

President
Michael C. Savas, CTIP



Executive Vice President & CEO
Leslie Midgley, CAE

January 6, 2020

Kristen Worman
TREC Deputy General Counsel
Texas Real Estate Commission
1700 Congress Ave #400
Austin, TX 78701

Dear Ms. Worman,

This submittal is by the Texas Land Title Association (TLTA) in connection with the Broker – Lawyer Committee meeting scheduled for January 10, 2020.

Founded in 1908, TLTA is a statewide trade association representing the Texas title insurance industry and currently serving over 15,000 professionals involved in the safe and efficient transfer of real estate. In the course of their daily work, our membership serves over a million consumers each year. With active members in 253 of 254 Texas counties, TLTA membership comprises over 85 percent of all title insurance agents and underwriters licensed to do business in Texas. From time to time, the Broker Lawyer Committee may take up considerations of great importance to our daily functions. On those occasions, we will endeavor to share with the Committee our perspective in order to aid in your deliberations.

It is TLTA's understanding that the Agenda includes discussion of Paragraph 23. Termination Option, in TREC Forms 20-14, 9-13, 23-15, 24-15, 25-12, and 30-13. We applaud this undertaking as the current language has proven to be confusing for consumers, license holders and title companies serving as escrow agent, and creates an unnecessary step that increases cost and loss of time. It also can have unintended consequences and disastrous results if the separate check is not timely delivered. Please consider the proposal below which includes the Option Fee as a specific portion of the Earnest Money to be delivered to the title company. This will avoid the necessity of separate consideration being paid and delivered to the seller. If the transaction closes, the entire Earnest Money, including the Option Fee portion, is applied to closing.

Specifically, TLTA suggests the following substitution for paragraph 23:

23. TERMINATION OPTION: Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within ___ days after the Effective Date of this contract. Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed, \$___ of the earnest money will be paid to Seller as independent consideration for Buyer's unrestricted right to terminate and the balance will

be refunded to Buyer, subject to any deductions pursuant to Paragraph 18B. If no dollar amount is stated in this Paragraph 23, or if Buyer fails to pay the earnest money within the time provided in Paragraph 5, this paragraph will not be a part of this contract and Buyer will not have the unrestricted right to terminate this contract. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

Also enclosed, please find a red-line of the existing language together with the proposed language.

This approach has proved successful in commercial transactions and is one option included in the contract form adopted by the Texas Association of Realtors (Form TAR-1801). The proposal still provides for inserting an amount and time period, but it eliminates the delivery issue. This in turn is simpler and more direct for the buyer with the following benefits:

- It reduces the risk of liability to the license holder and escrow agent if the option fee is not timely delivered.
- The license holder representing the buyer will be spared the time of having to arrange for the separate delivery of the option fee check.
- Arguably, the escrow agent is prohibited from taking custody of the separate check and seeing to its delivery.
- It is consistent with emerging technology that provides for earnest money payment, which can allow for a more secure and less cumbersome transfer between parties.
- The consumer benefits from a more secure execution of a contract and a more rapid path to opening a file and closing the transaction.

TLTA has an additional suggestion for clarification within the contract forms, though possibly not timely for the January agenda. Developed over time, the TREC forms now provide numerous events triggering an automatic return of earnest money without reference to any other paragraph. However, paragraph 18B provides for certain deductions for expenses. We would welcome a clarification in paragraph 18B, or elsewhere, such that any return of earnest money is subject to the specified deduction of expenses and the Option Fee.

Again, TLTA appreciates your consideration of these proposals. Thank you so much for your continuing extraordinary efforts to benefit the consumer and the license holders whom you serve.

Sincerely,



Michael C. Savas, CTIP
President

TLTA PROPOSED REVISION OF PARAGRAPH 23 OF TREC CONTRACT FORMS

Clean Version:

23. TERMINATION OPTION: Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within ___ days after the Effective Date of this contract. Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed, \$_____ of the earnest money will be paid to Seller as independent consideration for Buyer's unrestricted right to terminate and the balance will be refunded to Buyer, subject to any deductions pursuant to Paragraph 18B. If no dollar amount is stated in this Paragraph 23, or if Buyer fails to pay the earnest money within the time provided in Paragraph 5, this paragraph will not be a part of this contract and Buyer will not have the unrestricted right to terminate this contract. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

Strike Throughs & Underlined:

23. TERMINATION OPTION: ~~For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ (Option Fee) within 3 days after the Effective Date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified.~~ If Buyer gives notice of termination within the time prescribed, \$_____ of the earnest money will be paid to Seller as independent consideration for Buyer's unrestricted right to terminate and the balance will be refunded to Buyer, subject to any deductions pursuant to Paragraph 18B. If no dollar amount is stated in this Paragraph 23, ~~as the Option Fee~~ or if Buyer fails to pay the earnest money ~~Option Fee~~ to Seller within the time provided in Paragraph 5 ~~prescribed~~, this paragraph will not be a part of this contract and Buyer will ~~shall~~ not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, ~~the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing.~~ **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**