

# 2018 Contract Changes & New Addenda

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Online Town Hall

February 22, 2018

# REVISED CONTACT FORMS

## APPROVED BY THE COMMISSION 2/18

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- Unimproved Property Contract
- One to Four Family Residential Contract (Resale)
- New Home Contract (Incomplete Construction)
- New Home Contract (Complete Construction)
- Farm And Ranch Contract
- Residential Condominium Contract (Resale)

## **NEW ADDENDA APPROVED BY THE COMMISSION 2/18**

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- Addendum for Authorizing Hydrostatic Testing
- Addendum Concerning Right to Terminate Due to Lender's Appraisal

# WHEN AND WHERE

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- Voluntary use now
- Mandatory use beginning May 15, 2018
- Forms available on our website (look for 2/12/2018 version)
- Redline versions available on our website in the materials for February 12, 2018 Commission meeting

# SUMMARY OF CONTRACT CHANGES

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- Changes apply to all contract forms unless otherwise stated
- Paragraph Number references are from the One to Four Family Residential Contract
- **Paragraph 2** is amended to clarify that any reservations of mineral rights must be done in a separate addendum.
- **“Effective Date”** is made a defined term throughout the contracts but is still tied to the final date of acceptance provided on the signature page.

# Paragraph 5 Earnest Money

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**5. EARNEST MONEY:** Within 3 days after the Effective Date, Buyer must deliver \$\_\_\_\_\_ as earnest money to \_\_\_\_\_, as escrow agent, at \_\_\_\_\_ (address). Buyer shall deliver additional earnest money of \$\_\_\_\_\_ to escrow agent within \_\_\_\_\_ days after the Effective Date of this contract. If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. **Time is of the essence for this paragraph.**

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# Paragraph 5 Earnest Money

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- **Paragraph 5** is amended to require Earnest Money to be delivered within 3 days after the Effective Date.
- If the 3<sup>rd</sup> day falls on a Saturday, Sunday or legal holiday, the Earnest Money is due on the next day that is not a Saturday, Sunday or legal holiday.
- Seller may terminate the contract if buyer fails to timely deliver the Earnest Money. Seller must notify buyer of seller's election to terminate the contract before buyer delivers the Earnest Money.

# TIMEFRAME FOR DELIVERY

## When is earnest money due?

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Think of it as calendar days plus...not business days

- **Contract is fully executed and accepted on Friday?**
  - Monday
- **What if Monday is a legal holiday?**
  - Tuesday
- **What if the Effective Date is Monday and Monday is a legal holiday?**
  - Thursday



# TIMEFRAME FOR DELIVERY

When is earnest money due?

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- **Effective Date is Tuesday?**
  - Friday
- **Effective Date is Tuesday and Friday is a legal holiday?**
  - Monday
- **Effective date is Saturday?**
  - Tuesday

# RACE TO DELIVER/TERMINATE

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Earnest Money is not delivered within 3 days - What happens?

**Race is on!**

- Seller has to give notice of termination to Buyer before Buyer delivers Earnest Money to Title Company

# SUMMARY OF CONTRACT CHANGES

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- **Earnest Money Receipt Page.** Separate receipt boxes added for Earnest Money, the Contract and Additional Earnest Money. Space to enter the time received added. Initial boxes for Seller and Buyer were removed.
- Questions on Paragraph 5 revisions?

# SUMMARY OF CONTRACT CHANGES

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- **Paragraph 6A(9)** adds an exception for minerals as approved by the Texas Department of Insurance.
- **Paragraph 6B** “due to factors beyond Seller’s control” is removed from the sentence allowing Buyer to terminate the contract if Commitment and Exception documents not timely received.
- **Paragraph 6 D** now defines the time by which seller must cure objections as the “Cure Period” and provide a specific time frame by which the buyer must notify the seller that the buyer will terminate or waive the objections if the objections are not cured within the Cured Period.

# SUMMARY OF CONTRACT CHANGES

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- **Paragraph 20** is amended to clarify what is meant by “applicable law” and an “affidavit” when seller is a “foreign person.”
- **Paragraph 22** is amended to add the two new addenda forms as applicable
- **Broker’s Information Page.** The spaces for fax numbers were removed and spaces for phone numbers for the brokers were added. Initial boxes for Seller and Buyer were removed if in current contracts.

# SUMMARY OF CONTRACT CHANGES

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Specific contracts only:

- **Paragraph 2B(2) and 2C (Condominium Contract Only)** clarifies that the seller bears the expense to deliver the condominium documents and the resale certificate to buyer.
- **Paragraph 2F. Reservations (Farm and Ranch Contract Only)** the parenthetical stating that reservations may be included in special provisions was deleted. Reservations are to be addressed in an addendum.

# ADDENDUM FOR AUTHORIZING HYDROSTATIC TESTING

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- Recall Paragraph 7.A. says: “Any hydrostatic testing must be separately authorized by Seller in writing.”
- This new addendum will now be that written authorization.
- The parties authorize a hydrostatic test to be performed at buyer’s expense and elect who will be responsible for damages caused by the test.

# ADDENDUM FOR AUTHORIZING HYDROSTATIC TESTING

**Consult a licensed plumber about the risks associated with hydrostatic testing before signing this form.**

A. **AUTHORIZATION:** Seller authorizes Buyer, at Buyer's expense, to engage a licensed plumber to perform a hydrostatic plumbing test on the Property.

B. **ALLOCATION OF RISK:**

- (1) Seller shall be liable for damages caused by the hydrostatic plumbing test.
- (2) Buyer shall be liable for damages caused by the hydrostatic plumbing test.
- (3) Buyer shall be liable for damages caused by the hydrostatic plumbing test in an amount not to exceed \$\_\_\_\_\_.



# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- Created to address the situation where the parties want to create a special contingency based on the appraisal performed by the lender.
- Three options available that affect the basic rights of the parties
- First must understand paragraph B.2. Property Approval, in the Third Party Financing Addendum.

# THIRD PARTY FINANCING ADDENDUM

## Paragraph B.2. Property Approval

- Buyer may terminate contract and receive refund of earnest money if lender decides the property does not satisfy lender's underwriting requirements
- Most common underwriting requirement - the property must appraise to the minimum value required by the lender
- There is no time limit for Property Approval – lender can decline loan up until closing

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- **Box 1.** The buyer is giving up his or her right to terminate the contract under paragraph B.2. if the appraisal on the property comes back too low to satisfy the lender's underwriting requirements.
  - ❑ (1) Buyer may not terminate the contract under Paragraph B(2) of the Third Party Financing Addendum if Property Approval is not obtained because the opinion of value in lender's appraisal does not satisfy lender's underwriting requirements for the financing described in the addendum. If Buyer's lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is automatically increased by the amount the loan is reduced.

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- **Box 1.** If the appraisal of the property is too low for Buyer's initial loan as set forth in the contract, the buyer must produce additional cash (equity) at closing to close the purchase at the sales price listed in the contract.
- The lender's loan amount is automatically reduced by the same amount, thus causing the property to appraise to lender's standards.

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- **Box 2.** This option is basically the same as Box 1, except, the parties can put a limit (a floor) on how much lower the appraisal can drop to trigger buyer's obligation to come up with additional cash at closing.

⌋ (2) Buyer may not terminate the contract under Paragraph B(2) of the Third Party Financing Addendum if: (i) Property Approval is not obtained because the opinion of value in lender's appraisal does not satisfy lender's underwriting requirements for the financing described in the addendum; and (ii) the opinion of value is \$\_\_\_\_\_ or more. If Buyer's lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is automatically increased by the amount the loan is reduced.

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- **Box 2.** Example - if the contract purchase price is \$350,000, and the lender requires the property to appraise for that amount, and the buyer wants to waive the right to terminate under Paragraph B.2. only if the appraisal comes in no more than \$20,000 lower than the contract price – Parties would put \$330,000 in the blank in Box 2.
- If the appraisal comes in at \$330,000 or higher, the buyer cannot terminate the contract under Paragraph B.2. and must come up with additional cash over whatever loan they can receive to complete the purchase at \$350,000.
- If, however, the appraisal comes in at less than \$330,000, the buyer may terminate the contract under Paragraph B.2. and receive a refund of the earnest money.

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- **Box 3.** Buyer may terminate the contract under Paragraph B.2. and get a refund of the earnest money if the appraisal does not satisfy the lender's underwriting requirements. And, even if the appraisal satisfies the lender's requirements, buyer may still terminate and get a refund of earnest money, if the appraisal is less than an agreed value.
- (3) In addition to Buyer's right to terminate under Paragraph B(2) of the Third Party Financing Addendum, Buyer may terminate the contract within \_\_\_\_\_ days after the Effective Date if:
  - (i) the opinion of value in the lender's appraisal is less than \$\_\_\_\_\_;
  - (ii) Buyer delivers a copy of the appraisal to the Seller. If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer.

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- **Box 3.** For example, if the contract purchase price is \$350,000, and the buyer only wants to purchase the property if it appraises for \$345,000 or more, the buyer would put \$345,000 in the blank in that box. They would also put in the number of days they think it would take to obtain an appraisal -- let's say 30 days.
- If the appraisal comes in at \$343,000, and that satisfies the lender's underwriting requirements, the buyer may still terminate the contract under the terms of this option. The buyer must provide a copy of the appraisal to the seller in order to terminate.



# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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When will each box most likely be used?

- **Box 1** will most likely be used in transactions when:
  - (i) the buyer is fairly confident that the appraisal will be at or above a certain amount; and
  - (ii) the buyer is willing to assume the obligation to close the sale (i.e. has access to additional cash available) regardless of the appraised value.

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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When will each box most likely be used?

- **Box 2** will most likely be used in in the same conditions as set out under Box 1, but the buyer wishes to place a limit on how much extra cash he is willing to commit to close the transaction.
- **Box 3** will most likely be used when a buyer wants to have the unequivocal right to terminate the contract if the appraisal falls below a certain amount.

# ADDENDUM CONCERNING RIGHT TO TERMINATE DUE TO LENDER'S APPRAISAL

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- Do parties have to use this addendum?
- NO. This addendum is not required to be used unless the parties want one of these special appraisal contingencies to the contract.
- No addendum is needed if the provisions in the Third Party Financing Addendum are acceptable as written.

# PROPOSED NOTICE FORMS UP FOR ADOPTION IN MAY 2018

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- **Notice of Buyer's Termination of Contract.** Amendments include the election to terminate given under one of the option in the new Addendum Concerning Right to Terminate Due to Lender's Appraisal and under paragraph 6.D. when objections to title or survey are not timely cured.
- **Notice of Seller's Termination of Contract.** New notice proposed for Sellers to use to give notice of termination under rights granted under the mandatory contract forms or addenda (Mainly under revised Paragraph 5).

# QUESTIONS?

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