

Negligent Referrals Carry Risks

If you give clients a list of inspectors to contact, be sure all of those inspectors are qualified.



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Your buyer and the seller have a signed contract and now the inspection process begins. You tell your buyer she needs a general property inspection and her first question is, "Whom do you recommend?" It's a good practice to give her three choices if you decide to offer that help. She picks an inspector, the inspection proceeds, and the transaction closes. Six months later, you get sued.

The buyer claims you made a "negligent referral to an unqualified inspector" because the person she selected from your list missed many significant defects.

Think this can't happen? In the past 18 months, I've have had three transactions thrown into chaos because of poorly conducted inspections. All of them involved mold inspections conducted by unqualified inspectors, resulting in transaction delays. One also involved insufficiently inspected structural and sewer issues. These problems didn't result in lawsuits because, as either a buyer or seller representative, I flagged the problems for my clients, but I've seen lawsuits arise on other agents' transactions.

Requirements Vary by State

Some states certify or license property inspectors. My state of California does not. As a matter of risk management, you need to know the qualifications of the inspectors you refer. It's not enough for a person to have a business card and contract form to be a home inspector. The reality may be that the least qualified inspector might be the one who finds the least amount wrong with the house, keeping your deal on track. But referring that person is a good way to increase the chance you'll end up in court.

In one recent case I was involved in, the inspector claimed he was certified by the North American Inspection Association, but there was no record of such an association existing. Professionals at the American Society of Home Inspectors and the

California Real Estate Inspectors Association, two recognized professional associations in my state, had never heard of it. He claimed to follow the "ASHI Standards of Practice" but had never been a member of the group. He had no errors and omissions or liability insurance and no contracting license. His contract included clauses to limit his liability, but those clauses were eliminated by the Business and Professional Code of California in 1997. Just picture yourself in court trying to tell the jury why this person was on your referral list.

Check Qualifications

For the protection of you and your client, check the qualifications of the property inspectors you include on your list. They should all have proof of E&O and liability insurance; membership in at least one professional association, whether it's ASHI or your local or state association; a record without lawsuits; a contract that reflects current state law; and documented inspection experience.

If you have two great inspectors and one not-so-good one on your list and hand that list to your client, there's a chance the client will pick the least qualified one, especially if that person is the cheapest one.

Be diligent with specialized inspectors, too. A mold inspector might not have to have any certification or license in your state. But as a matter of good practice, that inspector should have specific mold insurance as part of E&O coverage and be a certified industrial hygienist. A mold inspector should also have several years of experience, membership in appropriate associations such as the Indoor Air Quality Association or the American Industrial Hygiene Association, and the ability to take air and surface samples for testing.

Bottom line: The more qualified the inspectors, the more likely the inspections will be done right and no one will be sued.