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Insurance Law Update

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ATTENTION PROPERTY INSURERS
STANDARD MORTGAGE CLAUSE "TRUMPS" STATUTORY CONDITION 4

SCC DECISION IN *ROYAL BANK* v. *STATE FARM*

In a decision handed down June 9, 2005 the Supreme Court of Canada reversed the Ontario Court of Appeal on an issue with significant impact to those of you writing homeowners' policies. The case stands for the proposition that even when an insured is in breach of Statutory Condition 4 and, therefore, not entitled to coverage under your policy, a bank or lender, even when it is aware of the breach, still has coverage by virtue of the "standard" IBC approved mortgage clause. In effect, the standard mortgage clause remains in force despite any act of the insured provided that the lender pay any increase in premiums for the increase of hazard that comes about as a result of the insured's conduct.

IMPACT FOR THE INSURANCE INDUSTRY

While the SCC case dealt with circumstances wherein the insurer was not advised of the vacant condition of the premises prior to a fire occurring, the decision of the court may have much broader application. The practical impact of this case may be that even in circumstances where the insured commits an arson or runs a marijuana grow operation on the insured premises, you as the insurer may be forced to pay-out under the homeowners' policy to one or more mortgagees. It would appear that the SCC has effectively closed the door on any circumstances where a property insurer would be able to void a policy as against a bank or lender named in a mortgage document for the improper acts of an insured.

It is a fair assumption that the IBC approved standard mortgage clause will be examined in light of *Royal Bank* and possibly be reworded in order to remedy its conflict with Statutory Condition 4.

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