

REVISIONS TO THE 2010 OREF NEW CONSTRUCTION SALE AGREEMENT

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The following summary addresses the changes made to the OREF New Construction Residential Real Estate Sale Agreement. Some changes were stylistic and grammatical, and will not be discussed here as they do not materially affect Realtor® practice. The primary focus of the discussion below will be on the substantive changes which bear on Realtor® practice, the reason for the changes, and their risk management impact. *This summary should not be relied upon in lieu of a thorough review of the documents and provisions by each individual broker and principal broker.*

SECTION 6. (TITLE INSURANCE) Language has been added to permit the parties to select who will pay for an early-issue policy (i.e. the ALTA extended coverage policy to protect the buyer against unrecorded, yet still legally enforceable, construction liens.)

Comment: The Homeowner Protection Act (“HPA”) is unfortunately unclear on this point, but the conventional wisdom is that the law does not “require” builders to pay for it. Accordingly, with no legal direction, OREF thought it better to let the parties decide at the inception of the transaction.

Risk Management Tip: Brokers should be careful about telling their clients that it is one party’s obligation or the other’s. Customarily, in Oregon, sellers of previously occupied homes (i.e. not “new construction”) pay for the buyer’s owner’s policy but leave it up to the buyer if they want extended ALTA coverage for unrecorded liens. However, with new construction, it is more a matter of negotiation on the extended coverage issue. Additionally, brokers should remember that the HPA also requires the seller to advise whether he/she has had over \$50,000 of improvements performed within the last 75 days. If so, the same issue arises (i.e. what type of buyer protection will be provided for unpaid construction liens), including – but not requiring – an extended ALTA policy. Fortunately, even if the buyer is to pay for the extended coverage, if the property is being financed through a lender, most title companies will also provide the buyer’s extended ALTA policy for free, since the buyer is already paying for the lender’s extended coverage anyway.

SECTION 20. (PROFESSIONAL INSPECTIONS) The form now contains a specific reference to the “New Construction Professional Inspection Addendum (OREF-026).”

Comment: OREF feels that a professional inspection is important even for new construction and encourages use of the form.

Risk Management Tip: Even new construction can contain defects that are apparent to the trained eye. Although most inspectors do not inspect for Code violations (and should not be expected to) some apparent defects that an inspector calls out can help the homeowner secure the cooperation and correction of the builder as a part of the warranty provided by the builder. If there is no warranty, or it does not cover the defect, the buyer may still have recourse through the Construction Contractor’s Board (“CCB”).

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SECTION 29. (HOME WARRANTIES) In accordance with Senate Bill 205, builders are required to offer a warranty. The scope and type of warranty is not mandated, but something must be offered. This section would describe the warranty or incorporate it by reference.

Comment: Buyer agents should make sure their clients are comfortable with the scope and length of the warranty being offered by their builder before proceeding with the transaction. There may be significant differences in warranties among builders. Secondly, one must always ask, "Will the builder be around in a year or so, should a warranty claim be made?"

Risk Management Tip: Remember that the warranty is no better than the ability of the builder to back it up. Accordingly, all builders should be investigated both through the CCB as well as through client references.

SECTION 47. (COUNTERPARTS/DELIVERY) Language has been added to include email and overnight mail.

Comment: This change simply adds more options to speed up delivery.

Risk Management Tip: If each party is to sign a different (though duplicate) document, brokers should make sure they are, in fact, exact duplicates, especially if some changes were made on the original and were initialed. These initials should also appear on the copy, otherwise that copy is not a "duplicate original."