

## A Reminder About Hazard Insurance Claims

BY RONALD REITZ

**S**ervicers of mortgage loans have many responsibilities to the mortgage holder or investor. A couple of these responsibilities, while important, may sometimes be overlooked by servicers. Those responsibilities are the ones that require them to ensure that the investor's collateral is adequately insured and that the investor's rights to collect upon the insurance policy are protected.

Servicers may not know everything they need to know to meet these responsibilities, and so they may need special training or other outside assistance in learning about these areas. This article will help provide mortgage loan servicers with some guidance in this area.

### Servicer's Responsibilities to Maintain the Investor's Rights

Servicers may not realize that the mortgagee is actually a party to the contract of insurance insuring the mortgaged property. As a party, the mortgagee is required to perform specific duties under the terms of the policy. In most cases, the servicer performs those duties and meets those obligations for the mortgagee or investor. But what duties and requirements does a mortgagee have under the terms of the policy?

There is no simple answer since there are thousands of different insurance policies, and each one may have slight varia-

### POINT OF VIEW

—Ronald Reitz

'Servicers may not realize that the mortgagee is actually a party to the contract of insurance insuring the mortgaged property.'

tions to its terms and obligations. The only way for the mortgagee to know exactly what its duties are is for it to read each individual policy. Unfortunately, it is not practical to expect that a mortgagee will have a copy of each insurance policy on file for each property in their inventory. So, what should a mortgagee or servicer do? Fortunately, many policies contain certain similar terms and requirements.

Generally, the Standard Form Homeowners Policy (known in the industry at an ISO HO 00 03 Special Form) requires the mortgagee to do the following:

- A) Notify the insurer of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware.
- B) Pay any premium due under this policy on demand if the homeowner has neglected to pay the premium.
- C) Submit a signed, sworn proof of loss within 60 days after receiving notice from the insurer of the insured's failure to do so.

### Change in Ownership, Occupancy and Substantial Risk

The first part of this provision requires that if a mortgagee or servicer has any knowledge of or becomes aware of any change in ownership of the collateral, occupancy of the collateral or any substantial change of risk, it is contractually required to notify the insurer.

In certain cases, loans will go through the foreclosure process and a lender will file a claim for certain damage. Insurers may attempt to deny a claim if the servicer did not notify the insurer of a change in ownership. However, foreclosure proceedings that result in a judgement in favor of the mortgagee are not considered a change of ownership in most states.

The second part of this provision makes the mortgagee contractually required to notify the insurer of a change of occupancy, if the mortgagee becomes aware of any. This means that if the mortgagee or servicer has any note in their files that states that the occupancy has changed, it needs to notify the insurer.

Note that most policies do not define "substantial risk." A good guideline is that if the mortgagee becomes aware that the use of the property has changed in any way from the original use as described at the inception date of the policy, then the mortgagee should notify the insurer.

#### **Payment of Premium**

The insurer is required to notify the mortgagee if the homeowner has failed to pay the premium and the policy is subject to cancellation. If such notice is received, the mortgagee can preserve its rights by immediately paying the premium and continuing the coverage, at least until such time as alternate (force placed) coverage can be obtained.

#### **Notice to Insurer When a Loss Occurs/Proof of Loss**

When a mortgagee becomes aware of a loss to the property, the mortgagee should immediately contact the insurer to make a claim. For properties that are still owner-occupied, it is very likely that the borrower has already filed a claim with the insurer. The borrower also may have retained a public insurance adjuster to assist with their claim. It is generally held that when a borrower makes a claim, the claim for the mortgagee is also made. However, as a precautionary action, it is wise for the mortgagee to send written notice of the claim to the insurer stating that the mortgagee is also a party to the claim. Further, the mortgagee should remind the insurer of its right to be named on any loss drafts that are issued to the borrower. In the

same notice of claim to the insurer, the mortgagee should specifically request a complete copy of the policy, including any and all endorsements that are attached to the policy.

Policies typically require that the mortgagee submit a signed, sworn statement of loss or proof of loss, within 60 days after receiving notice from the insurer that the

## **Policies typically require that the mortgagee submit a signed, sworn statement of loss or proof of loss.**

borrower has failed to submit one. It is paramount to the mortgagee's claim that this requirement be met within the 60 days.

The mortgagee has a contractual obligation under the terms of the policy to mitigate any loss and to protect the property from further damage. So, if the mortgagee finds the property to be vacant or abandoned and damage exists, then the mortgagee should take immediate action to secure the property from additional damage and to minimize any exposure of liability.

#### **Other Policy Conditions**

##### **That Apply to the Mortgagee**

The policy language will specify what other conditions apply to the mortgagee. In the most common type of form, only three conditions in the policy are typically applica-

ble to the mortgagee. Those conditions are:

- **Appraisal** — This is a condition relating to the determination of value of the damaged property.
- **Suit Against Us** — This clause specifies the timeframe for submitting a claim and filing a lawsuit. A typical condition states: "This policy gives the insured one year to file a lawsuit after the date of loss." This clause can be confusing to the insured because many states have different laws regarding such a condition. Some states enforce them literally. Some states refuse to enforce them. Some states allow for an equitable tolling period while the claim is investigated. The safest course is to assume all claims have a one-year statute of limitations. Regardless, be sure to check with counsel before one year from the date of loss if you intend to file a claim.
- **Loss Payment** — This condition specifies how the claim will be paid. These provisions usually provide actual cash value initially, but allow for payment of replacement cost, if the property is repaired within 180 days of the date of loss.

Of course it is impossible to address all applicable conditions under every policy. Some insurers may argue that all conditions of the policy apply to the mortgagee. It cannot be stressed enough that it is imperative for the servicer to read the policy so that they may learn of their obligations under the policy and take the appropriate actions to fulfill them. If a servicer is unable to do so then it should retain someone who can. Otherwise the mortgagee may lose the right to make a claim and the servicer may be subject to a lawsuit for the investor's damages. ■

---

Mr. Reitz is the director of insurance for GMAC-RFC and is responsible for pursuing claims on damaged properties. Mr. Reitz is a member of the board of directors for the National Association of Public Insurance Adjusters as well as the president of the California Association of Public Insurance Adjusters.