller’s control” is removed from the sentence allowing Buyer to terminate the contract if Commitment and Exception documents not timely received.
- Paragraph 6 D now defines the time by which seller must cure objections as the “Cure Period” and provide a specific time frame by which the buyer must notify the seller that the buyer will terminate or waive the objections if the objections are not cured within the Cured Period.
- Paragraph 20 is amended to clarify what is meant by “applicable law” and an “affidavit” when seller is a “foreign person.”
- Paragraph 22 is amended to add the two new addenda forms as applicable.
- Broker’s Information Page. The spaces for fax numbers were removed and spaces for phone numbers for the brokers were added. Initial boxes for Seller and Buyer were removed if in current contracts.

Specific contracts only:
- Paragraph 2B(2) and 2C (Condominium Contract Only) clarifies that the seller bears the expense to deliver the condominium documents and the resale certificate to buyer.
- Paragraph 2F. Reservations (Farm and Ranch Contract Only) the parenthetical stating that reservations may be included in special provisions was deleted. Reservations are to be addressed in an addendum.
ADDENDUM FOR AUTHORIZING HYDROSTATIC TESTING

- Recall Paragraph 7.A. says: “Any hydrostatic testing must be separately authorized by Seller in writing.”
- This new addendum will now be that written authorization.
- The parties authorize a hydrostatic test to be performed at buyer’s expense and elect who will be responsible for damages caused by the test.

ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER’S APPRAISAL

- Created to address the situation where the parties want to create a special contingency based on the appraisal performed by the lender.
- Three options available that affect the basic rights of the parties.
  - Box 1. The buyer is giving up his or her right to terminate the contract under paragraph B.2. if the appraisal on the property comes back too low to satisfy the lender’s underwriting requirements.
  - Box 1. If the appraisal of the property is too low for Buyer’s initial loan as set forth in the contract, the buyer must produce additional cash (equity) at closing to close the purchase at the sales price listed in the contract.
  - The lender’s loan amount is automatically reduced by the same amount, thus causing the property to appraise to lender’s standards.
  - Box 2. This option is basically the same as Box 1, except, the parties can put a limit (a floor) on how much lower the appraisal can drop to trigger buyer’s obligation to come up with additional cash at closing.
  - Box 2. Example: if the contract purchase price is $350,000, and the lender requires the property to appraise for that amount, and the buyer wants to waive the right to terminate under paragraph B.2. if the appraisal on the property comes back too low to satisfy the lender’s underwriting requirements.
  - If the appraisal comes in at $330,000 or higher, the buyer cannot terminate the contract under Paragraph B.2. and must come up with additional cash over whatever loan they can receive to complete the purchase at $350,000.
  - If, however, the appraisal comes in at less than $330,000, the buyer may terminate the contract under Paragraph B.2. and receive a refund of the earnest money.
  - Box 3. Buyer may terminate the contract under Paragraph B.2. and get a refund of the earnest money if the appraisal does not satisfy the lender’s underwriting requirements. And, even if the appraisal satisfies the lender’s requirements, buyer may still terminate and get a refund of earnest money, if the appraisal is less than an agreed value.
  - Box 3. For example, if the contract purchase price is $350,000, and the buyer only wants to purchase the property if it appraises for $345,000 or more, the buyer would put $345,000 in the blank in that box. They would also put in the number of days they think it would take to obtain an appraisal --let’s say 30 days.
  - If the appraisal comes in at $343,000, and that satisfies the lender’s underwriting requirements, the buyer may still terminate the contract under the terms of this option. The buyer must provide a copy of the appraisal to the seller in order to terminate.

THIRD PARTY FINANCING ADDENDUM

Paragraph B.2. Property Approval

- Buyer may terminate contract and receive refund of earnest money if lender decides the property does not satisfy lender’s underwriting requirements.
- Most common underwriting requirement -the property must appraise to the minimum value required by the lender.
- There is no time limit for Property Approval –lender can decline loan up until closing.
When will each box most likely be used?

- Box 1 will most likely be used in transactions when:
  » The buyer is fairly confident that the appraisal will be at or above a certain amount; and
  » The buyer is willing to assume the obligation to close the sale (i.e. has access to additional cash available) regardless of the appraised value.
- Box 2 will most likely be used in the same conditions as set out under Box 1, but the buyer wishes to place a limit on how much extra cash he is willing to commit to close the transaction.
- Box 3 will most likely be used when a buyer wants to have the unequivocal right to terminate the contract if the appraisal falls below a certain amount.

Do Parties Have to Use This Addendum?

- No. This addendum is not required to be used unless the parties want one of these special appraisal contingencies to the contract.
- No addendum is needed if the provisions in the Third Party Financing Addendum are acceptable as written.

Forms Up for Adoption in May 2018

- Notice of Buyer’s Termination of Contract Amendments include the election to terminate given under one of the option in the new Addendum Concerning Right to Terminate Due to Lender’s Appraisal and under paragraph 6.D. when objections to title or survey are not timely cured.
- Notice of Seller’s Termination of Contract. New notice proposed for Sellers to use to give notice of termination under rights granted under the mandatory contract forms or addenda (Mainly under revised Paragraph 5).