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**TA 221**

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**SUBJECT: Toxic Mold, CLUE reports, and the FCRA**

**BACKGROUND:** It is often said that politics makes strange bedfellows. The same could be said about insurance. Given how many aspects of society are impacted by insurance, and vice versa, strange juxtapositions of issues and viewpoints are not uncommon.

One of the most recent, and possibly very significant, is the situation involving toxic mold, CLUE reports, and the Fair Credit Reporting Act (FCRA).

**MAIN POINTS:** **CLUE reports** (Comprehensive Loss Underwriting Exchange) have been an important insurance underwriting tool since the database was developed in the late 1980's by ChoicePoint of Atlanta, GA. It is estimated that about 600 insurers, representing about 90% of the Homeowners market, participate in CLUE.

ChoicePoint estimates that the CLUE database contains about 40 million claims records on homes in every state, with approximately 30% of the homes having a loss history. The database contains five years of loss history, with 18-20 sources of loss, including such categories as fire, windstorm, slip and fall, burglary, dog bite, credit card theft, mysterious disappearance, flood, water damage, contamination/pollution, etc.

**Mold problems.** Given the recent loss experience in the Homeowners market (\$8.9 billion in losses last year), insurers are implementing ever-tougher underwriting guidelines. In recent years, dog bites have been a red flag for liability underwriters, and the bane of homeowners who are dog owners. By some accounts, water damage claims, with the potential for toxic mold exposure, are fast becoming the equivalent kiss of death for property underwriting and homeowners.

The Insurance Information Institute estimates that the average mold claim can run as high as \$35,000, which is more than 12 times the typical claim. Some opine that toxic mold is the "next asbestos" for the insurance industry. The EPA has developed an entire web page exclusively to the dangers of mold. A search on Google.com for "toxic mold" produces over 113,000 hits. Residential contractors are finding mold exclusions on the CGL policies, with very few insurers willing to cover the exposure. Commercial building owners and landlords are being hit with mold lawsuits, many in the millions of dollars.

In this environment, it is no wonder that Homeowners insurers are anxious about any potential mold exposure, which can originate from virtually any water source, such as burst pipes, water leaks, etc. It is estimated that the industry paid out hundreds of millions of dollars in mold claims last year.

One insurer spokesman summed up the concerns of the industry when he was quoted in a recent Wall Street Journal article on the subject: “We do not want to bring into our pool of premiums a known risk, something we know we’re going to have to pay down the road because of lingering water damage.” The same article included a quote from an independent agent: “Every company we represent is requiring us to pull reports on customers and property. If you see a water claim on it, forget it.”

**Impact on the real estate market.** A home with a water damage claim on a CLUE report is almost a guaranteed deal-killer in real estate today. Real estate websites are replete with warnings to Realtors, as well as buyers and sellers, about the difficulty of insuring a home with a water damage claim. Virtually every article advises Realtors about the necessity of seeing a home’s CLUE report before taking a listing, or making an offer, and most advise including a “mold contingency” in an offer to buy. Most articles correctly state that a *buyer cannot* obtain the CLUE report on a house they *do not own* (but are purchasing) due to the **Fair Credit Reporting Act (FCRA)** (see below). But they advise: “However, your insurance agent can.”

**Dangers for the independent agent.** CLUE reports fall within the jurisdiction of the Fair Credit Reporting Act (FCRA), which has strict guidelines restricting access to “consumer reports,” which includes a wide variety of personal information, including CLUE reports, MVRs, credit reports, etc.

One of the “permissible purposes” for which an independent agent can access a CLUE report is *underwriting insurance*. In situations where a home buyer requests a Homeowners policy on the home they are purchasing, an agent would generally be within proper FCRA guidelines to pull a CLUE report as a routine part of the underwriting process.

Likewise, the home seller (who currently owns the home) could request that his or her independent agent pull a CLUE report, which the home seller could give to the listing agent or prospective home buyer.

**However, it is a violation of the FCRA for an agency to provide a CLUE report to someone other than the current homeowner.**

One way for an agency to unknowingly violate the FCRA is to provide, “as a favor,” a CLUE report to a current insured that is considering, or has made, an offer to purchase a home. Penalties under the FCRA are severe, and can include actual damages, court costs and attorneys fees, fines, punitive damages, and up to 2 years in prison.

A similar situation exists for agencies that receive requests to provide MVRs to commercial insureds on current or prospective employees who will be driving company vehicles. See IIAL Technical Advisory # 202 of March 6, 2002: “Dangers of Furnishing MVRs to Commercial Insureds.” (This is available on the IIAL website: [www.ial.com](http://www.ial.com) – select “Technical Issues.”)

According to ChoicePoint, homeowners can obtain their own CLUE reports online starting in September of this year, for \$12.95. Their website is [www.ChoicePoint.com](http://www.ChoicePoint.com).

**NECESSARY ACTION:** Agencies must maintain a very high awareness by all staff, at all times, of privacy issues and Federal privacy laws. It is strongly recommended that agencies include privacy policies in their agency employee handbooks or procedures manuals.

Circulate this Technical Advisory to all staff who have access to CLUE reports.