

Plain English in Title Insurance Policies

By Ronald E. Hodess

On June 1, 1987, the American Land Title Association (ALTA) issued its revised plain language residential title insurance policy for use by its member title companies. The plain language policy represents an attempt by ALTA to make the standard owner's policy understandable to the residential owner without substantially changing policy coverage.

The plain language policy consists of the Owner's Information Sheet, Table of Contents, Owner's Coverage Statement, Covered Title Risks, Company's Duty to Defend Against Court Cases, Schedule A, and Schedule B—Exceptions, Exclusions and Conditions. The standard owner's policy, on the other hand, contains no explanatory provisions or table of contents, and consists mainly of fine print. The residential owner will find that the easy-to-read format and straightforward definitional section make the plain language policy a friendlier document. However, closing agents, brokers, attorneys, lenders, and title agents already familiar with the stan-

dard owner's policy might find the plain language policy foreign until its use increases. This reluctance to use the plain language policy should be overcome because (1) the form of title insurance commitment which is currently in use (or as slightly modified) will generally be issued before issuance of the plain language policy, and (2) the plain language policy is not radically different from the standard owner's policy.

The plain language policy is used significantly in at least twenty-two states, including California, Connecticut, Massachusetts, Missouri, and Wisconsin, according to Clifford Morgan of First American Title Insurance Company in California. In Michigan, the plain language policy is not being used. The primary reason is that people are generally unaware of it. Another reason is that each title company is required to obtain prior approval of its forms from the Michigan Department of Commerce Insurance Bureau. A number of Michigan title underwriters are authorized to issue the plain language policy and will do so on request. For instance, Minnesota Title Insurance Company recently received approval from the Michigan Insurance Bureau to use the plain language policy. "We are advocating use of the 1987 ALTA plain language form in Michigan," says John F. Rohe, Associate State Counsel for Minnesota Title. Other underwriters may be less willing to issue the plain language policy because they feel that the standard policy is adequate and that interest in the plain language policy is low.

There are several substantive differences in the insurance coverages between the plain language policy and the standard owner's policy. For instance, part 12 of the Covered Title Risks in the plain language policy covers against the forced removal of an existing structure (other than a boundary wall or fence) if it violates an existing zoning law. This coverage is not provided for in the standard owner's policy. The plain language policy also covers risks from "other defects, liens or encumbrances." This broad statement could be a basis for claiming coverage which is beyond the coverage of the standard owner's policy. Also, the plain language policy specifically covers the reimbursement of rent for reasonable substitute facilities if the property cannot be used because of a title claim.

In addition, the plain language policy does not contain the standard exceptions to coverage which are generally found in Schedule B of the standard owner's policy. These exceptions are for parties in possession not shown of record, matters that would be disclosed by a survey, mechanic liens not of record, dower rights, and building and use restrictions not of record. Title insurers, however, may limit coverage by showing specific matters as exceptions on Schedule B-I of the policy.

For the most part, the remaining terms and conditions of the two policies coincide point for point. However, because of the above differences, the owner will receive slightly broader coverage from the plain language

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

policy. More importantly, because the plain language policy is directed at the consumer, the courts could be inclined to construe provisions in a way that would protect the consumer's best interests.

The plain language policy will remain unused in Michigan until there is sufficient demand. Real estate brokers and salespersons, residential

One More

This month, a bonus. I happened to see this notice of mortgage sale in a local paper. It was drafted by Joseph Backus, an attorney in East Lansing. We offer it here in the hope that it may start to replace the ones that begin with "Default having been made in the terms and conditions of a certain mortgage."

—JK

MORTGAGE SALE

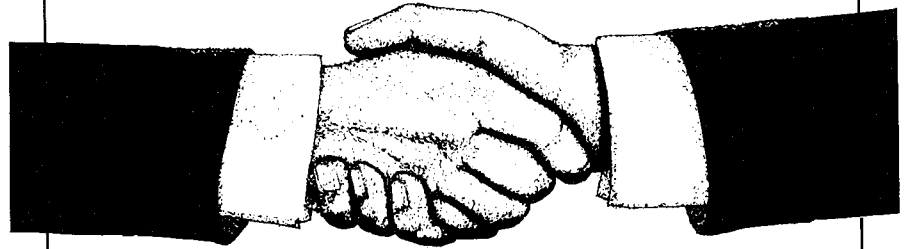
Default has occurred in a mortgage made by John Doe, a single man, to First National Acceptance Co. on September 2, 1986, recorded in liber 1000, page 125, Ingham County records. No proceedings have been instituted to recover any part of the debt, which is now \$32,594.57.

The mortgage will be foreclosed by a sale of the property, at public auction to the highest bidder, on Friday, January 19, 1990 at 10:00 a.m. local time, at the front entrance of City Hall, in the City of Lansing, Ingham County, Michigan, the place of the Circuit Court. The property will be sold to pay the amount then due on the mortgage, together with interest at 15 percent, legal costs, attorneys fees, and also any taxes and insurance that the mortgagee pays before the sale.

The property is located in Ingham County, Michigan, and is described in the mortgage as: Lot 100 of the plat of Pleasant Valley Subdivision No. 2, City of Lansing, Ingham County, Michigan.

The redemption period will be six months from the date of sale.

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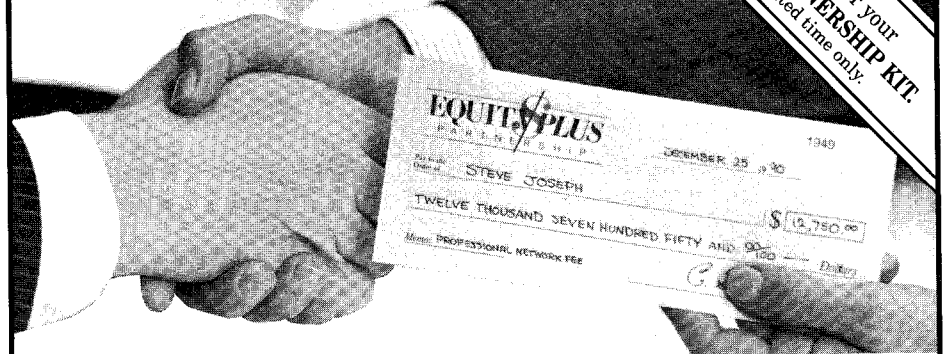
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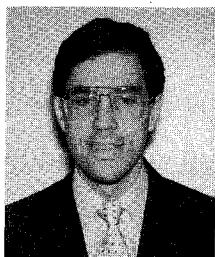
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property sellers, attorneys, lenders, and other persons who order title insurance will be instrumental in promoting the plain language policy. The benefits to residential property owners are threefold. First, as mentioned, residential owners will receive greater coverage from the plain language policy. Second, residential owners will have a better understanding of what title insurance is and, more importantly, what title insurance is not. Third, residential owners will be in a better position to evaluate a possible title claim and to increase their awareness of title matters. Michigan title companies could also benefit from the plain language policy by using it as a marketing tool, by avoiding frivolous claims and promoting a better understanding of the policy, and by increasing reissue business.

In summary, the residential plain language title insurance policy is a first step taken by ALTA to better serve residential owners with a policy that is easier to understand than the existing standard owner's policy. The plain language policy contains a number of substantive changes in coverages that benefit the owner even though they do not greatly increase the owner's coverage. If title orders begin to reflect a desire for the plain language policy, it will become more common to the benefit of all residential owners. ■



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Below are the insuring clauses from the standard owner's policy and the plain language policy. Notice that the plain language policy expands and clarifies the insuring clause in order to make the terms understandable to the residential owner.

Standard Owner's Policy

Subject to the exclusions from coverage, the exceptions from coverage contained in Schedule B and the conditions and stipulations, Blank Title Insurance Company, a Blank Corporation, herein called the Company, insures, as of the Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

Plain Language Policy

"Covered Title Risks"

This policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
 - a mortgage or deed of trust
 - a judgment, tax, or special assessment
 - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and materials furnished before the Policy Date—unless you agreed to pay for the labor and materials.
9. Others have rights arising out of leases, contracts or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure—other than a boundary wall or fence—because:
 - it extends onto adjoining land or onto any easement
 - it violates a restriction shown in Schedule B
 - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens or encumbrances.