

On November 10, 2020, and becoming mandatory April 1, 2021, the Texas Real Estate Commission enacted some major changes to the TREC one-to-four family resale contract (TREC 2015). One of the most significant changes is found in paragraph 5 of the contract, concerning Option Fees. Some of these FAQs are taken directly from TREC's website at https://www.trec.texas.gov/article/changes-delivery-option-fee-0



A Under the revised contract 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?

A The buyer must deliver the option fee to the title company within three days after the effective date of the contract. Note, however, that if the last day to deliver the option fee falls on a Saturday, Sunday, or legal holiday, the time to deliver is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.

## Are option fees refundable to Buyers?

Option fees are never refundable to a Buyer. They are paid for the RIGHT to terminate the contract, regardless of whether that right is used, or not.

For detailed information and all important contract changes, please visit:

www.trec.texas.gov



Q 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?

A 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. Title companies, which are regulated by the Texas Department of Insurance, must comply with "good funds" rules before disbursing option fees.

What about additional option fees?

A The delivery of an additional option fee was not changed – per the wording the TREC amendment form, this fee is presumed and stated to have already been delivered to Seller upon execution of the Amendment.

What happened to box to check to allow Option Fees to be credited or not credited to the Sales Price?

That box and choice was removed – now all option fees are, by default, credited to the Sales Price.

What if a Buyer terminates and then stops payment on their option fee check?

A The possibility of this scenario also existed before this change was made. A Seller could take the legal position that the option was not paid for, and therefore the Buyer's termination under the option period was legally ineffective. Sellers will have to consult their own chosen legal counsel on this matter.

If you have additional questions please contact one of our attorneys at bit.ly/RTTattorney

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