

A Powerful Tool in the Buyer's Agent's Toolbox – The Addendum to Sales Contract Insurance Unavailability Due to Extreme Weather Conditions

By: Charles C. Whittington, Esq.

If 2020 couldn't get any stranger, we have approximately one month left in an already record breaking hurricane season (second only to the 2005 hurricane season). By the time this article is published, Hurricane Zeta (the 27th named storm) will have recently struck the gulf coast near the Florida panhandle. When a hurricane or other extreme weather condition is present and has the potential to impact Florida (or so called "in the box") many insurance carriers will stop binding coverage. The inability to bind insurance coverage could have a direct and negative impact on your real estate closing.

As a result of changes to the Sales Contract (Residential Improved Property) after Hurricane Irma, the Sales Contract addresses this issue in Lines 330 to 335 by providing that:

If, as a result of the Casualty, Buyer is unable to obtain hazard, flood, wind or homeowner's insurance or is unable to obtain such insurance at a reasonable rate and/or if the services essential for closing are not available by the Closing Date as a result of the Casualty, Buyer may delay the Closing Date until a date that is up to 5 days after said coverage becomes available and services essential for closing are restored. If said coverage is not available and/or said essential services are not restored for a period of 30 continuous days after the Casualty date, either Seller or Buyer may terminate this Contract no later than 35 days after the Casualty date.

Importantly, this language ties the ability to delay the Closing Date based on the unavailability of insurance (or unavailability of insurance at a reasonable rate) to a "Casualty". This term is defined in lines 326-328 as "any loss or damage to the Property (which for reference includes the Landscaping and Systems and Equipment) or Personal Property caused by fire, flood, extreme weather conditions or other casualty occurring between the Effective Date of this Contract and the Closing Date or date of possession, whichever is earlier." (emphasis added). Arguably, the existing language would not apply to a pending or threatened hurricane or other extreme weather condition which results in a buyer's inability to obtain insurance. As a result of this potential limitation, the Legal Resources Committee drafted and published a new addendum to the Sales Contract entitled "Addendum to Sales Contract Insurance Unavailability Due to Extreme Weather Conditions."

The Addendum to Sales Contract Insurance Unavailability Due to Extreme Weather Conditions seeks to address this potential outstanding issue. As stated in the Addendum:

If, due to an actual, pending or threatened hurricane, tropical storm, tornado or other extreme weather condition, Buyer is unable to obtain hazard, flood, wind or homeowners/casualty insurance coverage at a reasonable rate for closing, Buyer may delay the Closing Date until a date which is not more than 5 days after such insurance coverage become available. If such insurance coverage remains unavailable for a period of 30 continuous days, then either Seller or Buyer may terminate the Contract.

This Addendum expands the scope of protection to the Buyer related to obtaining insurance coverage to also include inability arising out of actual, pending and threatened storms and other extreme weather conditions. It does not require a “Casualty.”

While specific legal advice is beyond the scope of this article, use of the new Addendum to Sales Contract Insurance Unavailability Due to Extreme Weather Conditions could expand the Buyer’s options and protections in the event that Southwest Florida faces a hurricane in the remaining hurricane season or other extreme weather event(s). All agents and brokers are encouraged to review this new Addendum and speak with trusted advisors to determine if it is appropriate for use in their transactions.

If you have any questions about the Addendum to Sales Contract Insurance Unavailability Due to Extreme Weather Condition, please contact Charles C. Whittington, Esq. at (239) 514-1000 or cwhittington@gfpac.com.