

Please read carefully before checking the box to change the title policy!

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This morning I randomly picked a new order for a standard coverage owner's policy, to find out how the purchaser chose only the standard coverage policy. I wrote to the selling agent and asked if the purchasers were asked if they wanted the improved coverage provided by the Homeowner's Policy.

The selling agent called me and said he did specify the Homeowner's Policy. He said he checked the box on NWMLS Form 22 D ["Optional Clauses"] that changes the title policy form. *He misunderstood the effect of that provision!*

2. Standard Form Owner's Policy of Title Insurance. Notwithstanding the "Title Insurance" clause in the Agreement, Seller authorizes Buyer's lender or Closing Agent, at Seller's expense, to apply for the then-current ALTA form of Owner's Policy of Title Insurance, together with the homeowner's additional protection and inflation protection endorsements if available at no additional cost, from the Title Insurance Company rather than the Homeowner's Policy of Title Insurance.

Paragraph e of the General Terms of the NWMLS Form 21 Residential Real Estate Purchase and Sale Agreement ["P&SA"] requires the seller to reimburse the premium cost for a purchaser to receive the Homeowner's Policy. There is no question that policy form provides better protection for the purchaser. See [my earlier article about the differences in that policy](#).

It is unfortunate that a *selling agent* might unintentionally choose the lower protection of the standard coverage policy. Usually that is selected by the listing agent to reduce the seller's closing costs. It would be even more unfortunate if the purchasers do not know that there are different policy forms they may choose.

I do not suggest the Optional Clauses provision is easy to understand. For example, I believe *the standard form of owner's policy for residential transactions is the Homeowner's Policy*. The provision could be clearer if its heading was "**Standard Coverage Basic Form Owner's Policy of Title Insurance.**"

There will be sales of improved residential property where the seller will agree to reimburse for only the lowest premium owner's policy. That will be the standard coverage basic form that is used for any type of real property. Builders and REO banks as sellers often save themselves a few dollars there.

Even if the seller will not agree to pay the extra premium for the Homeowner's Policy, the purchaser of an improved residential property that qualifies for that policy should be informed about their opportunity to pay the difference and receive that protection. ***Who should tell the purchasers?***

In my opinion, the real estate professionals who are negotiating the purchase agreement with the proposed purchasers should inform the purchasers that there are different title insurance policy forms. However, the selling agent is not responsible to give advice about the title insurance.

The selling agent also does not advise the purchasers about the appropriate fire insurance to protect their investment in that property. The purchasers will discuss their fire and home casualty insurance with their usual insurance agent. Most people are not familiar with title insurance and their normal agent does not sell title insurance. The difference with title insurance is that the purchaser's title insurance protection is designated by the P&SA, mixed up with the seller's reimbursement duty.

So, if a discussion about the title insurance does not occur when the contract is being negotiated, it is not likely to occur later. Thereafter, the escrow closing agent and the title company will follow the P&SA contract terms.

At any time before the closing, a purchaser may ask for the improved protection of the Homeowner's title insurance policy. It does not have to be agreed upon by the seller. It does not have to be documented by an Addendum to the P&SA. The purchasers only have to tell the escrow agent, or tell the title company directly. The purchasers may pay the increased premium and still receive reimbursement from the seller for the premium due for the standard coverage policy.

Please ask the purchasers to choose the title insurance policy. There are comparison charts and marketing materials provided by the title companies that inform the purchaser about those choices. Any questions can be directed to the title company. We want the purchasers to have the opportunity to choose the premium and protection that is right for them.

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