

How to Use TREC's New Appraisal Contingency Addendum



Paragraph B(2) of the Third Party Financing Addendum allows a buyer to terminate the contract before closing and receive the earnest money if the property fails to satisfy the lender's underwriting requirements, like if the appraisal is too low for the lender's comfort.

But in some situations, a buyer might want to gain or even waive a right to terminate because of the appraisal. TREC's new form - Addendum Concerning Right to Terminate Due to Lender's Appraisal (1948, TREC 49-0) - has three different options that can change a buyer's ability to terminate because of an appraisal.

This new form can be used as an addendum to the contract when the Third Party Financing Addendum is used and the transaction does not involve FHA or VA financing.

Like other TREC addenda, if your buyer is not interested in pursuing any of these contingencies, you are not required to use this form.

Box 1

If your client selects this choice, she ... waives her right to terminate if the appraisal doesn't satisfy the lender's underwriting requirements. The form says if the lender reduces the amount of the loan, the buyer covers the difference between the loan and the sales price.

Your client may be interested in selecting this box if she ... has the cash to make up any difference between the loan offer and the sales price, and

- She really wants the property.
- She's competing against multiple offers and wants to show the seller she's serious.

Make sure your client ... understands the financial consequences.

Example 1: The sale price of the property is \$200,000, your client is making a \$40,000 down payment, and seeking \$160,000 in financing. The appraisal comes in at \$170,000, so now the lender will only loan \$130,000.

Your client cannot terminate because ... The appraisal doesn't satisfy the lender's underwriting requirements and your client will have to pay an extra \$30,000 on top of her \$40,000 down payment.

Ex. 1

(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.

Box 2

If your client selects this choice, she ... is waiving her right to terminate depending on the amount she selects for the space in (2)(ii), if the appraisal doesn't satisfy the lender's underwriting requirements.

The form says if the lender reduces the amount of loan because of the appraisal, and the appraisal is equal to or more than the amount written in (2)(ii), the buyer covers the difference between the loan and the sale price.

Your client may be interested in selecting this box if she ... has some cash to make up the difference between the loan offer and the sales price, but only to a certain amount, and

- She really wants the property.
- She's competing against multiple offers and wants to show the seller she's serious.

Make sure your client ... understands and carefully chooses the amount for the space in (2)(ii).

Example 2: The sale of the property is \$200,000, your client is making a \$40,000 down payment, and seeking \$160,000 in financing. The appraisal comes in at \$170,000, so now the lender will only loan \$130,000.

Your client can terminate because ... The appraisal doesn't satisfy the lender's underwriting requirements and the conditions of the waiver have not been met. The appraisal is not \$180,000 or more.

Example 3: The sale price of the property is \$200,000, your client is making a \$40,000 down payment, and seeking \$160,000 in financing. The appraisal comes in at \$190,000, so now the lender will only loan \$150,000.

Your client cannot terminate because ... The appraisal doesn't satisfy the lender's underwriting requirements and the conditions for the waiver have been met. The appraisal is more than \$180,000. Your client will have to pay an extra \$10,000 on top of her \$40,000 down payment.

Box 3

If your client selects this choice, she ... has an additional right to terminate the contract due to the appraisal in certain circumstances.

Your client may be interested in selecting this box if she ...

- Wants an option to terminate if the property doesn't appraise for a certain amount.
- Is concerned a lower appraisal might still meet the lender's underwriting requirements - if, for example, she is providing a higher down payment - preventing her from terminating under Paragraph B(2) of the Third Party Financing Addendum.

Make sure your client ... carefully considers the appraisal amount she is comfortable with and selects a time period that gives the lender enough time to obtain an appraisal.

Example 4: The sale price of the property is \$200,000, your client is making a \$60,000 down payment, and seeking \$140,000 in financing. The appraisal comes in at \$180,000, but the lender will still loan \$140,000.

Your client cannot terminate because ... The appraisal satisfies the lender's underwriting requirements and is not less than \$180,000.

Example 5: The sale price of the property is \$200,000, your client is making a \$60,000 down payment, and seeking \$140,000 in financing. The appraisal comes in at \$180,000, but the lender will still loan \$140,000.

Your client can terminate because ... The appraisal is lower than \$200,000. To terminate, your client must act within 30 days after the effective date and deliver a copy of the appraisal to the seller.

Ex. 2

(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 \$180,000 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.

Ex. 3

(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 \$180,000 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.

Ex. 4

(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 30 days after the Effective Date if: (i) the opinion of value in the lender's appraisal is less than \$180,000; and (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.

Ex. 5

(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 30 days after the Effective Date if: (i) the opinion of value in the lender's appraisal is less than \$200,000; and (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.