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8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

**Partners**

Thomas E. Black, Jr.<sup>1</sup>

Gregory S. Graham<sup>2</sup>

Shawn P. Black<sup>3</sup>

Regina M. Uhl<sup>4</sup> ‡

**Senior Lawyers**

David F. Dulock

Diane M. Gleason

**Associates**

Peter B. Idziak<sup>3</sup>

Daniel S. Engle<sup>3</sup>

Nick Stevens

Sydney Davis

Margaret Noles

Dora Herran

**Of Counsel**

David M. Tritter

Calvin C. Mann, Jr.

**Retired Partner(s)**

Calvin C. Mann, Jr.

<sup>1</sup> Also Licensed in Iowa, New York, and Washington

<sup>2</sup> Also Licensed in Georgia

<sup>3</sup> Also Licensed in New York

<sup>4</sup> Also Licensed in Kentucky and Illinois

‡ Board Certified- Residential Real Estate Law- Texas Board of Legal Specialization

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** TREC Adopts New Third Party Financing Addendum TREC NO. 40-8

This memorandum advises our clients that effective March 1, 2019, the Texas Real Estate Commission (TREC) adopts a new Third Party Financing Addendum form (TREC NO. 40-8, [click here](#)) that replaces the current Third Party Financing Addendum form (TREC NO. 40-7, [click here](#)) as an addendum to be added to TREC contracts when there is a condition for third party financing for all or part of the purchase price of the subject property (*see* 43 TexReg 7908 (12/07/2018) and revised 22 TAC §537.47).

The major difference between TREC NO. 40-7 and TREC NO. 40-8 is in the property approval provision. Under TREC NO. 40-7, if lender's approval of the property is not obtained, the buyer may terminate the contract and get a refund of the earnest money by giving notice to the seller prior to closing. Under TREC NO. 40-8, if lender's approval of the property is not obtained, in order for the buyer to terminate the contract and get a refund of the earnest money, the buyer must give notice to the seller not later than 3 days prior to closing and also provide the seller with a copy of a written statement from the lender containing the reason(s) for the lender's determination that the property does not satisfy the lender's underwriting requirements; otherwise, property approval is deemed to have been obtained.

For comparison, the text of each property approval provision is reprinted below:

TREC NO. 40-7:

B. 2. Property Approval: Property Approval will be deemed to have been obtained when the Property has satisfied lender's underwriting requirements for the loan, including but not limited to appraisal, insurability, and lender required repairs. If Property Approval is not obtained, Buyer may terminate this contract by giving notice to Seller before closing and the earnest money will be refunded to Buyer.

TREC NO. 40-8:

2. B. PROPERTY APPROVAL: If Buyer's lender determines that the Property does not satisfy lender's underwriting requirements for the loan (including but not limited to appraisal, insurability, and lender required repairs) Buyer, not later than 3 days before the Closing Date, may terminate this contract by giving Seller: (i) notice of termination; and (ii) a copy of a written statement from the lender setting forth the reason(s) for lender's determination. If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer. If Buyer does not terminate under this paragraph, Property Approval is deemed to have been obtained.

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