



## **Do You Have a Clue About Property Insurance?**

By the Demco Law Firm, P.S.

Within the past year the insurance industry has undergone a significant change that is having a direct impact on buyers and sellers of real estate. Insurance companies stung by the high-cost of mold and water damage cleanups and investment portfolio losses are refusing to issue homeowner's insurance policies on houses that have a negative claim history. Do you have a CLUE what to do to protect your client's interests?

Insurers have recently experienced a surge in the number and size of property casualty claims. Insurance companies have also been hit by several large lawsuits for invasive mold claims including a \$32.1 million judgment in Texas. Compounding the issue is the increased use and sharing of databases such as the Comprehensive Loss Underwriting Exchange (CLUE) that records 90 percent of all insurance claims in the United States.

The CLUE database increases the availability of data on prior insurance claims. Insurers have used the database for years to assess the insurance risk of individuals and now they are using it to run background checks on homes. The result is that some insurers are now refusing to insure some properties that have a negative claim history especially for water damage claims.

In the recent past most real estate agents have rarely had to bother with concerns about the insurability of a property. Typically buyers obtain an insurance binder shortly before closing and pay the premium at closing. Most mortgages require some form of property insurance as a condition of the loan. Failure to procure or maintain insurance for the property may breach the terms of the buyer's note or deed of trust possibly resulting in rejection of the loan or foreclosure.

Since insurance is typically a condition of a loan, buyers who have a financing contingency may be able to get out of a transaction if the property is uninsurable since the lender will likely reject the loan. However, our office has heard of a few instances in which the buyer was not informed of the coverage rejection until after closing. Some homeowners have been forced to pay exorbitant premiums to keep the property insured.

Unless buyers ask about the claim history of a property they are unlikely to discover negative claim history. Real property transfer disclosure statements do not ask about past insurance claims. Generally sellers do not have a duty to disclose past defects that have been repaired or corrected.

## **Legal Bulletin**

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Due to these concerns buyers and their insurance brokers should address the issue of insurance availability early on in a transaction. CLUE reports can be obtained instantly on the Web for \$12.95 at [www.choicetrust.com](http://www.choicetrust.com). However, the reports can only be obtained by the owner of the home. Buyers can request that the seller provide a CLUE report as part of the transaction. A transaction can also be made contingent upon a clean CLUE report and insurance binder to ensure that the property is not an insurance premium time bomb.

NAR has formed a task force to explore solutions to the problem. You may also expect form changes at some point to address the issue. In the meantime buyers need to be aware that insurance availability and premium costs are a concern. Buyers ought to be encouraged to apply for insurance early on in a transaction and to obtain CLUE reports to avoid loan rejection at the eleventh hour, costly premiums or rejection of coverage after closing.

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