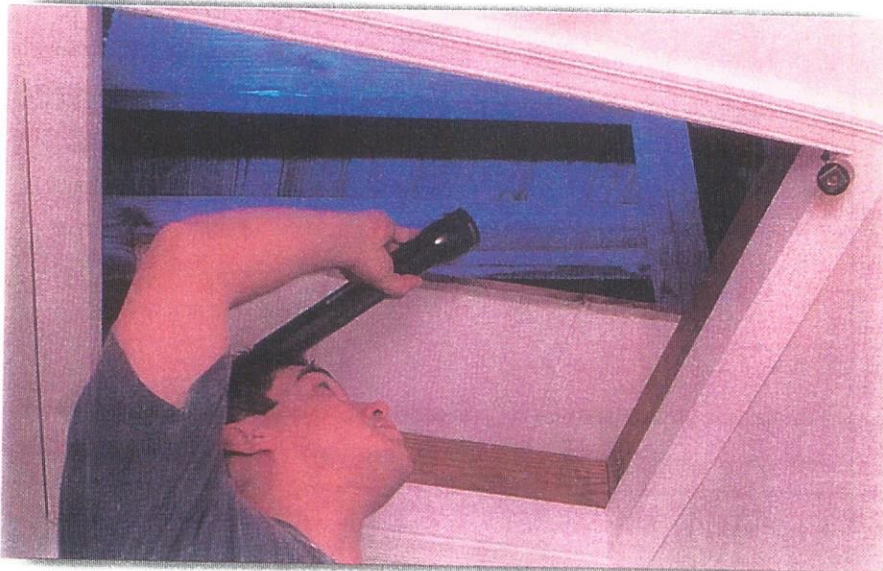


DOING BUSINESS

The Law & You



Home inspection risk reduction

BY BARBARA NICHOLS

In real estate, surprises are never good. And when they involve property condition, surprises can mean liability for sellers and real estate salespeople.

One way to avoid surprises—whether you represent the buyer or the seller—is to stress the importance of a home inspection. Then follow up with these additional risk-reduction steps:

■ **Get it in writing.** Simply telling a buyer to do an inspection does little to reduce your risk of being sued. Without documentation, you could claim, “I told the buyer to have an inspection, but he didn’t want to spend the money,” and the buyer could counter with, “My agent told me an inspection was a waste of money.” Don’t leave it to a jury to decide who’s telling the truth.

Include an inspection addendum in standard contracts, specifically

advising the buyer to have a general inspection and the appropriate specialty inspections for local issues such as earthquakes, termites, and landslides.

■ **Put a buyer who refuses on notice.** Ask buyers who opt out of inspections to sign a statement that reads: “Against the strong recommendation of the listing agent and seller, I have elected *not* to fully inspect this property and assume all liability for any property flaws discovered after the transaction closes that such an inspection would have revealed.”

■ **Repeat it.** A buyer can claim not to have read or understood an inspection advisory if it was buried in the fine print. But if you include your advisory in a separate document and in bold type, request signatures, and even repeat your warnings, buyers will have a harder time convincing a jury they didn’t understand it or realize its importance.

■ **Invite everyone to the inspection.**

If you’re the buyer’s rep encourage the buyer, listing agent, and seller to attend the inspection. The buyer can ask the inspector questions and the inspector can ask the seller questions. So, many issues can be resolved on the spot in the presence of witnesses.

■ **Encourage the use of additional inspectors as needed.** If the general inspector says to call in a specialist, advise the buyer in writing to do so.

■ **Encourage sellers to disclose.** If the seller knows about a problem—even if inspectors don’t find it—they should disclose it in writing. Many states require sellers to complete and sign a written property condition disclosure form, but such a form is a good idea even in states where caveat emptor is still the rule.

■ **Disclose any material facts you know.** If you know that the area has a history of land settling, for example, or that the house is on the airport flight path, disclose it. A fact is considered material if it potentially affects the price or the buyers’ decision to buy.

■ **Never evaluate or interpret property condition.** Don’t call cracks “minor” or an unlevel floor “normal settling.” State what you observe without any evaluation of significance or cause. When disclosing something the seller told you, state the problem in writing and that you haven’t verified or investigated it yourself.

■ **Be sure the inspector is qualified.** Some buyers’ reps shy away from recommending an inspector for fear of liability. But if your client selects a bad inspector, your risk of being sued increases whether you recommended the inspector or not. Even if your lia-

bility doesn't increase, your reputation suffers from a bad inspector.

The smartest course is to recommend several well-qualified inspectors and advise buyers to get references and ask about experience, credentials, report content, cost, and insurance coverage.

Recommend only those inspectors who are qualified and who'd appear so to a court. The inspectors I recommend must hold a general contracting license (personally, not just the company); belong to the American Society of Home Inspectors or the state professional association; and have liability insurance and errors and omissions coverage. Few states have testing or licensing requirements for home inspectors, though a number of state legislatures have inspector licensing laws pending.

To avoid unnecessary risk, don't recommend any inspectors affiliated with your company.

If you represent the seller, you rarely have input on the inspector, but a poor inspection still puts you and the seller at risk. Consider requiring in the counteroffer that the buyer select an inspector with certain minimum requirements. A good inspection may cost more, but it's worth every penny.

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