

# Home Inspections are a Good Idea—but Don't Oversell

By James R. Myers, Esq.

It is perfectly natural, especially in a marketing and sales profession such as the real estate industry, to want to be helpful. For example, if a real estate agent's client is a newcomer in town, the agent can provide helpful and valuable services above and beyond the call of duty to steer the client in the right direction; whether it is recommending reputable schools, a favorite florist, a reliable drycleaner, or a good veterinarian. Recommending a home inspection company is also a helpful and valuable service a real estate agent can perform. An agent can tap into his or her own experience with the home inspectors the agent has dealt with in the past—are they reliable, do they have a good reputation, and are they experienced as opposed to being a “fly by night” operation? A professional and competent pre-closing home inspection, paired with a good Home Warranty Plan after closing, provides protection and peace of mind to the client—and it is a valuable aspect of the professional services a real estate agent provides.

However, as anyone who has experienced errors and omissions litigation can attest, when something goes wrong, fingers get pointed in all directions—including at the agent, even if he or she did absolutely nothing wrong. Although it might be a natural inclination to highly recommend and tout the value of a home inspector the real estate agent has used multiple times in the past with good results, agents should be cautious and take care not to oversell the value of the home inspection or the specific inspector's qualifications. If the home inspector misses or overlooks a significant problem that surfaces after the sale, the agent does not want to hear the client say, “I relied on you in selecting this home inspection company; you repeatedly assured me that they were the best.” This is especially important because there are aspects of a typical home inspection contract that a buyer (and perhaps even many real estate agents) will most likely not be aware of until it is too late.

## The Inspection May Be Visual Only

A professional home inspector is naturally more likely to spot a problem during the course of his inspection than the average homeowner. However, many homeowners are not aware that most home inspections for which buyers typically pay \$350 – \$600 are visual inspections only. The contracts are usually very clear (but often never read) that the inspector is performing only a “limited, visual inspection of apparent conditions in readily accessible areas.” One of many areas this can impact is the roof. The inspector may not be obligated to get up onto the roof (and if the contract does not require the inspector to do so, chances are he or she won't), and he or she may not even go into the crawl space underneath the roof.

Furthermore, a limited visual inspection also means that in addition to the possibility that the inspector may not discover common conditions such as roof leaks, or the presence of termites or other wood destroying organisms, the inspector is even less likely to discover the existence

of more hard-to-notice problems, such as foundation cracking that might indicate signs of sinkhole activity, or defective/corrosive drywall.

If a significant problem like a major roof leak is discovered after closing, the homeowner is going to be unhappy that the problem was not discovered before the sale. That unhappiness will be compounded if the homeowner then discovers that his or her rights to pursue relief against the inspector are strictly limited—or even non-existent altogether.

## **Many Home Inspection Contracts Are Very One-sided**

A home inspection contract can be chock full of exclusions and limitations as to what the inspector is obligated to do, and what sort of remedies a homeowner has in the event of an inspector's failure to discover a problem. Some contracts even contain a provision stating that if the client is not present at the time of the inspection and therefore not able to sign the inspection agreement, the unsigned (and unread) agreement becomes incorporated into the inspection report itself—and mere delivery of the inspection report to the client will constitute acceptance of all the terms and conditions of the agreement.

In addition to limiting what the home inspector is required to actually do (e.g., limited visual only), home inspection agreements typically contain very restrictive limits on the inspector's liability. We have seen agreements that limit any monetary liability to a sum equal to the price charged for the inspection service itself. Others are not as restrictive but still contain a cap on damages, such as limiting any damages to 10-15 times the inspection contract price. To illustrate, on a "15 times the contract price" agreement, this means that if a home inspector fails to discover a \$25,000 roof leak, the grand total damages recoverable from the inspector on a \$400 contract would be limited to \$6,000. Where does the homeowner go for the other \$19,000?

Other very restrictive terms and conditions are often contained within the contract, specifically intended to limit the inspector's liability and make it more difficult for a homeowner to make a claim. For example, some contracts require the client to make any claims against the inspector in writing and reported within 10 days of discovery—or the claim is waived. Some contracts also require that any legal action must be brought within one year from the date of the inspection or claims will be deemed to be waived and forever barred—in lieu of the normal four to five year statute of limitations.

## **What Does This Mean For The Agent?**

If things go wrong after the closing due to a problem or defect discovered by the buyer, the buyer may retain counsel to seek legal relief. Once the buyer discovers that the remedies available against the home inspection company are either very limited or non-existent altogether, the homeowner may look elsewhere to cast blame. This makes recommending a home inspection company distinguishable from recommending a favorite florist or drycleaner. The agent needs to remember the balancing act between the value of recommending a

professional, reliable (and therefore favored) home inspector, versus being placed in a position where the agent is “blamed” for “choosing” the allegedly negligent home inspector with accusations that the buyer “relied” upon the agent’s handling of that matter—and the agent is now also to blame for the faulty inspection.

One way to try to mitigate the risk of being placed in that uncomfortable position is to recommend two or three separate companies to the buyer, and then leave it up to the buyer to select which inspector he or she wants to retain. In addition, buyers should be advised to carefully read the inspection agreement prior to authorizing the inspection. The contracts are typically not very difficult to read, and are often as short as one or two pages. If a buyer reads the agreement, he or she will see any limiting factors (such as an inspection that is visual only) in advance. This may go a long way towards tempering expectations, and may help diffuse any initiation of the “blame game” if a defect is discovered after closing.

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