

HUD requires new disclaimer and warning for radon:

In 2004 HUD issued new requirements for radon warnings for FHA buyers. These requirements have not been widely implemented at this point. It's not clear who has the final obligation and liability for providing appropriate information to buyer's.

It is clear that buyer's must be given the following warning:

The United States Environmental Protection Agency and the Surgeon General of the United States have recommended that all houses should be tested for radon. For more information on radon testing, call the National Radon Information Line at 1-800-SOS-Radon or 1-800-767-7236. As with a home inspection, if you decide to test for radon, you may do so before signing your contract, or you may do so after signing the contract as long as your contract states the sale of the home depends on your satisfaction with the results of the radon test.

It seems that primary responsibility for informing buyer's falls on the lender, but a recent survey of FHA home loan originators found that most knew little, or nothing, about radon. When asked who is responsible for explaining the dangers of radon and the need for testing, loan originators said either the realtor or the inspector. Inspectors and realtors may become liable if the loan officer doesn't explain the dangers.

All FHA buyers are required to sign revised HUD form 92564-CN, "For Your Protection: Get a Home Inspection", and Mortgagee Letter 2004-04. Copies of these forms are available on our website: www.inspection-perfection.com.

Mortgagee Letter 2004-04 covers the requirements regarding radon disclosure and disclaimers. Form 92564-CN outlines why a buyer should have a home inspection and what a home inspection includes. Unfortunately, HUD failed to find out what home inspectors actually do.

HUD states that home inspections, "estimate the remaining useful life of the major systems, equipment, structure, and finishes." No industry standards, nor association standards, require home inspectors to estimate remaining life of household components. Some inspection reports, like those from Inspection Perfection Inc, estimate the age of components and provide a chart of average life expectancy for clients to make their own estimates of remaining useful life. Estimating actual useful life remaining opens inspector and real estate agent to unacceptable liability.

HUD also states that radon testing is incorporated in home inspections. Buyers who believe that radon testing has been done as part of the inspection may create liability for everyone involved in the sale except HUD. A specific, signed disclaimer is advisable stating the buyer was informed about the dangers of radon and declined testing against the advice of the Surgeon General, the EPA, the loan officer, the realtor and the inspector. A sample disclaimer and a radon information sheet can be downloaded at: <http://inspection-perfection.com/main/pages/radon%20index.htm>.

Sales contracts involving FHA loans must now have a clause stating that sale is contingent on satisfactory radon test results. All government loans will soon follow in this

requirement due to pressure from the American Radon Policy Coalition to enforce the 1988 Radon Abatement Act. Private lenders may enact similar requirements to maintain conforming loan packages and ease of selling mortgages on the open market.

Radon is recognized as the second leading cause of lung cancer in this country killing over 20,000 people a year. The EPA has estimated that at least 20% of all homes in the US have high radon levels. In Colorado, this number may be as high as 50% due to elevated concentrations of radon gas in the entire state.

Liability potential is high from this new enforcement of regulations. To protect yourself it is advisable to inform your clients that home inspectors do not estimate remaining life of household components and get a signed waiver of radon testing.

The following documents are available on our website: <http://inspection-perfection.com/main/pages/radon%20index.htm> in .pdf and MS Word .doc formats: HUD radon warning requirements; For Your Protection: Get a Home Inspection – HUD 92564-CN; Radon Facts; Signed Radon Disclaimer; MORTGAGEE LETTER 2004-04.