WASHINGTON REALTORS®

Legal Hotline Q&A of the Week

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Question:

I have a listing that is pending. The inspection has passed with mutual agreement and I believe the financing contingency has been waived. Now the buyer claims that since the seller did not disclose 2 previous insurance claims, buyer is unable to get insurance and wants to terminate and recover earnest money. There is no place on Form 17 to disclose prior insurance claims and the work was completed, with all systems working well so no problem was disclosed on Form 17. I have not seen any rejection letters from insurance companies. If the letters exist, what is the status of the earnest money?

Answer:

Listing broker is correct that there are no questions on Form 17 specifically addressing prior insurance claims. If the insurance claims constitute a material defect, then those claims should be addressed in the final question on Form 17, asking seller if there are any additional material defects about which buyer should be made aware. It appears this seller determined that the prior insurance claims are not "material defects". The Hotline lawyer has no basis for agreeing with or refuting seller's determination. The form, and thus the Legislature, require seller to make that determination.

The primary problem for buyer lies in the fact that there is a statewide forms addendum specifically intended to create a contingency based on buyer's inability to obtain homeowners insurance. The form is numbered 22VV. If buyer wanted a contingency protecting buyer's earnest money in the event homeowner's insurance is unavailable, buyer should have included Form 22VV in buyer's offer. Because buyer did not include a homeowner's insurance contingency, it appears that buyer is now attempting to boot strap a homeowner's insurance contingency into seller's disclosure obligations.

While that effort seems unlikely to succeed, there is no way the Hotline lawyer or either broker can advise either party how to proceed if a dispute over the earnest money develops. Anything can happen in litigation so if the parties cannot resolve this issue, broker should advise seller to seek legal counsel. Broker cannot give seller the legal counsel seller needs if buyer asserts a claim to the earnest money on this basis.

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