



TEXAS REALTOR

One to Four Contract Problems

**A GUIDE COVERING
12 CONTRACT DETAILS**



One to Four Family Residential Contract (Resale)

A quick reference guide.

Get clarity about some confusing sections of the most popular TREC contract.

It's one of the most commonly used forms among Texas REALTORS®, which means there are more opportunities to make a misstep. Use the *One to Four Family Residential Contract (Resale)* (TAR 1601, TREC 20-14) correctly with this handy guide.



by David Jones

What is the “Effective Date” of the contract?

Page 8 of the contract contains a box to insert the date the parties execute the contract, which is called the effective date. The effective date is the most crucial date in the contract because it’s the day the contract officially binds the parties to the agreed-upon terms and it’s the date from which performance periods within the contract are measured.

When is the effective date?

The effective date is the date of “final acceptance.” Final acceptance means the day the last party to accept (sign) the contract *communicates* this acceptance to the other party or that party’s agent.

In a typical transaction, buyers send an offer. If sellers accept the offer, they must communicate their acceptance of the contract to the buyers. The date the communication occurs is the date the broker fills in as the effective date. Agents can confer with one another to ensure the proper effective date is written.

How to calculate time periods and deadlines

Most periods of performance in the *One to Four Family Residential Contract (Resale)* are written as “within X days after the Effective Date.” This means Day 1 of the performance period would be the first day *after* the effective date. The effective date should be considered “Day Zero.”

To determine a particular deadline, start with the day after the effective date as Day 1, and continue counting until you reach the number of negotiated days for that deadline.

What is the “Property”?

Paragraph 2 of the contract defines what “Property” the seller is selling to the

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The contract is still binding on the parties even if a broker doesn't fill in the effective date.

buyer. According to the contract, the seller is conveying “the land, improvements and accessories.”

Paragraph 2B, Improvements

Improvements include the house, garage, and all other “fixtures” and improvements *attached* to the real property. The contract lists several items that may be considered “improvements,” however, the items must be “permanently installed and built-in” for them to automatically convey to the buyers.

What is considered permanently installed and built-in?

Whether a particular item on a property is “permanently installed and built-in” is a factual issue determined on a case-by-case basis. There is no universal rule that states a particular item, such as a security system, is always permanently installed and built-in.

What is considered a fixture?

A fixture is an item that began its life as personal property, but was then attached to the real property in such a manner that it became part of the real property. Therefore, when sellers convey their real property, they are also conveying the fixture along with it.

Unfortunately, what is or is not a fixture is not a simple question to answer. Texas courts look at three factors to determine if an item is a fixture:

- Did the party that installed the item intend the item to become a permanent part of the real property (intent)?
- Was there a real annexation of the item to the real property (attachment)?
- Was the item adapted to the uses or purposes of the real property (customization)?

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Buyers and sellers should discuss any questionable items before executing a contract, so that all parties have the same understanding as to what items will stay with the property and which items the sellers will take with them.

Paragraph 2C, Accessories

Accessories do not have to be permanently installed. All the items listed under Accessories are conveyed to buyer as part of the property under the contract.

Paragraph 2D, Exclusions

If a seller intends to keep an item that would normally convey to a buyer, such as fixtures and improvements, the item must be listed as an “exclusion” under this paragraph, otherwise it will convey to buyer as part of the property.

How the Termination Option and Repair Amendments work together

Under Paragraph 23, Termination Option, buyers may pay a fee for the option to terminate the contract within a negotiated number of days. The option fee must be paid to the sellers—not to the title company—within three days after the effective date.

If no fee is listed on the contract, or if the buyer fails to pay the fee within three days, the buyer would not have the right to terminate under the Termination Option.

The buyers’ right to terminate the contract ends on the last day of the option period at 5 p.m. local time where the property is located. This is the only deadline in the entire contract that has an actual time of day for performance. For all other deadlines, a party would have until the end of the day (11:59 p.m.) to perform.

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If a seller is willing to convey personal property, such as a refrigerator listed in the MLS, the personal property must be included in the contract to be binding on the seller. A seller's personal property can be conveyed using the *Non-Realty Items Addendum to Contract* (TAR 1924, TREC OP-M).

A buyer is not in default of the contract for failure to pay the option fee. The only penalty for not paying the option fee is that the buyer doesn't have the option to terminate.

Repair Amendments

Since the contract is an “As Is” contract, the seller only has to make repairs to the property that they agree to either within the contract or after it’s executed with an amendment. If buyers are going to request seller make repairs during the option period, buyer’s agents should not wait until the last day of the option period to submit an amendment.

A repair amendment is not binding on the sellers until sellers sign it. The termination deadline is not automatically extended just because the buyers and sellers began repair amendment negotiations before the deadline. If the sellers haven’t signed the amendment by the last day of the buyers’ option period, the buyers must either send notice of termination by 5 p.m. local time where the property is located, or remain in the contract without the sellers agreeing to make any repairs.

What can REALTORS® write in Paragraph 11, Special Provisions?

The short answer? Very little. If clients absolutely want or need a special term to be written into their contract, you should advise them to consult an attorney.

Both The Real Estate License Act and the REALTOR® Code of Ethics prohibit REALTORS® from engaging in the unauthorized practice of law. Unless also a licensed Texas attorney, agents and brokers are crossing the line into the unauthorized practice of law by preparing or drafting a legal document or language for their clients.

The Special Provisions Paragraph provides instructions to only insert “factual statements and business details.” But what is the difference between a factual statement or business detail and

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language that could be considered the unauthorized practice of law?

TREC Rule 537.11(b)(5) provides guidance: “A license holder may not ... draft language defining or affecting the rights, obligations or remedies of the principals of a real estate transaction, including escalation, appraisal or other contingency clauses.” In other words, if a party has the right or is obligated to do something under the terms of the contract, an agent or broker cannot draft language changing that right or obligation. Therefore, it would not be considered a “factual statement” if the language inserted into special provisions requires a party to do something they didn’t have to do, or prohibits a party from doing something they could otherwise do under the terms of the contract.

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