

2018 UPDATE – NEW TREC FORMS & ADDENDA

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* = Information copy only, not a new form

** = Proposed Forms

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VI.

Proposed Notice of Buyer's Termination of Contract, TREC No. 38-6

Proposed Third Party Financing Addendum, TREC No. 40-8

Proposed Addendum Concerning Right to Terminate Due to Lender's Appraisal, TREC No. 49-1

Proposed Notice of Seller's Termination of Contract, TREC No. 50-0

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I.

Commentary

A.1. HISTORY

The Texas Real Estate Commission (“TREC”) was established by the Texas Legislature in 1949. The purpose of TREC is to “safeguard consumers in matters of real property transactions and valuation services.” (per TREC website, July 19, 2018). The TREC website homepage (including public access to addenda, contracts and forms) can be accessed at www.trec.texas.gov.

TREC administers four laws for the benefit of the public, being (1) Texas Occupations Code, Chapter 1101 – The Real Estate License Act; (2) Texas Occupations Code, Chapter 1102 – Real Estate Inspections; (3) Texas Occupations Code, Chapter 1303 – the Residential Secure Company Act; and (4) Texas Property Code, Chapter 221 – the Texas Timeshare Act.

Per TREC’s appointment power as detailed in Texas Occupations Code, Section 1101.251, et seq., TREC has appointed an advisory committee of brokers and lawyers to assist TREC in the preparation for promulgation of various addenda, documents or forms. Such appointed advisory committee is generally referred to as the “Texas Broker-Lawyer Committee” (the “Committee”). The Committee is composed of six attorneys and one broker or brokers and lawyers, who are appointed by the Governor of Texas for six-year staggered terms of office.

A.2 CAUTION ON PROPER USE

The following warning notice is quoted from the TREC website homepage:

“As public records, contract forms adopted by the Texas Real Estate Commission are available to any person. Real estate license holders are required to use these forms.

However, TREC contract forms are intended for use primarily 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 a contract which is unenforceable. Persons using these forms assume all risks associated with their proper use.

If you are obtaining the forms for possible use in a real estate transaction, you should contact a real estate license holder or an attorney for assistance. TREC cannot provide legal advice to the public on private contractual matters.”

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A.3 INTRODUCTION

On February 18, 2018, the Texas Real Estate Commission approved (on an initial voluntary basis) new contract forms and addenda forms to be used by licensed real estate brokers and agents when representing buyers or sellers of residential property. The approved forms are mandatory for such use, effective as of May 15, 2018.

The revised forms include new TREC Form No. 20-14, One to Four Family Residential Contract (Resale); TREC Form No. 23-15, New Home Contract (Incomplete Construction); TREC Form No. 9-13, Unimproved Property Contract; TREC Form No. 25-12, Farm and Ranch Contract; TREC Form No. 30-13, Residential Condominium Contract (Resale); TREC Form No. 36-4, Addendum For Authorizing Hydrostatic Testing; and TREC Form No. 49-0; Addendum Concerning Right To Terminate Due To Lender's Appraisal.

B. CHANGES COMMON TO ALL FORMS

- (1) Paragraph 2 revised to clarify that any reservations of mineral rights must be done by separate addendum. For example, see TREC Form No. 44-2, Addendum For Reservation of Oil, Gas, and Other Minerals.
- (2) "Effective Date" is now a defined term, per the Final Acceptance block just above the signature blanks provided for the contract parties.
- (3) Earnest Money must be delivered to the Escrow Agent within 3 days after the Effective Date.
- (4) If the last day of the 3 day Earnest Money delivery period falls on a Saturday, Sunday, or legal holiday, the legal last day to deliver Earnest Money is the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (5) If the Earnest Money is not timely delivered, the Seller may terminate the sale contract or exercise Seller's Paragraph 15 remedies, or both, by providing notice of termination of the sales contract to Buyer before Buyer delivers the Earnest Money to the Escrow Agent.
- (6) "Time is of the essence" language added to Paragraph 5.
- (7) Paragraph 6.A.(9) adds an exception or exclusion regarding minerals as approved by the Texas Department of Insurance.
- (8) Paragraph 6.B., "Due to factors beyond Seller's control" deleted as a time delay exception for Sellers' timely delivery of the Commitment and Exception documents to Buyer.
- (9) Paragraph 6.D. now defines the time by which Seller must cure objections as the "Cure Period" and provides a specific time frame by which the Buyer must notify the Seller that

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