

Questions and Answers on: DUE DILIGENCE FOR RESIDENTIAL BUYERS

Due diligence is a vital part of the home buying process. As a buyer, it is your opportunity to gather information about the property and surrounding area to help you make an informed decision about whether this is the right home for your needs. Since purchasing a home is a large investment for most buyers, it is wise to ask questions, review documents, and order inspections to reduce the risk of buying a home with serious and costly defects or with issues that could affect its value and desirability.

A number of inspections are highly recommended as part of the due diligence process, even if they are not required by a lender and even if a seller answers “No” to every question on the "Residential Property and Owners' Association Disclosure Statement." As a homebuyer, you are responsible for the costs of inspections and other services necessary to determine the condition of the property and to assess whether it meets your needs. The inspection expenses are generally not recoverable if you choose not to proceed with the purchase. **On the other hand, if you choose to forego available inspections in order to save money, you could be faced with expensive repairs or other problems after the purchase.**

Your purchase contract may give you a limited time to gather the information and documentation you need. You should complete your due diligence by the deadline specified in your contract, and in enough time for the seller to respond to any repair requests. You will also want to have sufficient time to decide whether to continue moving forward, attempt to renegotiate the contract, or terminate your contract. If you wish to extend your due diligence period, you may ask the seller to do so, but the seller is under no obligation to agree.

Remember, most sales contracts state that “closing shall constitute acceptance of the property in its then existing condition unless provision is otherwise made in writing.” So, you should address all repair issues and be fully aware of the condition of the property before closing. You will likely be responsible for all repairs needed after the closing.

Q: What kind of inspections do I need to find out about the condition of the property?

A: The most important inspection is usually a home inspection. You should order a home inspection even when a home is brand new or recently renovated. If a home has been renovated or has a room addition, check for building permits that may have been required and ask for the qualifications of the person(s) who made the renovations. Your real estate broker can help you with this.

Q: What is a home inspection?

A: A home inspection is a general review of the systems and components of a home (plumbing, electrical, HVAC, structural, roof, etc.), performed by a person licensed by the North Carolina Home Inspector Licensure Board. It is intended to give you an understanding of the home's condition, including whether a repair is needed or whether further inspection by a specialist is recommended. You should ask the home inspector to inspect all the things that are important to you. Read carefully the written contract provided by the home inspector to understand the services provided and the cost. For more information about home inspections, refer to the Commission's brochure, "Questions and Answers on: HOME INSPECTIONS", the home inspection videos on the Commission's website at <https://www.ncrec.gov/Resources/VideoLibrary>, and the Home Inspector Licensure Board website at https://ncdoi.com/osfm/Engineering_and_Codes/HILB.aspx.

Q: Should I be present when an inspection is performed?

A: Yes, you (and your broker, if you have one) should be present so that the inspector can show you any problems found and discuss them with you. The home inspector must give you a written report of the results of the inspection.

Q: What do I do after receiving the home inspection report?

A: Review the report carefully. Discuss your questions with the home inspector and your real estate broker. You may then want to ask the seller to make repairs, renegotiate the terms of the contract, or exercise your right to terminate it.

Q: How will I know if I need other inspections?

A: Your home inspector may recommend further evaluation by a specialist such as licensed electrician, plumber, HVAC technician, roofing contractor, structural engineer or other professionals. And, you may want to consider other inspections and services described here. **If you decide you want a specialized inspection, it would be wise for you to hire your own inspector rather than relying upon an inspector hired by the seller.**

Q: How do repairs get made?

A: With the assistance of your broker (if you have one), you should decide which repairs are important to you. Prepare a written request clearly specifying which repairs you desire, how you want the repairs to be made, whether you want licensed professionals to make the repairs, and whether you want to receive copies of written receipts for the repairs at or before the closing. The seller or seller's broker will likely ask for a copy of your home inspection report for confirmation of the repairs you request before agreeing to make repairs. The report belongs to you, and you may share it with them if you wish.

Q: If the sellers or the sellers' broker indicates that the agreed upon repairs have been completed, may I have the home inspector perform a “re-inspection?”

A: Yes. It is always a good idea to confirm that all agreed upon repairs have been made properly and completely prior to the closing. You should be aware that some home inspectors charge a fee for re-inspections and that a re-inspection is not a warranty of the repairs that have been made. **A broker who lacks the qualifications to evaluate the quality of a repair should refrain from evaluating the repair.**

Q: What other inspections and services should I consider?

A: Consider each of the following.

Wood-Destroying Insect Inspection (aka "termite inspection")

Wood-destroying insects usually include termites, powder post beetles, and carpenter bees. A licensed pest control operator can determine whether there is evidence of a present or past infestation and whether the property has been previously treated for an infestation. A current infestation will likely require treatment by a pest control firm. If a wood-destroying insect infestation has been present (or was present) for a long period of time, there could be structural damage to the home which could warrant a structural inspection by an engineer or licensed general contractor as well as structural repairs. The pest control operator will issue a written inspection report for you to sign acknowledging your receipt of it.

Survey

A survey is the process of locating and measuring a property's boundary lines to determine its borders, its total area (i.e. acreage), the location of buildings and other improvements to the property, and any encroachments, easements and setback violations. Some lenders require a survey; buyers are typically responsible for the cost. If your lender will not require a survey, it is still wise to obtain one before the end of the due diligence period to make sure the acreage and borders of the property match what you were told, and so that you can resolve all encroachments, setback violations, or other issues prior to closing. The title insurance company may exclude from coverage any problem shown on the survey that is not resolved before closing.

Appraisal

Virtually all lenders will require you to pay for an appraisal of the property to determine if its market value meets or exceeds the purchase price. [Note: Your loan amount will be based upon the lesser of appraised value and sales price.] Review the appraisal report prior to the end of the due diligence period to make sure that the value of the property, its square footage and features match what you were told by the seller or real estate brokers and what is shown in the purchase contract. If you intend to pay cash for a

property (i.e., not obtain financing), consider ordering an appraisal anyway, or asking your broker to prepare a comparative market analysis ("CMA") to confirm that you are not paying too much for the property.

Wells and Sewage Disposal Systems

If you are buying a property with a well and/or a septic system (not city water or sewer), have the well and/or septic system inspected prior to the end of the due diligence period. A well inspection and separate water quality test will determine whether there is an adequate amount of water and water pressure and if there are any harmful contaminants (i.e. bacteria, heavy metals, pesticides, etc.) in the water. An examination of the septic system should determine if it is adequate to support the number of bedrooms in the property and is performing properly. Repairs to these systems can be very expensive. Be sure to review a copy of the septic permit to confirm that the number of bedrooms specified on the permit meets or exceeds the actual number of bedrooms in the house. If the property is advertised as having "city water or city sewer," ask for a copy of the sellers' most recent utility bill and call the city or the utility provider if the bill does not clearly indicate that the property has city water and/or sewer services.

Radon

Radon is a colorless, odorless, radioactive, carcinogenic gas that can be found in the air and well water of homes all over the United States. Any home can have radon, regardless of its age, condition, or location. Have the property tested to make sure that radon is at or below the EPA's guidelines for an "acceptable" level. See www.ncradon.org for a map and additional resources on radon in North Carolina.

HVAC system

As a buyer, you should strongly consider hiring a licensed HVAC technician to determine whether the HVAC system is functioning properly whenever a home inspector recommends it. If the HVAC firm determines there is a problem, the buyer should ask the seller to hire a licensed HVAC firm to make any necessary repairs prior to closing. A re-inspection by your HVAC technician following any repairs to confirm the repairs were properly made.

Structural inspection

If the home inspector reports seeing structural defects, such as foundation cracks, inadequate support in the crawl space or roof, moisture-related damage, or damage from a long-term wood-destroying insect infestation, a structural engineer can determine the severity of the problem and indicate whether repairs are needed.

Moisture and Mold inspection

If there is excessive moisture and/or mold in the crawl space or other parts of the house, a crawl space specialist may be able to suggest a solution for the moisture in the crawl space and a mold inspector will be able to determine the type and extent of the mold, and whether it is harmful to people.

Flood Zones

Properties located along or near bodies of water, waterways and low-lying areas may be located in federally designated flood zones. If you are going to borrow money to buy property located in certain flood zones, the lender may require you to buy flood insurance. If you are not going to obtain a loan to buy the property, determining whether the property is located in a flood zone and the cost of flood insurance are still important considerations. Keep in mind that flood zone maps are updated periodically, so a property's location inside or outside a flood zone can change. You can search for the property address on FEMA.gov to view the most relevant flood map in the area. If the property is located in a flood zone, talk to your insurance agent about the cost of flood insurance.

Private Streets/Roads

A private street or road is one that has not been accepted into the State system of roads and is not State-maintained. It may or may not have been constructed to the standards of the NC Department of Transportation. All responsibility for repairing, maintaining and clearing a private road lies with the people who own land along the road. It is very important to have a road maintenance agreement signed by all such property owners that makes clear who has the responsibility and cost of maintaining, repairing and clearing the road (typically, all the owners). The condition of the road will deteriorate over time, and lenders will be less likely to lend money to buyers if the road is not properly maintained. This can make such properties more difficult to sell later. The developer of a new subdivision is required to give prospective buyers a subdivision street disclosure statement indicating whether the street on which the lot/house is located is public or private (N.C.G.S. § 136-102.6(f)).

Noise/Odors/Traffic/Land Use

If you are sensitive to noise, odors, or traffic, be sure to investigate the property's proximity to airports, highways, fire stations, businesses, farms, and other land uses that generate any of these. Searching public information, driving around the area, and talking to neighbors are ways to gather such information.

Documents to Review:

Residential Property and Owners' Association Disclosure Statement: A seller must deliver this form to a buyer when the buyer makes an offer., <https://www.ncrec.gov/Forms/Consumer/rec422.pdf> . The purpose of this form is to give a seller the opportunity to disclose any defects present in the home. As a buyer, you should carefully review this form. If the seller answered "Yes" to any question or failed to answer any question, ask for an explanation. Note that sellers have the right to make "no representation" on the Statement.

Mineral and Oil and Gas Rights Mandatory Disclosure Statement: A seller must deliver this form when a buyer makes an offer, <https://www.ncrec.gov/Forms/Consumer/rec425.pdf>. The purpose of the form is to give the seller an opportunity to disclose whether the mineral, oil and/or gas rights have been severed from the property. If the seller answers “Yes” to any question, ask for more information. Note that sellers have the right to make “no representation” as to some of the statements on the form.

Restrictive Covenants and Homeowners’ Association Bylaws: Obtain and review all available restrictive covenants and homeowner association documents to verify that your intended use of the property will be permitted, and that you understand other requirements and restrictions imposed in the neighborhood. These might include things like operating a business from the home, renting the home, paint colors, parking, or having animals. If a property is subject to a homeowners' association ("HOA"), it is also a good idea to inquire about the HOA's financial situation and whether anticipated expenses could lead to an assessment.

Q: Are there special considerations for older homes?

A: Yes, with older homes you should inquire about underground fuel storage tanks, lead-based paint, and materials containing asbestos. If present, these can pose health and safety issues, so ask the seller to remedy these issues prior to closing. Also, be aware that historic homes may be subject to special zoning requirements.

Q: What are some due diligence steps for buying an unimproved lot or land?

A: If the seller (or seller’ broker) indicates that city sewer and/or water services are available, contact the city utilities department to confirm this, preferably in writing. If city sewer service is not available, contact the county’s environmental health department and order a soil evaluation test (aka a “perc” or percolation test) to determine whether the soil can support an onsite septic system for the number of bedrooms you plan to have. There is no way to determine the quantity and quality of available water on the property without drilling a well, but you may ask neighbors about their water quantity and quality, and whether they use water filters. Consider hiring an engineering firm to perform a soil compaction test to determine if the soil can support the structure(s) you want to build. Also consider getting a survey, whether the property is located in a flood zone, and researching building restrictions relevant to the area, such as ridge line protections in the mountains, CAMA restrictions along the coast, and wetlands protections along waterways and low-lying areas. Make sure it has access from a public road or otherwise, and is not “landlocked.”

Q: What is a “walk-through” and why is it important?

A: A “walk-through” inspection is your final opportunity before closing to go through the property to confirm that all of the repairs and services promised by the seller have been completed and that the

property is still in the same condition it was in at the time of contract formation. Ideally, this inspection should occur after the sellers have removed all of their furniture, appliances, rugs, boxes, and other belongings to enable you to see areas of the house that may have been hidden. Ask for copies of all repair/service invoices that have not already been provided. As previously noted, closing usually constitutes a buyer's acceptance of a property in its condition at the time of closing unless you and the seller have agreed otherwise in writing. It is therefore important that you are satisfied with the condition of the property at the time of closing.

Other Helpful Websites:

ncdot.gov/projects - for information regarding road projects planned by the NC Dept. of Transportation that may affect the property you are interested in.

sexoffender.ncsbi.gov – to search for sex offenders near the property you are interested in.

fws.gov/endangered/map/state/NC.html – to search for information regarding endangered species that could affect your ability to develop a piece of property.

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