Parts of the Integrated Mortgage Disclosure (IMD) rules may present closing issues and closing table fights that can probably be best addressed with amendments to the FR-BAR form contract.

1. In Florida, rates are determined by computing the premium for the owner’s policy, (net of any applicable discounts), then charging a smaller simultaneous issue premium for the lenders policy. So the owner’s policy is the “Big” number, and the lenders policy is the “little” one.
2. The IMD rule requires this to be reported differently on the closing disclosure– showing the full premium for a stand-alone lender’s policy (the “Big” number) with the net amount (owners + simo – lenders) reported as the premium for the owner’s policy (the “Little” number).
3. The presumed logic behind this is that CFPB wanted the lender to understand that an owner’s policy was available for a small amount more than what they were paying already for the lender’s coverage.

When the seller will be paying for the owner’s title insurance policy, this mismatch can be expected to result in disputes at the closing table. Consider a $200,000 owners policy and $160,000 Mortgage with no endorsements

|  |  |  |
| --- | --- | --- |
|  | Rate Rule Actual Payment Expected | IMD will Say |
| Owners Policy | $1075 | $225 |
| Loan Policy | $25 | $875 |
| Total | $1,100 | $1,100 |

Closings may be held up as the Seller is expected to question why he should pay $1075, when the official disclosure statement says he should only pay $225. The current FR/BAR language (attached) doesn’t clearly say which of these two “prices” should be paid.

Perhaps the addition of something like this at the end of 9(c) would avoid some of the disputes:

The charge for Owner’s Policy shall be computed based upon the applicable rates promulgated by the Florida Office of Insurance Regulation, with the benefit of any simultaneous issue rate accruing to the benefit of the Buyer. The parties understand and agree that these costs may be reported differently and reallocations of expenses made on certain federally mandated Closing Disclosures.

1. Even though the total payments for both policies shown in the IMD will match the aggregate premium as computed under our rate filings, it will appear that we are not in compliance. This may create:
   1. Confusion on the part of the regulators and resulting market conduct and regulatory risk.
   2. The appearance that we are out of compliance with our filed rates

We also need to discuss this issue with OIR and DFS and suggest that DFS issue an Informational Bulletin to address the above conflict; and/or to consider including language in the rule rewrite process to expressly address the above conflict as follows:

In compliance with federal regulations, any Integrated Mortgage Disclosure (“IMD”) must be prepared pursuant the rules of the Consumer Financial Protection Bureau, 12 CFR parts 1024 and 1026. The IMD may contain title premiums that appear to differ from the rates computed herein, due to the manner in which title premiums and settlement costs are required to be stated on the IMD.  The title insurance premiums charged under any given file shall be calculated pursuant to the rates and rules contained herein, but may be shown on the IMD in the manner required by CFPB rules provided the total aggregate premium is the same in both instances.

FROM FR/BAR AS IS (Rev 8/13)

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) COSTS TO BE PAID BY SELLER:

\* Documentary stamp taxes and surtax on deed, if any \* HOA/Condominium Association estoppel fees

\* Owner’s Policy and charges (if Paragraph 9(c)(i) is checked) \* Recording and other fees needed to cure title

\* Title search charges (if Paragraph 9(c)(iii) is checked) \* Seller’s attorneys’ fees

\* Other:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) COSTS TO BE PAID BY BUYER:

\* Taxes and recording fees on notes and mortgages \* Loan Expenses

\* Recording fees for deed and financing statements \* Appraisal Fees

\* Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked) \* Buyer’s Inspections

\* Survey (and elevation certification, if required) \* Buyer’s attorneys' fees

\* Lender’s title policy and endorsements \* All property related insurance

\* HOA/Condominium Association application/transfer fees \* Owners Policy Premium (if Paragraph9 (c) (iii) is checked.)

\* Other:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(c) TITLE EVIDENCE AND INSURANCE: At least \_\_\_\_\_\_\_\_ (if left blank, then 5) days prior to Closing Date, a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner’s policy of title insurance covering the Real Property, a copy shall he furnished to Buyer and Closing Agent within 5 days after Effective Date.

The owner's title policy premium, title search, municipal lien search and closing services (collectively, “Owner’s Policy and Charges”) shall he paid, as set forth below

(CHECK ONE):

[ ] (i) Seller shall designate Closing Agent and pay for Owner’s Policy and Charges (but not including charges for closing services related to Buyer‘s lender‘s policy and endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select); or

[ ] (ii) Buyer shall designate Closing Agent and pay for Owner’s Policy and Charges and charges for closing services related to Buyer’s lender’s policy, endorsements, and loan closing; or

[ ] (iii) [MIAMI-DADE/BROWARD REGIONAL PROVISION]: Seller shall furnish a copy of a prior owner’s policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer’s title Insurance underwriter for reissue of coverage; (B) tax search: and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer‘s owner's policy, and If applicable, Buyer’s lender‘s policy. Seller shall not be obligated to pay more than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (if left blank, then $200.00) for abstract continuation or title search ordered or performed by Closing Agent.

Comments to CFPB Rule

37(f)(2) Services you cannot shop for.

4. Lender’s title insurance policy. Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender’s title insurance policy. However, an owner’s title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender’s title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender’s title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender’s title insurance policy pursuant to § 1026.37(f)(2) or (3) is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner’s title insurance policy. This amount may be disclosed as “Title –Premium for Lender’s Coverage,” or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender’s title insurance coverage. See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for an owner’s title insurance policy that covers the consumer.

37(g) Closing cost details; other costs.

37(g)(4) Other.

1. Owner’s title insurance policy rate. The amount disclosed for an owner’s title insurance premium pursuant to § 1026.37(g)(4) is based on a basic owner’s policy rate, and not on an “enhanced” title insurance policy premium, except that the creditor may instead disclose the premium for an “enhanced” policy when the “enhanced” title insurance policy is required by the real estate sales contract, if such requirement is known to the creditor when issuing the Loan Estimate. This amount should be disclosed as “Title – Owner’s Title Policy (optional),” or in any similar manner that includes the introductory description “Title –” at the beginning of the label for the item, the parenthetical description “(optional)” at the end of the label, and clearly indicates the amount of the premium disclosed pursuant to § 1026.37(g)(4) is for the owner’s title insurance coverage. See comment 37(f)(2)-4 for a discussion of the disclosure of the premium for lender’s title insurance coverage.
2. Simultaneous title insurance premium rate in purchase transactions. The premium for an owner’s title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender’s and an owner’s policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:

i. The title insurance premium for a lender’s title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3).

ii. The owner’s title insurance premium is calculated by taking the full owner’s title insurance premium, adding the simultaneous issuance premium for the lender’s coverage, and then deducting the full premium for lender’s coverage.