

Closing Tips

Release of Earnest Money



If a transaction cancels within the option period, paragraph 5B calls for the title company to “release any Option Fee remaining with the escrow agent to Seller and any earnest money will be refunded to Buyer”. The earnest and option money may be refunded without written authorization from both parties provided the check has cleared the bank and we have satisfactory evidence that the contract was terminated before the option period expired.

If a transaction cancels after the option period has expired a written authorization from both parties is required directing us how the money is to be disbursed. Depending on the situation, we may choose to follow any applicable escrow provision in the earnest money contract relating to refund of the earnest money. A typical approach is set out in Paragraph 18(C) of the TREC One to Four Family Residential Contract (Resale), which may apply when that is the contract used for the transaction. If both parties give written demand to us for the earnest money, and no agreement is reached, the earnest money may be surrendered to the court registry in an interpleader action so that the court disburses the earnest money pursuant to court order.