

AND THE SURVEY SAYS: WHO PAYS FOR TITLE INSURANCE BY COUNTY?

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The party who customarily pays the owner's title insurance policy premium in a residential transaction in Florida varies by county. In at least one county, who pays the premium depends on where the property is located within the county. For Fund Members writing or reviewing contracts for property located in a county where the Fund Member is not familiar with the local custom, this variability may create uncertainty.

In order to assist Fund Members in their work with buyers, sellers, lenders, and real estate licensees, Directors of Attorneys' Title Insurance Fund, Inc. (ATIF), Fund Members and Fund employees from around the state were polled to obtain information about which party pays certain fees in the real estate transaction. Three questions were asked about the customary practice, realizing that the terms of a real estate contract are always freely negotiable, but that some closing costs are traditionally paid by the buyer or the seller.

Who pays the documentary stamp tax on the deed in a residential transaction? The unanimous response was that the seller pays this fee. This practice may have arisen as part of the seller's obligation to transfer title to the buyer and is a standard contractual obligation of the seller in every residential form contract in wide use in Florida.

Who pays for the owner's title insurance policy in a residential transaction?

The responses to this question appear on the map on page 88. Of the 67 counties in the state, 44 counties were reported in the survey as seller-pay counties, 22 were reported as buyer-pay counties and one county was divided on the issue. It may not be surprising that the most geographically unique county has an equally unique tradition. The responses to the survey for Monroe County reported that Islamorada and the Upper Keys follow the custom of the neighboring counties to the north and are a buyer-pay area. Marathon and the Middle Keys were reported as a seller-pay area and Key West and the Lower Keys are a combination of seller-pay and buyer-pay.

Many survey respondents were careful to point out that even in a traditional seller-pay or buyer-pay county, payment of the title insurance premium for the owner's policy in a residential transaction is increasingly the subject of negotiation between the parties. Survey respondents also noted that developer and financial institution contracts often vary from the norm in the

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county on the terms relating to the payment of the owner's title insurance premium. These contracts should be carefully reviewed if the Fund Member is unfamiliar with the contract terms regarding the premium payment. There are also local residential purchase and sale contracts which are widely used in particular areas that may contain terms that dictate the payment of the owner's policy premium. For instance, the Sales Contract (Residential Improved Property) of the Naples Area Board of Realtors® and Association of Real Estate Professionals, Inc.® (NABOR), contains a provision that the seller pays the premium for the owner's title insurance policy issued by a title insurance agent selected by the buyer if the property is located in Lee or Charlotte Counties. Those two counties are traditional seller-pay counties, but under the NABOR® contract, the buyer picks the title insurance agent to issue the policy.

Who customarily pays the documentary stamp tax and owner's title insurance premium in a commercial real estate transaction? The survey responses to this question were inconclusive because the terms of a commercial sale are much more likely to be negotiated by the parties or their attorneys.

The information contained in this article is to provide guidance on the customs in each of the 67 counties in Florida and is not intended to dictate which party should pay the title insurance premium in any transaction. As one ATIF Director noted, "EPIN . . . Every Penny Is Negotiable."

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