

Changes to Delivery of Option Fee

Changes to the Texas Real Estate Commission residential contract forms go into effect April 1, 2021.

What changes are being made to delivery of the option fee?

TREC recently adopted changes to their residential contract forms with respect to the delivery of option fees. Under the revised forms, which become mandatory April 1, 2021, a buyer is required to deliver the option fee to the title company, not to the seller.

What is the deadline for delivery of the option fee to the title company under the revised forms?

The buyer must deliver the option fee to the title company within three days after the effective date of the contract.

May the buyer deliver the option fee together with the earnest money?

Yes. The option fee and earnest money may be paid separately or combined in a single payment. The amount delivered will be applied first to the option fee then to the earnest money. Any amount of funds remaining after that will be applied to any additional earnest money.

Will the seller have to wait until closing to receive the option fee from the title company?

No. Under the revised forms, the buyer authorizes the escrow agent to release and deliver the option fee to the seller at any time without further notice to or consent from the buyer, and releases escrow agent from liability for delivery of the option fee to the seller. The option fee will be credited to the sales price at closing. Note, however, that any disbursement may be conditioned on the collection of good funds acceptable to the escrow agent.

When am I required to use the updated versions of the TREC residential forms?

The updated versions may be used on a voluntary basis a few days after February 16, 2021, when TREC meets to finalize two of the forms that were previously omitted. All the updated forms are mandatory April 1, 2021.

Texas REALTORS® is working with all our forms vendors, including zipForm, to ensure the forms are posted prior to April 1. Look for the updated forms to replace the current forms in early March in the vendors' libraries and on texasrealestate.com. It will be important during this time to note which form you are using to ensure your brokerage practice adheres to the changes in the forms regarding delivery of option fee.

Will title companies be ready to receive option fees?

The Texas Land Title Association is working with their members to ensure title companies are aware of the changes and prepared [to](#) receive delivery of the option fee.

Which forms were updated?

TXR	TREC	Form Name
1601	20-14	<i>One to Four Family Residential Contract (Resale)</i>
1603	23-15	<i>New Home Contract (Incomplete Construction)</i>
1604	24-15	<i>New Home Contract (Completed Construction)</i>
1605	30-13	<i>Residential Condominium Contract (Resale)</i>
1607	9-13	<i>Unimproved Property Contract</i>
1701	25-12	<i>Farm and Ranch Contract</i>
1922	36-8	<i>Addendum for Property Subject to Mandatory Membership</i>

Not every contract received the same update, so check [TREC's website](#) for specifics.

What are the changes that were made to the *One to Four Family Residential Contract (Resale)*?

- Paragraph 2C: The definition of Controls was updated to include both software and applications used to access and control accessories along with dedicated hardware solely used for the accessory.
- Paragraph 4: This paragraph now contains lease information, including references to the new residential and fixture lease addenda as well as information on natural resource leases to which seller is a party.
- Paragraph 5: The revised section combines payment of earnest money and termination option in a single provision and calls for payment of the termination option fee to the escrow agent.
- Paragraph 8: The previously proposed version removed the language stating the brokers' fees obligations. This language was added back in.
- Paragraph 10: A Smart Devices section was added to clarify that those devices get transferred with the sale of the property.
- Paragraph 21: The notice information changed to allow for more email addresses by updating the email to read "Email/Fax."
- Paragraph 23: This paragraph was deleted to follow the changes to Paragraph 5.
- The Broker Information page now contains additional space for team names.
- Disclosure language at the bottom of the Broker Information page was updated regarding broker compensation.

Are additional forms being considered?

The commission held a special meeting to propose updating two forms previously omitted from consideration: the *Notice of Buyer's Termination of Contract* (TREC 38-6; TXR 1902) and the *Short Sale Addendum* (TREC 45-1; TXR 1918). They will be considered for adoption at TREC's February 16, 2021, meeting to ensure conformity with changes regarding the delivery of option fee, so that all forms will be ready for the April 1 effective date.