

Addendum Regarding Brokers' Fees (TXR 2406)

The *Addendum Regarding Brokers' Fees* (TXR 2406) is used with TREC residential sales contracts (i.e., the *One to Four Family Residential Contract*, *Unimproved Property*, and *New Home* contracts). This form documents the payment of brokers' fees in the transaction, including from a listing broker or seller to a buyer's broker.

Note: This addendum should not be used with the *Farm and Ranch Contract* (TREC 25-15; TXR 1701), which already contains provisions regarding broker fees in the contract.

Paragraph A. Addendum Controls. This paragraph states that if there is any conflict between this addendum and the sales contract, the terms of this addendum will control.

Paragraph B. Fees. Insert the county in Texas where the fees must be paid in cash. This county can be where your brokerage office, the property, or the title company that is closing the transaction is located.

Paragraph C. Listing Broker's Fees. This paragraph states that the listing broker will be paid a fee by the seller as specified in a separate written agreement (i.e., a listing agreement).

Paragraph D. Other Broker's Fees. This paragraph states that the buyer's broker may be paid by the seller or listing broker, depending on which box, if any, is checked. Also, it states that the buyer shall pay any remaining amount due to the buyer's broker as specified in a separate written agreement (i.e., a buyer representation agreement). Any payment from the seller or listing broker will be applied before the buyer's payment. Both D(1) and D(2) may be checked depending on how the buyer's broker will be paid.

Note: If a buyer's broker is receiving compensation from a listing broker or seller that exceeds the amount the buyer and buyer's broker previously agreed to in a buyer's representation agreement, the buyer's broker will need to amend the representation agreement to have the buyer authorize the buyer's broker to receive the full amount.

- **Paragraph D(1) (Listing Broker Pays Buyer's Broker).** Check this box only if the listing broker has agreed to pay the buyer's broker under a separate written agreement such as the *Compensation Agreement Between Brokers* (TXR 2402). *Insert* the amount of the agreed upon payment.

The amount inserted in Paragraph D(1) does not change the amount agreed to in the separate compensation agreement. If there is a conflict, the amount specified in the separate compensation agreement will control.

- **Paragraph D(2) (Seller Pays Buyer's Broker).** Check this box only if the seller agrees to pay the buyer's broker. If you check D(2), you also need to check either D(2)(a) or D(2)(b). Do not check both.
 - **Paragraph D(2)(a).** Check this box only if the seller has agreed to pay the buyer's broker using a separate written agreement such as the *Compensation Agreement Between Broker and Owner* (TXR 2401). *Insert* the amount of the agreed upon payment.

The amount inserted in Paragraph D(2)(a) does not change the amount agreed to in the separate compensation agreement. If there is a conflict, the amount specified in the separate compensation agreement will control.
 - **Paragraph D(2)(b).** Check this box only if the seller agrees to pay the buyer's broker as part of the sales contract. *Insert* the amount of the agreed upon payment.

Note: This paragraph creates a new obligation for the seller to pay the buyer's broker the specified fee. Only check this box if there is no previous separate agreement between the seller and buyer's broker, such as *Compensation Agreement Between Broker and Owner* (TXR 2401). This addendum is the agreement between the parties.

Paragraph E. Intermediary Broker's Fees. This paragraph states that the seller will pay an additional amount of compensation to the broker that will be applied to the broker's fees the buyer has agreed to pay the broker under a buyer representation agreement. Only use Paragraph E if the broker is representing both the seller and the buyer in the transaction.

Note: This paragraph creates a new obligation for the seller to pay an additional amount to the listing broker acting in an intermediary capacity.

Paragraph F. Authorization. This paragraph authorizes the title company to disperse funds in accordance with this addendum.

Frequently Asked Questions

What box do we check if the seller agrees to pay the buyer's broker fee?

First, check the box next to Paragraph D(2) which states, "Seller shall pay." Then check either D(2)(a) or D(2)(b) depending on which contract is used to establish buyer broker's compensation.

- Check box D(2)(a) if the seller has signed a separate compensation agreement with the buyer's broker, such as the *Compensation Agreement Between Broker and Owner* (TXR 2401).
- Check box D(2)(b) if the seller agrees to pay any of the buyer's broker's fees as an additional term under the sales contract. This option creates a new obligation for the seller to pay the buyer's broker's fee as stated in this addendum.

What is the difference between the seller paying buyer's broker's fee in the *Addendum Regarding Brokers' Fees* (TXR 2406) and the seller paying buyer's expenses under Paragraph 12 of the sales contract?

- Paragraph 12A(1)(b) of TREC residential sales contracts allow the parties to agree that the seller will pay a negotiated amount towards buyer's expenses. "Buyer's Expenses" is a defined term in the contract and does not include broker fees. Buyer's Expenses includes items such as appraisal fees, loan origination charges, and credit reports.
- Paragraph D(2)(a) and D(2)(b) of the *Addendum Regarding Brokers' Fees* (TXR 2406) allow the parties to agree that the seller will pay an amount specifically for buyer's broker's fees. This is a separate obligation from paying buyer's expenses under Paragraph 12.
- Both provisions can be used depending on what expense seller agrees to contribute to, either buyer's expenses under the sales contract, buyer's broker's fees under the addendum, or a combination.

Is the *Addendum Regarding Brokers' Fees* (TXR 2406) required on every transaction?

No. The *Addendum Regarding Brokers' Fees* (TXR 2406) does not have to be used in every transaction. However, it should be used under two scenarios. First, when the seller agrees to pay an intermediary broker additional compensation. In this case, Paragraph E should be used for the seller to pay the intermediary broker additional compensation to be applied to the buyer-side broker's fees. Second, when the seller agrees to pay the buyer's broker under the sales contract. In this case, Paragraph D(2)(b) must be checked to specify the amount and authorize the payment. For the other options listed in the *Addendum Regarding Brokers' Fees*, the form can still be used to provide information to the title company on how the parties are handling brokers' fees. So, it would be good to use but is not required.

When is the *Addendum Regarding Brokers' Fees* (TXR 2406) executed?

The *Addendum Regarding Brokers' Fees* is designed to be used when the seller is agreeing to pay buyer's broker's fees under a sales contract. It can be included as part of an offer package delivered to a seller. It may also be executed later in the transaction.

How will the title company, lender, etc. know how much to pay if *Addendum Regarding Brokers' Fees* (TXR 2406) is not used?

Brokers can continue to use a compensation/commission disbursement authorization (CDA) form supplied by their brokerage to notify title companies of disbursement instructions.

Can the *Addendum Regarding Brokers' Fees* (TXR 2406) be used in an intermediary transaction?

Yes. Both the seller and buyer have agreed to pay the intermediary broker a fee in their representation agreements. If the seller or listing broker does not offer to compensate the buyer's broker, the buyer would be responsible for paying broker fees under their buyer representation agreement. The buyer can attach TXR 2406 to their offer to request the seller to pay the intermediary broker additional compensation to cover the buyer-side broker's fees. Any amount inserted in Paragraph E will be in addition to the amount the seller is already paying the intermediary broker under their listing agreement. **Note:** Paragraph E should not be used if the seller has already agreed to compensate the broker for the buyer-side broker's fees. For example, if Paragraph 5A was used in the listing agreement, which included buyer's broker compensation.

Which forms to use...

If the seller and the buyer will pay their own brokers:

- No additional compensation agreements are required other than the listing agreement and buyer representation agreement.
- The representation agreements authorize the title company to pay broker fees.

If the listing broker agrees to pay the buyer's broker:

- *Compensation Agreement Between Brokers* (TX 2402). Executed by the listing broker and buyer's broker before the offer is presented.
- *Addendum Regarding Brokers' Fees* (TX 2406). Executed by the seller and the buyer and can be included as part of an offer package delivered to a seller. It may also be executed later in the transaction.
- Check box D(1) and insert the agreed upon amount.
 - **Note:** Paragraph D(1) serves the same function as the compensation disclosure located at the bottom of Page 10 of the *One to Four Family Residential Contract*. It notifies the title company of the broker-to-broker compensation agreement. If the only fee the buyer's broker receives is from the listing broker, you can insert the amount on Page 10 of the sales contract and would not need to use the *Addendum Regarding Brokers' Fees* (TXR 2406).

If the seller agrees to pay the buyer's broker using a separate compensation agreement:

- *Compensation Agreement Between Broker and Owner* (TXR 2401). Executed by the seller and buyer's broker.
- *Addendum Regarding Brokers' Fees* (TXR 2406). Executed by the seller and the buyer and can be included as part of an offer package delivered to a seller. It may also be executed later in the transaction. Check box D(2) and box D(2)(a) and insert the agreed upon amount.

If the seller agrees to pay the buyer's broker as part of the sales contract:

- *Addendum Regarding Brokers' Fees* (TXR 2406). Executed by the seller and the buyer and can be included as part of an offer package delivered to a seller. It may also be executed later in the transaction. Check box D(2) and box D(2)(b) and insert the agreed upon amount.

If the seller agrees to pay the intermediary broker additional compensation to cover buyer's broker fees:

- *Addendum Regarding Brokers' Fees* (TXR 2406). Executed by the seller and the buyer and can be included as part of an offer package. Complete Paragraph E.

Note: Multiple boxes may be checked under Paragraph D if the buyer's broker will be compensated from more than one source. For example, if the listing broker and seller both agree to pay a portion of buyer's broker's fee, check box D(1) and box D(2)(a) or (b) inserting the appropriate amounts under each paragraph.

Disclaimer: The above information is being provided as a general guide and is not intended to be and should not be considered legal advice. Use of any form and how to complete each form depends on the needs of the parties on a case-by-case basis.