

## Home Owners' Protection Policy (HOPP) Compliance Guide

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**'Compliance advice and guidance about the HOPP has been provided by Frank Maher of Legal Risks LLP'**

As an established insurer, First Title is fully aware of the rules and regulations of the FSA in addition to those of the SRA that solicitors have to comply with. For this reason, we have consulted with both the SRA and the FSA on this programme and they are fully aware of all the details.

There is no issue with FSA or SRA rules provided that you, in your professional opinion, agree with the following statement:

*Clients should be aware of this new risk management OPTION, as the HOPP covers unknown risks (such as fraud, seller misrepresentation, boundary disputes), which even the best solicitor cannot detect, as well as known risks that you may find when carrying out due diligence. It also provides no-fault, unlimited legal expenses cover and rental/relocation cover. Accordingly, it is:*

- *in the best interests of each client; and*
- *consistent with a good standard of service that clients know about it and have the OPTION to purchase it to protect their home.*

### ► **What are my duties under the Solicitors' Code of Conduct 2007?**

You must comply with your core duties in Rule 1 of the Solicitors' Code of Conduct 2007, in particular as to independence and acting in the best interests of your clients.

Because of the potential benefit from the waiver of rights of subrogation, you should also consider the potential conflict of interest under Rule 3.01 (2) (b) in selling a policy to your client. Although if enough clients have hassle free claims under HOPP, which in turn may reduce your PII premiums, there will be no doubt that the duty to provide a good standard of service and act in the clients' best interests has been discharged.

### ► **Is the consumer being offered something that they do not need?**

The solicitor must believe purchasing the HOPP would place the consumer in a better position should an unforeseen problem with the property arise. Any property transaction can throw up the types of risk that the HOPP insures, so we believe it is necessary to explain the HOPP in every conveyance. With the exception of life insurance, consumers do not buy insurance knowing that they will need it in the future, they buy insurance to protect them in case they need it.



Please visit [www.theHOPP.co.uk](http://www.theHOPP.co.uk) for actual examples of where the HOPP would have helped consumers.

► **Does this compromise the solicitors' duty to provide good legal work?**

The HOPP scheme can only be offered by solicitors who can show that their work meets best standards. HOPP complements good legal work and is not a substitute for it. Conveyancers have to satisfy a range of underwriting assumptions and policy issuing conditions before they can purchase a HOPP for their clients. We will monitor all claims to ensure solicitors are maintaining good conveyancing standards.

► **Is there a conflict of interest if I get a future discount on PII premium if my clients purchase a HOPP?**

The solicitor may get reduced PII cost if their PI insurer gives the solicitor a lower risk profile. So yes, if this is how the PII market develops over the next few years, this is a possible conflict as reduced PII cost would be an indirect benefit. However:

- Use of the HOPP is only one of many factors a PI insurer uses to set future annual premium. If there is a discount in future PII premium, the value of a future discount will not be known to the solicitor:
- The client retains the right at all times to bring claims against the solicitors PII policy
- The solicitor is not an insured under the policy.

The solicitor must decide whether giving their client the OPTION to protect their biggest investment and greatest financial commitment with the HOPP is consistent with acting in their client's best interests and providing the best standard of service.

► **What should I tell the client?**

We recommend that solicitors should first draw the policy to their clients' attention before agreeing to act for them, i.e. before the client signs your terms, with a notice in substantially the following form:

*"Your property purchase is likely to be the largest investment and financial commitment that you make in your life. Like much legal work, conveyancing is a very complicated business.*

*"There are some risks that we cannot protect you from when you buy a property and for this reason, we recommend that you seriously consider the purchase of a Home Owners' Protection Policy (HOPP) from First Title.*

*"HOPP is your own insurance. It insures you for a wide range of legal ownership risks. It provides unlimited legal expenses insurance and relocation/ rental cost insurance if you cannot use your home whilst the insurer fixes the problem. You do not have to prove that someone made a mistake to use it.*

*"It works like your private health or travel insurance – it's not compulsory, but it takes the stress away if you encounter legal ownership problems in the future.*

*It protects you against many risks which we may not always be able identify. This includes:*

- *Misrepresentation by the seller;*
- *Boundary disputes;*
- *Breach of Planning Permission or Building Regulations;*
- *Fraud and Identity Theft.*

*"Like all solicitors, we have professional insurance in case we make a mistake. However, this only protects you if you can prove that your loss is due to a mistake made by us. The HOPP provides more extensive coverage for your home ownership - it provides insurance for risks that we cannot manage for you.*

*"The HOPP overlaps with our insurance, but it is easier and generally quicker to claim on because with the HOPP you just have to prove you have suffered loss, not that we made a mistake. First Title waives the rights to sue us for any claim they may have against our firm in the event that a claim under the policy arises from any mistake made by us. This does not exclude our liability to you and does not affect your rights against us.*

*"The policy could be highly beneficial to you but, as my firm may also benefit, the decision is yours whether to take it out or not. If you are in any doubt about the HOPP we suggest you speak to a chartered surveyor or insurance broker who will be able to give you impartial advice.*

*"We will arrange the HOPP for you if you decide to purchase it."*

We also recommend that you write to the client at the report on title stage and suggest the following wording:

*"I have previously drawn your attention to the Home Owners' Protection Policy (HOPP) provided by First Title.*

*"This provides you with extensive no-fault cover for a wide range of legal ownership risks. Although I am not aware of any defect in the title to this property [unless separately identified], the policy covers a variety of other risks, subject to the policy terms. By way of example, these include:*

- *Misrepresentation by the seller;*
- *Boundary disputes;*
- *Breach of Planning Permission or Building Regulations;*
- *Fraud and Identity Theft.*

*If you wish to take out this cover, it will cost you £X. Please let me know if you wish to take it out and I will arrange the policy for you.*

*Please note that I also drew your attention to the fact that First Title waive any claim they may have against our firm in the event that a claim under the policy arises from any mistake made by us. This does not exclude our liability to you and does not affect your rights against us.*

*The policy could be highly beneficial to you but, as my firm may also benefit, the decision is yours whether to take it out. If you are in any doubt about the HOPP, we suggest you speak to a chartered surveyor or insurance broker who will be able to give you impartial advice."*



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> [www.theHOPP.co.uk](http://www.theHOPP.co.uk)  
> First Title Insurance plc,  
London International Press Centre,  
76 Shoe Lane,  
London,  
EC4A 3JB

#### ► Do I have to be registered for financial services?

As with other insurance products, your firm must comply with the Solicitors' (Conduct of Business) Rules 2001 and your firm must be on the FSA Exempt Professional Firms register (unless your firm is authorised and regulated by the Financial Services Authority). You can check that you are registered here: <http://www.fsa.gov.uk/register/epfSearchForm.do>.

#### ► Do I have to scour the market for similar products?

No. The Solicitors' Financial Services (Conduct of Business) Rules 2001, Appendix 1, paragraph 1 provides:

1. Where a firm recommends a contract of insurance (other than a life policy) to a client, the firm must inform the client whether the firm has given advice on the basis of a fair analysis of a sufficiently large number of insurance contracts available on the market to enable the firm to make a recommendation in accordance with professional criteria regarding which contract of insurance would be adequate to meet the client's needs.
2. If the firm does not conduct a fair analysis of the market, the firm must:
  - (a) advise the client whether the firm is contractually obliged to conduct insurance mediation activities only with one or more

insurance undertakings;  
(b) advise the client that the client can request details of the insurance undertakings the firm selects from or deals with in relation to the contract of insurance provided; and  
(c) provide the client with such details on request.

The rules also require you to consider suitability and provide a written (paper copy) demands and needs statement before the contract is finalised.

#### ► What if I discover my firm has made a mistake?

In the event of a title defect arising from possible negligence, you must tell the client to seek separate advice – see Rules 3.01 and 20.09. Your client can then be advised separately on the relative merits of a claim on the HOPP or a claim against your firm.

#### ► Who shall I call if I have any other compliance queries?

Call the Solicitors Regulation Authority's Professional Ethics Helpline on 0870 606 2577.

First Title Insurance plc is authorised and regulated by the Financial Services Authority, registration number 202103.