

Earnest Money

FAQ on Paragraph 5 of the TREC Contract

Why did they change the TREC contract in paragraph 5 to require earnest money to be delivered within 3 days?

While it has always been industry practice for the earnest money to be delivered within 3 days, the Realtor community wanted a deadline for the delivery of earnest money in the contract to ensure that this part of the transaction occurred in a timely manner.

What happens if the 3rd day falls on a Saturday, Sunday, or a day when Independence is closed?

There is a provision in the contract that allows for an extension of the 3-day deadline if the 3rd day falls on a Saturday, Sunday, or legal holiday.

What else did they change in paragraph 5 of the contract?

TREC also added a provision that allows the seller to terminate the contract if the buyer doesn't deliver the earnest money within 3 days of the contract Effective Date.

If the seller wants to terminate, how does that work?

If the seller decides he does want to execute his option to terminate under paragraph 5, then the termination notice must be delivered to the buyer or buyer's agent BEFORE the earnest money is delivered to the escrow agent (i.e. Independence).

Will we see an increase in seller terminations now?

No, there shouldn't be an increase in seller terminations. Keep in mind that the only way the seller can terminate under paragraph 5 is if the buyer fails to deliver the earnest money within 3 days. In most cases, the seller wouldn't want to exercise his right to terminate unless he has another offer on the property.

How will it be determined if the seller delivers the termination prior to the buyer delivering the earnest money?

On the earnest money receipt page, TREC has added a space for the escrow agent (i.e. Independence) to indicate what time the earnest money was delivered. This time will be compared to the time that the termination was delivered to the buyer or buyer's agent.

Who can fill in the time on the earnest money receipt page?

The receipt page of the contract should only be completed by Independence Title employees. Courier services are not authorized to complete this page of the contract.

What if a client asks you to put a different time on the receipt page than when we received the earnest money?

If you are asked to put false information on the receipt page, please let the client know that you are not allowed to do this. If the client becomes upset or you need help, please contact your branch manager or Escrow Help.

What Independence Title processes have changed?

The only process that has changed at this time is that we need to comply with the requirement that the time of the earnest money delivery be documented on the receipt page of the contract.

Is it our responsibility to keep track of the number of days left for the earnest money to be delivered?

It is not Independence Title's responsibility to track when the earnest money is delivered. This is the responsibility of the parties to the contract. Our only responsibility as escrow agent is to properly document the receipt of the earnest money.

When is this effective?

The new contract forms are available for use now and have a mandatory use date of May 15th, 2018.