

2019-2020 General Update Course

Section Three HOME INSPECTIONS



1. Sue has found a house she loves and wants to close quickly. Tom, Sue's agent, advises her to hire a home inspector to determine the home's condition. Sue is eager to close on the home and tells Tom that she has lots of experience with home repair and doesn't need to have an inspection. She believes the home is in fine condition.

Is Sue required to hire a home inspector? YES / NO

2. Amy, a buyer's agent, is assisting Luke in his purchase of a starter home. Amy advises Luke to hire a home inspector to determine the condition of the home. Instead, Luke wants to have his friend John, who does some light carpentry work as a side business, inspect the home.

How should Amy advise Luke?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- explain what a home inspection is, and
- explain the broker's responsibilities related to the inspection and inspection period.

TERMINOLOGY

Home Inspection: An evaluation of the visible and accessible systems and components of a home which provides an understanding of the condition of the home.

Home Inspection Report: A written evaluation that describes the condition of the functioning and malfunctioning systems within the home.

Summary Page: This page describes any system or component that does not appear to function as intended, based upon documented tangible evidence, and that requires either subsequent examination or further investigation by a specialist.

HOME INSPECTIONS



What is a home inspection?

According to N.C.G.S. §43-151.45, a home inspection consists of a written evaluation of two or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior, and interior components, or any other related residential housing component.

The home inspection gives a potential homebuyer a preliminary understanding of the condition of the home. A home inspection evaluates the condition of the home on the day it is inspected, but it does not guarantee compliance with building codes, nor does it guarantee that systems within the home will not fail in the future.

An inspection is not exhaustive or conclusive. Inspections serve as preliminary information for a potential homebuyer to make a determination to proceed with the purchase of a home or terminate the contract based on the findings in the home inspection.



Is a home inspection required?

The North Carolina Real Estate Commission and the North Carolina General Statutes do not require a homebuyer to conduct a home inspection. Although a home inspection is not required, a homebuyer can gain an understanding of the condition of the home (i.e. defective systems) by hiring a licensed home inspector.

Note: All home inspectors are not created equal. Buyers should understand that home inspectors have varying levels of experience with systems within the home (i.e. HVAC, plumbing, electrical, etc.).



When is a home inspection conducted?

One of the primary considerations in a real estate sales contract is the home inspection period. A buyer needs time to investigate the home and, in some cases, to request repairs. The home inspection period is a negotiable period of time and will depend on factors such as the size and age of the home, the type of loan the buyer is obtaining, and general market conditions.

In North Carolina's *Standard Form 2T-Offer to Purchase and Contract Form*, the home inspection is part of the "due diligence period." During the due diligence period, the buyer will investigate the home and determine whether to proceed with or to terminate the transaction based on the results of inspections. A prudent buyer will negotiate a due diligence period that will provide enough time to perform a thorough evaluation of the home and to negotiate any needed repairs.

Note: A prudent listing agent may encourage a seller to complete a home inspection prior to listing the home for sale.



What is the broker's responsibility during the inspection / due diligence period?

A broker has the fiduciary duty to ensure they represent their clients' interests at all times, including during the inspection period. A broker who represents a prospective buyer should encourage the client to conduct a home inspection even if the home is a new construction, the seller indicates they are selling the home "As Is," or a seller performed a prelisting inspection.

Note: If a broker advises a buyer to conduct a home inspection and the client declines, a prudent broker would document the fact that the buyer chose not to have one completed.

During the inspection / due diligence period a broker should:

- recommend the buyer order a home inspection.
 - A prudent broker will advise the buyer to order an inspection even if one has previously been conducted by the seller.
 - A broker should make the homebuyer aware that inspectors are not all created equal due to having specialized knowledge or additional experience. Therefore, all inspection reports will not be the same. The home inspection report is good for the day of the inspection and issues can arise after the inspection is conducted. If issues do arise after the inspection is complete, this does not mean the home inspector is incompetent.
- ensure that the buyer orders an inspection in a timeframe that will allow ample time for the report to be performed and for the buyer to evaluate the results and ask for repairs, if necessary.
- assist the buyer in understanding the parameters of a home inspection, which include:
 - the inspection is visual and not exhaustive;
 - latent defects will not be discovered, and the prevention of future defects or system failures cannot be guaranteed;
 - the inspection considers normal wear and tear of the home and is an observation of the condition of the home on a certain date, and;
 - all home inspectors are not created equal due to their varying levels of knowledge and skills.
- attend the home inspection with the buyer.
- ensure the buyer receives the full home inspection report including the summary page during the home inspection / due diligence period, assist the buyer in evaluating the results and:
 - disclosing material facts in the home inspection report and summary page.
 - following the recommendations of the home inspection report such as a hiring a licensed plumber or electrician. The broker should assist the buyer in identifying a professional and scheduling the evaluation.
 - assisting the buyer in identifying the correct paperwork, such as the Due Diligence Repair Agreement, and communicating the repair requests to the seller.
 - advising the buyer as to their options if the home inspection/due diligence period timeframe may expire before the buyer is able to complete a full evaluation of the property. The options are: requesting an extension, moving forward without completing negotiations, or terminating the agreement if necessary.



What should a broker do upon receipt of a home inspection report?



FOR DISCUSSION

Tom recommends that his client Sue conduct an inspection on a home she wishes to purchase. Sue agrees and authorizes Tom to order a home inspection.

The home inspector sends the report to Tom but not Sue. Tom receives the report and calls Sue to discuss the contents of the written report and summary page.

Even though the report identifies a long list of potential issues, Tom advises Sue to ask for only a few repairs. Sue disagrees with Tom's advice and tells him she wants to ask the seller to address all the issues that were listed on the Summary Page.

Tom tells Sue that most of the inspector's suggestions are minor issues she shouldn't be worried about and that he (Tom) has identified the significant issues. Tom emails the short list of repair requests to the Listing Agent.

Did Tom act appropriately in this scenario? Why or why not? _____

When a broker receives a home inspection report on behalf of a client, they should share the entire report with the client and thoroughly review it [with the client]. If the broker or client has any questions about items discussed in the report, the broker should ask for clarification or an explanation from the inspector.

The broker has an affirmative duty to disclose all material facts to clients and customers. Consequently, the broker must disclose any issues identified on the inspection report; however, the broker should not attempt to step outside of their area of expertise by interpreting the condition of the home.



Statement in the Home Inspection Report: *The junction box needs further evaluation by a licensed electrician.*

Which of the following would be an appropriate way for the broker to explain this statement to a client?

- 1: *The home inspector identified a potential problem with the junction box and recommended an inspection by a licensed electrician. I recommend you hire an electrician to take a closer look.*
- 2: *The home inspector identified a problem with the junction box and recommended an inspection by a licensed electrician. Obviously, the junction box is failing and will have to be replaced, which will be very expensive.*
- 3: *The home inspector identified a potential problem with the junction box and recommended an inspection by a licensed electrician. I've seen this type of statement on reports, but it's nothing to worry about. Inspectors limit their liability by adding statements like this.*

Statement #1 is the right answer. If a broker attempts to interpret the issues, they may be liable for their interpretation. Therefore, it is wise for a broker to reiterate the findings of the report and to encourage the client to adhere to recommendations made by the inspector.

Best Practice: A prudent buyer's agent would suggest the buyer perform the recommended additional inspection(s) if needed instead of the seller.

Repair Negotiations

If, upon reviewing the report, the buyer decides to request repairs, the broker should assist the buyer in preparing the appropriate request form / agreement and submitting the request(s) to the seller in a timely manner.

The broker should make the buyer aware of the seller's obligations. Generally speaking, there is no requirement for a seller to make repairs, unless the seller agrees to do so. If the buyer and seller are using the *Standard Form 2T-Offer to Purchase and Contract Form*, the broker should also explain the due diligence period and the buyer's right to terminate the contract during that time.

If the seller agrees to make repairs, the broker should ensure the buyer has the opportunity to re-inspect the home to ensure the repairs were completed based on the terms of the contract. In the Standard Form 2T, for example, provision 8(c) states:

Access to Property: Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing Buyer and/or Buyer's agents or representatives, an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the Property.

Note: Brokers should be very diligent in assisting their buyers with reading the inspection report and completing any repair agreements. For example, specific language should be used as to which repairs are requested and who will complete the repairs (i.e. licensed general contractor, licensed plumber, etc.). Brokers are also encouraged to seek the advice of an attorney if needed when completing a repair agreement request.



What happens to a buyer's home inspection report if the buyer terminates the Offer to Purchase and Contract?



Billy has a home listed that goes under contract. During the due diligence period, the buyer orders a home inspection and ultimately terminates the contract based on the results of the inspection. The buyer forwarded a copy of the home inspection to Billy prior to terminating the contract.

Now Billy's listing is back on the market for sale. Even though the seller asks him not to do so, Billy discloses the material facts identified in the first buyer's inspection to prospective purchasers. However, Billy refuses to share the first buyer's actual inspection report, stating that the report is confidential.

Is Billy correct that he cannot share the report?

When a homebuyer hires an inspector to evaluate a home, the findings within the home inspection report and the information on the summary page are considered confidential information. However, once the buyer shares or disseminates this information to a seller or listing agent, the report is no longer confidential.

If a buyer decides to terminate the contract, some of the findings of the home inspection report may be considered material facts and must be disclosed to all parties.

If the buyer has provided a copy of the home inspection report and/or summary page to the listing agent, then the listing agent *can* but is not required to provide the inspection report and summary page to other prospective buyers.

North Carolina License Law and Commission Rules require material facts to be disclosed. Therefore, the listing agent must disclose all the material facts to the buyer's agents and/or buyers interested in the home even if the seller opposes this disclosure.

Alert: Brokers must follow their client's directions in regard to the distribution of the home inspection report. However, it is mandatory that brokers disclose all material facts.

For more information on handling home inspections, review this article:

<https://bulletins.ncrec.gov/handling-inspections-guidelines-for-brokers/>



How / when is an inspector compensated?

Most inspectors require payment when services are rendered, so the buyer may have to pay for the report before or at the time of the inspection. In such case, the broker should ensure that the inspection appears on the Settlement Statement and is noted as a POC (Paid Outside of Closing) item.

Inspectors will sometimes allow a buyer to pay for services at the time of settlement. In this case, the broker should ensure that the inspection is noted on the Settlement Statement as a standard debit to the buyer.

If the transaction is terminated before closing, a prudent broker will remind the buyer to pay the inspection fee to the inspector.

BIC Alert: A broker cannot be a courier of funds. The buyer is responsible for ensuring that the home inspector is compensated properly.



The following activity is a mandatory class exercise that must be completed by all brokers in the course.

Directions: Your client, Sue, just received the home inspection report for the home located at 123 Apple Street and has forwarded it to you. Assist Sue with understanding the findings on the summary page and advise her on the next steps.

After reviewing EXHIBIT A, answer these questions:

1. What additional questions, if any, do you have for the home inspector?
2. What additional inspections and repairs have been recommended?

EXHIBIT A

Summary of Recommended Repairs

ABC Home Inspections, Inc.

Phone: 919.333.1111, N.C. Home Inspector's License #000

Note: This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.

123 Apple Street, Anytown, NC 12345

For: Sue Savvy Buyer

Monday, July 1, 2019

The following items are not functioning as intended, posing a safety concern, warranting further investigation by a specialist or subsequent observation.



1. Grading

Slope from foundation: Reversed grading was documented along the left back wall, permitting surface water to drain against the foundation. In order for the surface water to drain away from the home, grading should be repaired.



2. Exterior Stairs

Handrails: The bottom of the pickets on the side step railings are rotting. All rotted wood needs to be replaced.



3. Foundation

Condition: A hairline crack approximately 3/16" wide was found at the left side wall in the basement. A home inspection cannot determine if movement will continue or has been stabilized. You should consult with a Structural Engineer specializing in residential structural issues. The foundation poses a safety concern.



Moisture: Excessive condensation was found in the crawl space. This condensation can cause wood rot and the growth of fungus that can destroy wood. The crawl space should be thoroughly dried by a qualified moisture control specialist. The crawl space poses a safety concern.



4. Floor Structure

Condition: The subflooring revealed wood rot under the powder room. The subflooring should be removed, and the floor structure evaluated, repaired, and replaced by a licensed contractor. The floor structure poses a safety concern.



5. Roof Coverings

Condition: Loose shingles were found at the right rear and at the top of the rear bay window. A professional roofer should repair or replace loose shingles to prevent leaks and damage to the home.



6. Gutters

Condition: The gutters are clogged with debris and leaves. Gutters should be cleaned regularly for proper drainage and the prevention of roof water from destroying the foundation.



7. Insulation

Condition: The crawl space insulation is wet and hanging down. This wet insulation should be removed and replaced to eliminate the possibility of organic growth. Insulation that is missing or has fallen should be reinstalled or replaced for energy conservation.



8. Walls

Condition: Cracking and possible movement was found at the left rear wall of the family room. Evidence of foundation movement was not found. However, the drywall should be repaired and continuously monitored for evidence of movement. The walls pose a safety concern.



9. Countertops

Condition: The grout is cracked and loose between the quartz countertop and tile backsplash to the left of the sink. Cracks should be caulked to prevent water penetration and damage to the cabinets.



10. Sinks

Condition: The faucet leaks in the center when it is turned on. This should be repaired by a licensed plumber to prevent water damage to the home.



11. Tubs and Showers

Condition: It was observed at the left end of the tub that caulking has broken loose. This will permit water to leak through if it is splashed. This caulking should be repaired by a licensed general contractor.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 39

1. Sue has found a house she loves and wants to close quickly. Tom, Sue's agent, advises her to hire a home inspector to determine the home's condition. Sue is eager to close on the home and tells Tom that she has lots of experience with home repair and doesn't need to have an inspection. She believes the home is in fine condition.

Is Sue required to hire a home inspector?

Answer: *No. Sue is not required to hire an inspector to evaluate the condition of home. However, a prudent broker will document the advice given to Sue.*

2. Amy, a buyer's agent, is assisting Luke in his purchase of a starter home. Amy advises Luke to hire a home inspector to determine the condition of the home. Instead, Luke wants to have his friend John, who does some light carpentry work as a side business, to inspect the home.

How should Amy advise Luke?

Answer: *Amy should explain to Luke that a licensed home inspector will evaluate all of the systems in the house and provide a comprehensive report. She might show him an example of a report. Ultimately, Luke may hire who he wishes to perform the inspection, but the broker should fully explain his options and document that she has given the buyer the options.*

For Discussion on page 43

Tom recommends that his client Sue conduct an inspection on a home she wishes to purchase. Sue agrees and orders a home inspection. Tom receives the report three days later and calls Sue to discuss the contents of the written report and summary page. Even though the report identified a long list of potential issues, Tom advises Sue to ask for only a few repairs. Sue disagrees with Tom's advice and tells him she wants to ask the seller to address all the issues that were listed on the summary page. Tom tells Sue that most of the inspector's suggestions were minor issues she shouldn't be worried about and that he (Tom) has identified the significant issues. Tom emails the short list of repair requests to the Listing Agent.

Did Tom act appropriately in this scenario? Why or why not?

Answer: *No. First, Tom should have shared the entire written report with Sue and should have reviewed and explained every item in the report to her. Then Tom should have assisted Sue in making an informed decision.*

For Discussion on page 46

Billy has a home listed that goes under contract. During the due diligence period, the buyer orders a home inspection and ultimately terminates the contract based on the results of the inspection. The buyer forwarded a copy of the home inspection to Billy prior to terminating the contract.

Now Billy's listing is back on the market for sale. Even though the seller asks him not to do so, Billy discloses the material facts identified in the first buyer's inspection to prospective purchasers. However, Billy refuses to share the first buyer's actual inspection report, stating that the report is confidential.

Is Billy correct that he cannot share the inspection report?

Answer: No, Billy is not necessarily correct. The report is not "confidential" and Billy would not be in violation for sharing the report with other buyers or agents as long as his client, the seller, allowed it. Regardless of the seller's desires, Billy has a mandatory duty to disclose material facts; however, everything in the report may not be considered material.

Activity on pages 48-52

1. What additional questions, if any, do you have for the home inspector?

Possible answer includes: Provide more detail as to how issues cited for foundation, floor structure, and walls pose safety concerns.

2. What additional inspections and repairs have been recommended?

Possible answers include: Repairs: grading, stairs, roof, insulation, walls, countertops, sink, tub and shower. Further inspection and/or repair: foundation (structural engineer and moisture control specialist) and floor structure (contractor).