



**Agency Bulletin: AGTX-2020-008**

Date: November 19, 2020  
To: FNTI Texas Agents  
From: FNTI Agency Department  
RE: TREC Upcoming Changes – Paragraph 5

The Texas Real Estate Commission approved multiple revisions to the TREC forms at its November 10 quarterly meeting, but the revision to paragraph 5 of the One to Four Family Residential Contract (Resale), relating to the delivery of the option fee to the title company, has generated the most interest and questions.

The final effective date for the revised forms will be set by the Commission at an upcoming meeting and at this time, they have determined that there will be no optional use of the forms prior to the effective date. It is anticipated that the forms will have an effective date in March/April 2021.

Paragraph 5 was amended to authorize and require payment of the option fee to the escrow agent separately or combined with the earnest money in a single payment. The revised paragraph establishes the order of application of the funds if delivered in a single payment: to be credited first to the option fee, then to the earnest money, then to any additional earnest money. The escrow agent is authorized to release the option money to the Seller without further notice to and/or consent from the Buyer.

The promulgated language (relevant portion) will read: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_, as escrow agent, at \_\_\_\_\_(address) \$\_\_\_\_\_ as Earnest Money and \$\_\_\_\_\_ as the Option Fee. The Earnest Money and Option Fee shall be made payable to escrow agent and may be paid separately or combined in a single payment.

Paragraph 5 goes on to address other conditions such as last day for performance falling on a weekend or holiday, the Buyer's unrestricted right to terminate within \_\_\_\_\_ days (defines the "Option Period") by giving the required Notice to Seller by 5:00 p.m. local time and incorporates language previously found in paragraph 23 relating to the remedy for failure to timely deliver the option fee and earnest money.

Delivery of the option fee and earnest money funds can be accomplished by the Buyer by wiring the funds to the title company or paying by check, payable to the title company. In addition, since the title industry has increasingly become an electronic world, some agents have allowed the earnest money funds to be delivered electronically via an approved app (user takes a photo of the front and back of a check and the funds are sent electronically to the title company), and we can expect the option fee to be handled in the same manner. If a check is delivered to the title company, then good funds (collected and deposited) must be in hand before the title company can disburse the option fee to the Seller, generally a 10 day to two week turnaround.

In addition to acknowledging receipt of the Earnest Money (Earnest Money Receipt), the Escrow Agent will be responsible for acknowledging receipt of the Option Fee (Option Fee Receipt).