Chapter 4

Promulgated Contract & Addendum Forms

Promulgated Contracts

Promulgated contracts and addenda are created and revised by the Broker Lawyer Committee. This committee is statutorily authorized to create promulgated contracts for TREC, and TREC has the authority to require their use by license holders. The Broker Lawyer Committee consists of six attorneys appointed by the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the Governor. TREC-approved contract forms are intended for use by licensed real estate brokers or sales agents who are trained in their correct use. Mistakes in the use of a form may result in financial loss or an unenforceable contract.

Promulgated Contract Changes Since January 1, 2014

TREC Form No. 47-0, Addendum for Property in a Propane Gas System Service Area (New) 2014
TREC Form No. 9-12, Unimproved Property Contract 2015
TREC Form No. 20-13, One to Four Family Residential Contract (Resale) 2015
TREC Form No. 23-14, New Home Contract (Incomplete Construction) 2015
TREC Form No. 24-14, New Home Contract (Complete Construction) 2015
TREC Form No. 25-11, Farm and Ranch Contract 2015
TREC Form No. 26-7, Seller Financing Addendum 2015
TREC Form No. 30-12, Residential Condominium Contract (Resale) 2015
TREC Form No. 32-4, Condominium Resale Certificate 2015
TREC Form No. 38-5, Notice of Buyer’s Termination of Contract 2015
TREC Form No. 39-8, Amendment to Contract 2015
TREC Form No. 40-7, Third Party Financing Addendum 2015

Contract Changes Highlights

The noted changes apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the One to Four Family Residential Contract (Resale). The One to Four Family Residential Contract (Resale) and the new Third Party Financing Addendum will be reviewed in detail later in this chapter.

* Paragraph 3, Sales Price, now references all of the financing addenda previously contained in paragraph 4 of the old versions.
* The Third Party Financing Addendum is completely rewritten and addresses both credit approval and property approval by the lender. Reverse mortgage loans are also addressed in this addendum, so form OP-N, Reverse Mortgage Financing Addendum is repealed.
* A new paragraph 4 is added regarding license holder disclosure. This paragraph is where a license holder will disclose that he or she is a party to the transaction or related to a party that requires disclosure under the law.
* A new paragraph 6E(10), Title Notices, Notice of Water Fluctuations, is added to add new statutory notice requirement regarding the fluctuation of the level of certain impoundments of water that adjoin a property.
* Paragraph 7A, Property Condition, Access, Inspections and Utilities, is amended to add a provision that hydrostatic testing must be authorized in writing by the seller.
* Paragraph 9, Closing, is amended to add a provision allowing a ten-day extension of closing if the buyer’s lender is required to provide additional disclosures mandated by the TILA-RESPA Integrated Disclosure Rule. Paragraph 9B(5) is amended to conform the language with a statutory change to the property code, noting that the buyer has to acknowledge to a tenant that the buyer has acquired the property and is responsible for the return of the security deposit.
* Paragraph 14, Casualty Loss, is amended to make it clear that an insurance company must permit insurance proceeds to be assigned to the buyer before the buyer can use this option after a casualty.
* Paragraph 18D, Escrow Damages, is amended to take out the treble damages provision based on recent case law.
* Paragraph 23, Termination Option is amended to require a 5 p.m. local time deadline for delivery of all notices under the paragraph.
* License numbers are added to the Broker Information Section to facilitate compliance with the TILA-RESPA Integrated Disclosure Rule.
* Paragraph 13, Prorations and Rollback Taxes, in the Farm and Ranch and Unimproved Property Contract forms, is amended to provide that assessments imposed due to the seller’s use or change in use of the property are the seller’s responsibility.
* A new Paragraph 2D to the Condominium Contract Form is added to address situations where the condominium documents reveal the existence of a right of first refusal after the parties enter into a contract.
* The Condominium Resale Certificate is amended to conform to new statutory disclosure requirements.
* The Seller’s Disclosure of Property Condition (OP-H) is amended to conform to a new statutory requirement.
Featured Contract Review

One-to-Four Residential Contract (Resale) - Appendix A

The purpose of this section is to review TREC forms and to look at the new provisions in order to bring out a discussion about common problem areas and provisions that are commonly misunderstood.

**Paragraph 1**

How do you verify that you have correctly listed the parties to the contract? That the seller is the title holder of the property?

**Paragraph 2**

2.A. How do you verify that you have correctly inserted the legal description?

---

**TREC Case Study 1**

Seller Arnold’s property consisted of three parcels: Parcel 1, Lots 8 and 9R; Parcel 2, Lot 10R; and Parcel 3, Lot 11R. Each had a separate Tax ID Number. The listing agreement and the MLS referred only to lots 8 and 9R. The seller’s agent, Amos, had a copy of the survey that showed all four lots. A copy of the survey was available as an “additional document” on the MLS, and a copy was provided to the buyer.

In the contract, the buyer’s agent, Daphne, wrote in “Lots 8 and 9” instead of Lots 8, 9R, 10R and 11R. The survey was not included as an exhibit to the contract. Amos never noticed that the legal description was incomplete. The title commitment referred only to Lots 8 and 9R.

The problem with the legal description was discovered at the first attempt to close. Closing was then delayed awaiting resolution of the discrepancy regarding the complete legal description. The buyer’s VA lender required the three parcels to be combined into one and to be replatted by the county. Amos helped complete this process, and the transaction closed three months later.

**DISCUSSION**

What could Amos have done to avoid this complaint and the delay?

**Paragraph 3**

This paragraph has been amended to include the financing addendum options formerly in Paragraph 4. The revised Third Party Financing Addendum contains the other parts of old Paragraph 4 and is discussed below. In Paragraph 3 be sure to fill in all of the blanks and check the math. This paragraph often gets changed during the negotiations. How do you properly document contract price revisions?

Can multiple boxes be checked?

**Third Party Financing Addendum**

The revised addendum contains all of the information contained in the prior addendum as well as addressing reverse mortgage financing (previously in form OP-N) and the property approval provisions previously contained in former paragraph 4. The information is reorganized but essentially the same.

Which type of approval does the Third Party Financing Addendum address?

What is the difference between financing (loan) approval, property approval and credit approval?
True or False:

1. The amount listed as the principal amount of the loan(s) in the addendum should match the amount in Paragraph 3B of the contract.

2. If the buyer receives credit approval during the time period stated in the addendum, the earnest money will not be refunded if the loan does not close.

3. Suppose the buyer received credit approval and after the time period for termination under the addendum had passed, something changed in the buyer’s circumstances that caused the lender to subsequently disapprove the loan based on the buyer’s credit. The buyer can then give the seller notice, and the earnest money is returned to the buyer.

4. The buyer’s notice of failure to receive credit approval from the lender, written on a napkin and given to the seller before the deadline, is sufficient to terminate the contract and receive a return of the earnest money.

5. If the seller does not believe the buyer was denied credit approval after the buyer sends notice of termination stating such, the seller can demand proof from the buyer.

TREC Case Study 2

Sales agent Sam entered into a contract to sell his own real property with Buyer Betty. Sam disclosed in the contract that “one owner was a realtor.” Betty paid $1,000 earnest money, and the closing was scheduled. The contract included a Third Party Financing Addendum for Credit Approval that gave the buyer 30 days after the effective date to give the seller written notice of termination if credit approval was not received.

After 30 days, Betty did not give Sam notice of termination based on lack of credit approval. Three days later, Sam presented Betty with a Notice of Seller’s Termination of Contract stating that Sam had a right to terminate because Betty was in default for failing to provide Sam any third party financing information within the 30-day period. Betty relied on Sam’s representation and signed the termination agreement. The contract was terminated, and three days later, Sam returned the earnest money to Betty.

DISCUSSION

Was there a violation of statutes or TREC rules in this case? Why?

Paragraph 4

This paragraph is new. 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 percent or a trust for which the license holder acts as trustee or of which the license holder or the license holder’s spouse, parent or child is a beneficiary must notify the other party in writing before entering into a contract of sale. License holders who are members of trade associations such as the Texas Association of REALTORS, may need to make additional disclosures in similar situations. This paragraph provides a space for a license holder to disclose either of those required relationship disclosures.
Paragraph 5
* Who decides on the amount of earnest money and who chooses the escrow agent?
* Should you fill in the name of a specific closer at a title company or just the title company?
* When would you use the additional earnest money deposit provision?

Paragraph 6
* 6.A.8 Why would a buyer want to have the standard printed exception amended to read “shortages in area?”
* 6.B&D When the license holder receives the title commitment, what is done with it?
* What happens if the title company issues a revised commitment after you have reviewed the first one?
* 6.C If the seller furnishes an existing survey, how old can the survey be?
* 6.C What happens if the seller checks box (1) and then cannot locate the existing survey?
* 6.C What happens if the seller checks box (1) and furnishes the existing survey, but the survey is not acceptable to the buyer’s lender?
* A new paragraph 6E(10), Title Notices, Notice of Water Fluctuations, was added. A bill recently passed that now requires a statutorily prescribed notice about the fluctuation of the level of certain impoundments of water that adjoin a property. The statutory notice is provided in its entirety in the contract and no additional addendum is required.
* 6.E Why is it important to be familiar with the area in which you sell properties?

TREC Case Study 3
Sales agent Lan obtained a listing agreement to sell Sarah’s home. Sarah informed Lan that part of the lot had been sold in 2010 and that she did not have a copy of the survey from the 2010 transaction.

When Lan listed the home in the MLS, the acreage auto-populated with information from the county appraisal district. Buyer Bob requested a survey of the property and was provided with a survey from 1993. When Bob used the 1993 survey to walk the property line of the home, he noticed that an area had been parceled off—the piece sold in 2010. In negotiations, Bob requested that Sarah pay for a new survey of the property. The new survey showed that the actual acreage of the property was a quarter of an acre less than what was advertised on the MLS. Bob filed a complaint against Lan. Lan’s broker, Jim Bob, was not aware of any issues related to the transaction until after the complaint was filed. He was also not aware that Lan used the name “Lan & Company” in his real estate practice.

DISCUSSION
1. How might Lan’s actions be considered a violation of TREC’s rules or the Real Estate License Act?
2. Should Lan have recommended that Sarah have the property resurveyed before listing it?
3. Would you consider the MLS listing a misleading advertisement? Note: The intent to mislead is not required for an advertisement to be misleading.
4. How could a broker prevent an issue like this from occurring?
5. What TREC violations occurred?
Paragraph 7

In certain areas of the state, there has been a debate as to whether a hydrostatic test is an inspection that was permitted under the language in Paragraph 7A or an invasive procedure that the seller could prohibit the buyer from conducting. Since there are questions regarding whether hydrostatic testing may cause damage to a property, the Broker-Lawyer Committee amended Paragraph 7A to make a hydrostatic test a negotiable item between the parties, requiring the seller’s written consent before it may be performed.

* 7.A What is an inspection? May buyers test any structure or system in the house in any fashion they want? When is a test too invasive to be considered an inspection?
* 7.A A static line test is performed with permission of the seller. During the test, a pipe bursts. Who is responsible for fixing the pipe, seller or buyer? What factors could affect your answer?
* 7.A May a buyer request that additional inspections be performed after the option period has expired?
* 7.A Who decides the time of day when inspections can be conducted?
* 7.B Does it matter if the Seller’s Disclosure Notice is given to the buyer after the contract is signed by the parties?

True or False

* 7.D If the Buyer agrees to take the property “As Is,” there is no need to elect the option period in paragraph 23.
* 7.D If you wait until after inspections are performed during the option period to name the items the seller will fix prior to closing, you can just insert “repairs per inspection” in the blank in 7.D.(2).
* 7.E A seller may perform any required repairs if no license for the repair is required by law.
* 7.E A handyman is considered commercially engaged in providing repairs for things like caulking a tub, fixing a shelf or re-splining a screen.
* 7.H If the seller pays for a residential service contract for the buyer at closing and the seller’s agent receives a fee for services from the residential service company in connection with that real estate transaction, the seller has to give the buyer a disclosure statement at closing.
Paragraphs 9 & 10

Paragraph 9, Closing, is amended to add a provision allowing a ten-day extension of closing if the buyer’s lender is required to provide additional disclosures mandated by the TILA-RESPA Integrated Disclosure Rule. If there is no lender involved (e.g., cash purchase or seller financing), this provision is not applicable.

Paragraph 9B(5) is amended to conform the language with a statutory change to the Property Code, requiring the buyer of a tenant-occupied property to acknowledge to a tenant that the buyer has acquired the property and is responsible for the return of the security deposit. This includes situations regardless of whether the parties choose to transfer the security deposit or not.

* How should a license holder handle possession issues when one party has to be out of their house before the closing date or the closing is delayed at the last minute, and one party has a moving truck loaded and ready to go?

* What should a license holder tell a buyer if there appears to be a problem with a current lease on the property?

Paragraph 11

Discuss this statement: Only an experienced license holder should coach his or her client on how to use the special provisions section to get an advantage in the contract.

Paragraph 12

Insert the amount if the seller is paying any fees or making other concessions for the buyer.

Paragraph 13

What type of issues with proration should you anticipate?

Paragraph 14

**True or False:** If the property is destroyed by fire and the seller cannot restore the property, and the buyer still wants the property, the buyer can always close on the damaged property and receive an assignment of insurance proceeds.

Paragraph 18

This paragraph is amended in light of recent case law, which held that trebling the amount of the earnest money for wrongfully withholding the earnest money is not a proper measure of damages.

**True or False:** An escrow agent becomes a party to the contract under this paragraph once the escrow agent accepts the earnest money.

Why doesn’t the title company release the earnest money when it is clear from the terms of the contract that the client should get the money?

Paragraph 21

**True or False:** To make sure that the license holder is on top of all phases of the transaction, a best practice is to put the license holder’s name and information in this notice section.

Paragraph 23

The Termination Option paragraph is amended to set the time on the last day of the option by which it must exercised as 5 p.m. local time where the property is located.

* Make sure to fill in all blanks and check the applicable box. What happens if they are not checked or filled in?

**True or False:** Option money can be delivered to the seller, broker or title company.
Never Give Option Money to the Title Company

A buyer’s agent delivered an option check to Chickenfeed Title Inc. The front desk clerk at Chickenfeed accepted the option money check along with the earnest money check and the contract. The clerk then placed the contract and the option check into a folder and left it on the desk of a closer who was on vacation.

The listing agent wondered why he never received an option check. The buyer’s agent never verified that the check was delivered to the seller or the listing agent. Five days later when the closer returned from vacation, she found the option check in the file and noticed the five-day-old effective date. She notified the buyer’s agent and the listing agent. The listing agent said, “Wow, I just assumed since no money was tendered that the buyer had decided it was okay to just have a contract with no option.”

The buyer’s agent said, “Well, #!!!” The buyer was under contract with no termination option.

DISCUSSION

What should the buyer’s agent have done?

Never Give Option Money to the Title Company, The Sequel

A buyer’s agent delivered the earnest money and option money to the title company on the second day after the effective date of the contract. The title company emailed the listing agent and informed her that the check was available to be picked up. The listing agent replied via email that it was not her job to pick it up and that the buyer’s agent needed to deliver the option check to her or to her broker by the next day or the buyer would be under contract with no option. The option check was not picked up.

The buyer had inspections done and requested repairs. The seller and the listing agent reviewed this request. The seller responded that he was not interested in performing the repairs. The response was delivered in writing to the buyer’s agent. The buyer’s agent, on behalf of her buyer, sent a termination form and a release of earnest money form to the listing agent. The listing agent responded that the buyer did not have a right to terminate, because there was no option period because no option money was received.

The buyer went to the title company and raised a fuss in the lobby, demanding the earnest money. The title company, not wanting to lose business from either brokerage, paid an amount equal to the earnest money to the buyer. The buyer was happy to receive the earnest money; however, the seller wondered who gave the title company the authority to release the buyer from a contract without the seller’s permission.

DISCUSSION

What do you see that could have or should have been done?
TREC Case Study 4

Broker Bob represented a buyer in a transaction to buy real estate in Irving, Texas. The residential contract was executed on October 6th. The buyer paid $2,000 as earnest money. The contract included an option period that expired October 13th.

On the evening of October 13th, buyer Shakira left Bob a voice mail to terminate the contract. After listening to the Shakira’s voicemail, Bob sent a notice of buyers’ termination of contract pursuant to the unrestricted right of the buyer to terminate the contract under the option period clause, along with a request for release of earnest money to the seller, Lupe. Both documents were signed and dated October 14th.

On October 17th, after several emails between Bob, Shakira, Lupe, and the title company, Lupe informed Shakira that the termination was late and the earnest money was forfeited.

DISCUSSION

* What should Bob have done to avoid this result? Does it make a difference when Bob listened to the voicemail?
* Was there a violation of TRLA or TREC rules in this case?

Paragraph 24

Make sure your client reads this section.

Effective Date

Who fills in the effective date and when?
1. Why is the effective date critical?
2. Does a blank effective date invalidate the contract?

Broker Information

Please note that to help with compliance with new CFPB rules, license holders must now fill in their license number in this section.

Why do license holders only print their names and not sign?

Option Fee Receipt

Why should the broker have a policy regarding who can sign for receipt of an option fee? What do you think that policy should be?