

Elements Of Earnest Money Receipt

A Review of Paragraph 5 of the TREC Contract

The Texas Real Estate Commission met on February 12th, 2018 and approved a significant change to the TREC One to Four Family Residential Contract (Resale) and many other contract forms. This change requires that the earnest money be delivered to the escrow agent within 3 days of the contract Effective Date and if this requirement is not fulfilled, the seller may terminate the contract.

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.**

EARNEST MONEY RECEIPT			
Receipt of \$ _____ Earnest Money in the form of _____ is acknowledged.			
Escrow Agent	Received by	Email Address	Date/Time
Address			Phone
City	State	Zip	Fax

As we review the revised paragraph 5 there are several elements we need to consider.

- Days in the contract are always calendar days and not business days.
- Since most escrow agents are closed on weekends and legal holidays, the contract allows for the extension of the 3-day deadline if the 3rd day falls on one of those.
- The revised earnest money receipt page now requires the escrow agent to document the time the earnest money is delivered.
- If the buyer fails to deliver the earnest money within 3 days, the seller has the option to terminate the contract.
- If the seller wants to exercise his option to terminate the contract, he must do so before the buyer delivers the earnest money to the escrow agent.
- The time indicated on the earnest money receipt page will determine whether the earnest money was delivered prior to or after the notice of termination by the seller.

Please contact your closing team or your business development representative with Independence Title to discuss the many options for delivering earnest money, including the electronic delivery app, Zoccam.