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## Home Inspections and Their Role in the Real Estate Transaction

If you are a buyer or seller, I bet you thought just getting under contract was stressful for all parties but in reality, the home inspection and/or feasibility response and associated negotiations are often the more stressful event. Allowing a buyer to have a home inspection and hopefully a concurrent feasibility study is a very necessary part of the transaction.

### **Seller's Disclosure form 17**

As required by statute, the seller must provide a disclosure about the property. This is merely a disclosure, not a representation, guarantee or warranty. This disclosure should be given to your home inspector prior to their visit so they can focus on the seller's comments about defects and repairs made. Your agent should automatically do this but as a buyer you should insure it happens.

### **Buyer's Due Diligence**

Washington is a buyer due diligent state, so basically, if the boilerplate language is used, the buyer gets a free ride to investigate whether the property is suitable or not. If it is the later, their deposit is refundable unless the contract is written differently.

In some of the near-by metropolitan markets, some buyers elect to waive their rights in order to attract the seller's attention, but that is not the case on San Juan. In the long term, allowing this process will reduce the exposure to future disagreements about the condition of the home. The buyer needs the opportunity to research the property and condition of the improvements prior to closing. As a seller, if your buyer waives their rights to an inspection, be sure to obtain a copy of the waiver or a hold harmless agreement.

In most transactions, the buyer shall have anywhere from 10-90 days to process their home inspection contingency and feasibility study, with 15 days being the typical for a home purchase. The home inspection contingency addresses the condition of the improvements on the property. The feasibility study addresses the "what if-s" a buyer is considering; May I have a dog run, can I park an RV, what will the kitchen remodel cost, can I obtain a vacation rental permit, etc.

The inspections must be processed by the buyer or a person licensed under chapter 18.280 RCW. Reports are at buyer's expense, ordered by them and performed by an inspector of their choice. If seller has already obtained a home inspection, the buyer should not rely upon it as there is no recourse against the inspector by a party not named in the report. The buyer can, however, hire that inspector for a new report in their name as it may save time.

The inspectors or contractors may not be invasive with their inspection without seller's consent and without the agreement that buyer will restore to the pre-inspection condition.

Some buyers and their agents are of the opinion that it is best to just get the property under contract and then plan to be aggressive during the home inspection and feasibility period. Only time will tell with this approach, it can backfire. It is true that the seller may be emotionally attached to the transaction as it is the solution they are looking for, however; they also need to feel that the transaction is fair. It may be their plan to be aggressive as well and perhaps they are not attached to the outcome. These are just some of the uncertainties that surround the process. During the inspection process of a transaction, sometimes not everyone is happy and sometimes all parties are slightly unhappy. It can be a stressful time for all. On the other hand, I have had the process run very smooth; it is a case by case situation. The goal is for everyone to be happy.

Just because you are under contract, it is still a long way until closing with numerous contingencies that must be satisfied along the way. No one should be packing until the contract is non-contingent and preferably not until you have signed your closing documents and the monies are on deposit with escrow. It is for this reason that delayed seller possession is popular.

### **Inspection Response Procedures**

The buyers must respond within their inspection and/or feasibility deadline to the seller with their decision. The options for the buyer include:

- 1) Approve the inspection and waive the contingency
- 2) Disapprove the inspection and terminate the agreement with the deposit refunded
- 3) Give notice of additional inspections per the inspector's recommendation
- 4) Ask seller to make repairs or a monetary adjustment to the price or as a credit to their closing costs

The seller then has 3 days, if the default provision is used, to respond, their options include:

- 1) Agree to Buyer's request for repairs or monetary adjustment
- 2) Agree to only some of the Buyer's request
- 3) Reject all proposals by Buyer
- 4) Reject all proposals by buyer and propose alternative modifications or repairs

Then the buyers get a change to decide:

- 1) Accept Seller's response
- 2) Reject seller's response and terminate the agreement

### 3) Reject seller's response but offer an alternative proposal

This cycle doesn't repeat itself unless extended by both parties so if neither party is willing to negotiate, this is when the transaction can fail to continue on to escrow. Real estate is a give and take process, and in some cases no one is entirely happy with the outcome but each must share in the effort to negotiate a resolution.

This is also the time to ask the seller for any corrections needed to the water or septic systems that were recommended by those inspectors. The boilerplate indicates the seller will make the corrections and updates to the septic but by adding it to the inspection response form, this insures the process is fully understood by all parties.

During this process, the agents are working together with their clients and each other to keep the processing going forward. Basically, we have a seller and buyer that want to conclude the transaction and it is important not to allow egos or emotions to enter into the equation. That is one reason why good agents earn their commission; they are the buffer and filter. They keep the situation under control and emotions in check. Selling and buying a property is a huge investment and mental commitment. The seller may be defensive as they love their home; they may have raised their kids there and are emotionally attached. They are sensitive to criticisms about the home. Buyers are often making one of the largest decisions in their life and want to be sure that it is the right decision. They are dealing with inspectors, lenders, escrow and other service providers and can get overwhelmed by the process.

Once there is mutual agreement for the repairs or monetary adjustment, the home inspection contingency and typically the feasibility study are deemed waived by the buyer. Depending on the decision, the seller will then arrange for repairs and insure that they are processed 3 days prior to closing so that the property may be re-inspected by the home inspector or buyer. Receipts are normally gathered to evidence the completion as well.

At times it is not in the buyer's best interest to have the seller make the corrections as the buyer has no ability to select the service provider and control the quality. Further most sellers appreciate agreeing to a monetary solution versus making repairs. The seller would prefer to focus on their packing and relocation versus caulking the toilet. The difficulty in granting a monetary adjustment is determining the amount. The agents recommend obtaining 3 bids from different service providers which can be challenging to obtain and time sensitive.

Often it comes down to being forced to obtain a ballpark estimate and that figure is used in the negotiations. Under this situation, the buyer may be forced to "pad" the ballpark to avoid the risk of it being inadequate. As we all know, due to volume and how few service providers we have, it is difficult to arrange for bids and repairs on this island in a timely manner. Most transactions only have about 30 days to accomplish this process.

If a lender is involved, then the work must be processed prior to closing to satisfy their underwriting requirements. If they become aware of the needed repairs via the appraisal report or the contract, they won't let the buyer/borrower assume the repairs and allow them to be processed in the future. The lender will want their collateral to be in repaired condition.

If the lender conditions their loan closing upon the repairs and the seller doesn't have funds to make the repairs, then we are in a catch 22. Buyers shouldn't do the work and invest their funds in the seller's home prior to closing as the risk is too great. This is another common benchmark where the transaction can fall apart. I have had transactions where the buyers do the work and the lender is happy and we close, but it is a great risk to the buyer.

### **Escrow holdbacks**

Although not common, at times it is possible to have a written agreement where the funds to complete the repairs are held by escrow or an attorney and the work is processed after closing. The written agreement must be very clear and have provisions that address funding shortfalls, delays and failure to complete the work. Again, high risk and many lenders, if one is involved, will refuse to allow for an escrow holdback as they are unable to sell their loan into the secondary market until all of the work is completed. In an increasing rate environment, very few holdbacks are approved as the lender may lose money when they sell the loan.

Buyers need to be aware that the home inspection is their due diligence report, not the sellers "to do" list. They are buying an existing home and all homes have some level of deferred maintenance or normal wear and tear. I have seen many transactions cancel as the buyers request that the seller repair every item contained in the inspection report. All parties need to work together and act in good faith regarding the home inspection in order to reach resolution and move towards closing.

The inspection report is for the buyer to determine if the condition of the improvements is suitable. The home inspector often recommends additional professionals visit the site and provide additional information to the buyer. Most reports allow for very little recourse against the home inspector. Buyers need to know there is risk in buying real estate and no one is going to guarantee the condition of the home for you unless it is new construction and comes with an implied builder's warranty.

### **Home Owners Insurance Warranty**

Agencies sell Home Owners Warranties and it is a very common practice in states such as California. It is prevalent on the main land but not so much in the islands, partly as the insurance policies have many exclusions to the insured items and THEIR service providers must be used for the repairs. As you may know, getting a repair person from the mainland to the islands to repair your disposal is very character building. Some clients feel these insurance policies aren't worth the premiums.

### **Walk-through**

Per the uniform instruments that we use, the seller must continue to maintain the property, except normal wear and tear during the escrow period until closing. The buyer has a right to walk-through the

home within 5 days of closing. This walk through is not to create a **new** seller "to do" list, it is merely to confirm that the home has been maintained and its systems and appliances are functioning. If a system or appliance has failed prior to closing, the seller must replace that item with one of equal value. During this inspection, the buyer can also confirm personal property is being or has been removed and repairs that were contained in the contract have been made.

Bottom line, there are many components to the purchase contracts but the most complicated are the home inspection and feasibility contingency responses and related negotiations. Both buyers and sellers need to read the forms and make sure they fully understand them. The uniform instruments were written by Washington State attorney's hired by the NWMLS. The inspection and feasibility deadlines must be met or those contingencies will be deemed waived. If you are involved or plan to be involved in a real estate transaction, you should be prepared for the inspection process. Having a clear understanding of the process will make yours more successful.

As always, this article is merely for information purposes and should not be relied upon as advice. You should consult with your attorney if you have any questions about your contract and the inspection process.

To view the sample forms recommended by the NWMLS click on the URL below. Inspection, Inspection Response and Feasibility. <http://www.sanjuanislands.com/PDF/addendumsforInspections.pdf>