

## **Barry L. Brumfield**

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# Memo

To: Real Estate Commission, State of Utah  
Attn: Renda Christensen  
From: Barry L. Brumfield, Citizen  
Date: 12/10/2013  
Re: Scheduling time at Board of Directors Meeting

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**Purpose:** To schedule time before the Commission BOD Meeting to address a problem

**Problem:** There is a direct conflict between the Utah Real Estate Purchase Contract (REPC) and HUD/FHA lending when being purchased as a Reverse Mortgage Purchase Contract.

The REPC states:

6.2: Title Insurance: At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency that issued the commitment (the "Issuing Agent"), the most current version of the ALTA Homeowners Policy of Title Insurance...

7: SELLER DISCLOSURES: No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents in hard copy or electronic format which are collectively referred to as the "Seller Disclosures"

b) a Commitment for Title Insurance as referenced in Section 6;

These two clauses clearly state that the "Seller" pays for "title insurance" and causes the title to be issued in favor of the Buyer.

However, when the purchase is a Reverse Mortgage Purchase, HUD/FHA rules very specifically prohibit the Seller from paying the "title insurance" or any other concessions at closing. HUD/FHA considers title insurance to be a concession by the seller, and concessions by the Seller are explicitly prohibited.

This situation could be easily solved via any one of two ways:

1. An addendum at the time of entering the contract, stating: "Due to HUD/FHA lending guidelines, Seller WILL NOT be paying for title insurance, and will be paid by the Buyer.
2. A separate REPC for Reverse Mortgage Purchases, omitting the requirement for Sellers to pay for title insurance.

But, this is NOT being addressed by the Utah Association of Realtors. They also will not discuss this conflict with me as I am not a Member of the Utah Association of Realtors.

It is my position that this issue needs to be addressed, as every purchase under these conditions, without an addendum, cannot follow the agreed to contract as written.

When a local realtor addressed this to the Association of Realtors on my behalf, their response was, as it was verbally quoted to me: "It is the responsibility of the Lender to inform the Buyer of this situation". This response has flaws, both practical and legal:

1. The Lender is often, and perhaps more often than not, met with to discuss the lending costs, after an REPC has been entered into
2. The Lender does not write the REPC and addendums. The Buyer and Selling Agents do.
3. The Association of Realtors is apparently responsible for the drafting of the REPC and then submitting to the Commission for approval
4. The Association of Realtors is responsible for making their Members aware of this conflict, and recommending how to resolve the conflict

I am addressing this issue to the Commission, as the Association of Realtors will not apparently address this issue, and as I understand the procedure, the Commission is the approving authority for the Utah REPC.

Thank you