



The Role of the Real Estate Licensee in the Home Inspection Process.

Revised 9/2017

- I. Obligations under **license law – it’s ALL about who you represent**
 - a. Fiduciary duties
 - i. To the Buyer client - Rule IV C – fiduciary duty of skill, care and diligence would require recommending a home inspection
 - ii. To the Seller client – obligations of skill, care and diligence owed with respect to the obligations of the Property Condition Disclosure (89-1-501-)
If anything on the home inspection report requires amending the Property Condition Report, delivery of the amendment to the Buyer’s agent/buyer is required to avoid the 3 day termination.
 - iii. Licensees have a duty of licensees to verify that the inspector hired by CLIENTS are licensed, including New Home inspectors (NH) if inspector is hired to remove any contingencies in a contract. Failing to verify may make the licensee liable for actual damages suffered by a purchaser and sanctions by MREC.
 - b. Scope of real estate license – not home inspectors
- II. Obligations under the **REALTOR® Code of Ethics**
 - a. Article 1 Requires Protection and Promotion of clients’ interests.
 - b. Article 2. Prohibits misrepresentation of pertinent facts about the property
 - c. Article 3. Prohibits providing access to listed property on terms other than those established owner or listing agent/broker. (Following Showing Instructions)

- III. Obligations under **MLS Rules:**
 - a. Listing broker shall not misrepresent the availability of access to show or inspect
 - b. Listing agents/brokers (through the seller) determine how showing or inspections are conducted
 - c. Home Inspectors' access with their MLS key does not extend to buyer
 - d. Home Inspectors do not have access to MLS and do not see Showing Instruction. Appointments must be made through agents.

- IV. Process by which a home inspector referral is made by a licensee:
 - a. Reiterate to the buyer that you are not an inspector and that a professional licensed home inspector should be hired.
 - b. There is no magic number, such as 3, that you should recommend. Provide the buyer a list of inspectors who you have first-hand knowledge of their expertise then let the buyer do the hiring.
 - c. Recommend only Mississippi licensed home inspectors
 - If a sale is contingent upon a home inspection, the inspector must be licensed in Mississippi; if not, inspection should be performed prior to offer being written (interpretation of license law)
 - d. Recommend that the buyer vet the potential inspectors:
 - a. How long they've been in business?
 - b. Are there any claims against the company?
 - c. Is he/she qualified to inspect special features that apply: EIFS/Stucco, pools, spas, gas logs, etc.
 - d. Is he/she qualified to inspect new homes if applicable

- VI. New Construction home inspections. What's the point?
 - a. Different inspection from those performed by city/county
 - b. Inspections can save the builder from subsequent disaster later
 - c. Inspector must be New Home certified (NH)

- VI. At the inspection – who attend?
 - a. Buyer's agent has the fiduciary duty to accompany the client to the home inspection if the buyer chooses to go (and wants his/her agent to go) but NOT walk through the property with the inspector. The agent can best represent the client's interest in a home inspection if he/she is there to hear what has been said by the home inspector.

On the other hand, If the buyer wants to attend the home inspection but DOES NOT want his/her agent to attend, then the agent should not attend. If there are further negotiations needed as a result of the Home Inspection, the client might be at a disadvantage since the agent was not there to see/listen/understand what the problems were and how they should be communicated to the seller.

- b. Misinformation: MYTH: “there is too much liability”.
Liability is created when a licensee says or does something they shouldn’t or fails to fulfill agency obligations.

It’s conduct at the inspection that puts licensees at risk, not their presence.

Buyer’s Agents’ roles are

- a. to be there to protect the seller’s property as was done during all prior showings
- b. owes seller the obligation of being honest and fair in all dealings
- c. Not tag along with the Home Inspector
- d. Counseling the buyer on what is appropriate and reasonable for the seller to correct; must know the problem before they can make an intelligent suggestion to their clients
- e. to provide adequate opportunity for the buyer to talk to the inspector about his/her findings
- f. A buyer present without an agent is trespassing UNLESS the seller/listing agent has given explicit written permission for the buyer to be there unsupervised by an agent.

Disclosed Dual Agent’s role:

Dual Agency scenarios will cause some unavoidable liability issues to the firm because of the obligations to the buyers who need assistance. Those cases should be handled by written office policy.

Home Inspector’s role:

- a. The home inspector has no responsibility for the buyer’s actions.
- b. The home inspector’s authority to enter does NOT extend to the buyer.
- c. If a buyer shows up at a home inspection without an agent, the home inspector can ASSUME that permission have been granted by the seller for the buyer to be there unattended.

V. The Home Inspection Report

- a. Who does it belong to?
The person whose name is on the agreement with the Home Inspector regardless of who pays for it.
- b. Should the **buyer’s** and **seller’s agent** get a copy of the report?
The **Buyer’s Agent – Yes** (single agency relationship). Buyer’s agent owes the buyer the fiduciary duty of reasonable care and diligence to review the report with the buyer and provide guidance.
However, licensee must get permission from the buyer to provide the report to a third party including the seller and other technicians or contractors.

The **Seller's Agent - No.** Accepting the complete report is putting the seller's agent in a position of having PERSONAL KNOWLEDGE which leads to liability issues and consequences directly related to the Property Condition Disclosure Statement. If the buyer is requesting repairs the seller's agent should request a list of those repairs or a summary, but not the full report.

- c. Should a licensee encourage a buyer to rely upon a home inspection report prepared previously for another potential buyer? No. The home inspector is liable only to the person who owns and paid for the original report.

JUST FOR FUN.....JURY TALK

From Oliver Frascogna's *Digital Paper Trail*:

The Buyer's Agent is the "All Powerful Expert in Theory." In the eyes of the public the Buyer's Agent is all things to all people. She is an expert on all matters. When you are a buyer's agent or assisting a buyer in any form, you must emphatically and repeatedly stress that you are not an expert beyond the scope of your professional real estate duties and license. Do so nicely in writing. Remember the buyer is usually the one who will bring the suit, and you are the number one person auditioning for the position as defendant."

Never go through the home with the inspector! Consider your being in the witness chair in this conversation:

Clerk of the Court: *"Do you swear to tell the truth, the whole truth and nothing but the truth?"*

REALTOR® : *"Yes, I do"*

Attorney: *"Do you care about your buyer?"*

REALTOR®: *"Yes, I do"*

Attorney: *"If you saw something during the inspection that the buyer missed, would you point it out to them, or keep quiet?"*

REALTOR®: *"I would point it out, of course."*

Attorney: *"I admire you for that. I knew you would. Now, what if you saw something that the inspector missed. Would you point that out to your buyer, or keep it to yourself?"*

REALTOR®: *"I would point it out, of course."*

Attorney: *"So, ladies and gentlemen of the jury. I think that you can see that the buyers, my clients, were justified in relying on the REALTOR. Not only was he inspecting the property, but he was supervising the buyer and the inspector."*