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It's a pretty straightforward process when a buyer hires an inspector. The inspector examines the property, makes notes, fills out a report, and discusses the property condition with the buyer. What happens next, though, often creates confusion for buyers, sellers, and their agents.

We frequently receive inquiries to the Texas Association of REALTORS® Legal Hotline concerning the parties' obligations with regard to inspection reports. Here are answers to some of the most frequent questions.

### Does my buyer have to turn over his inspection report to the seller when requesting repairs?

No. However, doing so can give the buyer more leverage in negotiating repairs, because the seller will then be charged with knowledge of the information in the report. This means that in the future, the seller will have a duty to make appropriate disclosures based on that report should the current transaction not close.

Be aware that some inspectors have their clients sign a confidentiality agreement prohibiting the client from sharing the report with others. It is a good idea for buyers to familiarize themselves with the terms of any inspection contract when choosing an inspector so that

they do not later find themselves in breach of contract. A confidentiality agreement is only binding upon the inspector's client. A seller who has received an inspection report from a buyer, even if the buyer violated a confidentiality agreement in handing it over, could not use a buyer's confidentiality agreement as a reason for not making the appropriate legal disclosures to subsequent buyers.

Keep in mind that even when a buyer provides an inspection report to the seller, the buyer cannot force the seller to agree to repairs. Thus, a buyer should make sure to negotiate repairs during the buyer's option period. That way, if the buyer is not satisfied with the information in the report or with the seller's response to a request to make repairs, the buyer can exercise his right to terminate the contract.

### Does my seller have to provide to subsequent buyers a previous buyer's inspection report from a sales contract that did not close?

Not necessarily. However, it might be in the seller's best interest to do so. The Texas Property Code is not the only statute that addresses disclosure in real estate transactions. A seller is in violation of the Deceptive Trade Practices Act if the seller withholds material information concerning the property in an effort to induce the buyer to buy the house. Furthermore, the seller may be liable for fraud if the seller made a false representation that the buyer relied on.

When hearing claims of deceptive trade practices or fraud, the court will consider whether the buyer still would have gone through with the transaction had the information been disclosed. This is a subjective

inquiry that makes it difficult for a seller to predict what information in a prior inspection report she ought to disclose. A seller who fully discloses an inspection report by providing a copy of the report itself to subsequent buyers does not take the legal risks associated with these difficult determinations. That's no small comfort, since a seller found guilty of deceptive trade practices or fraud may be ordered to pay the buyer for damages, attorney's fees, and court costs.

Sometimes a seller who disagrees with the findings in an inspection report will hire her own inspector to inspect the items in dispute. In those situations, it would be legally prudent to disclose a copy of each inspection report to the subsequent buyer. Otherwise, a seller may be found liable if the undisclosed report contains additional information or information that contradicts the report that was disclosed. The key question remains whether the buyer would have moved forward with the transaction had he known the undisclosed information.

**As a listing agent, can I shield my seller from having to disclose information in an inspection report to subsequent buyers by not passing the report along to the seller?**

No. The seller will be deemed to know information that the listing agent learned while carrying out negotiations on behalf of the seller. As a result, the seller will be charged with the legal consequences of the information in the inspection report.

Furthermore, as the listing agent, you, too, can be found liable for deceptive trade practices and fraud. The exemption for real estate licens-

ees under the Deceptive Trade Practices Act does not apply where a listing agent failed to disclose a material fact with the intention of inducing the buyer into the transaction. While the agent will not be deemed to know information known *only* by the seller, the agent is legally responsible for the information that he is aware of.

Inspections and disclosure are two important aspects of real estate transactions. Knowing your clients' rights and obligations regarding these activities puts everyone in a better position to get to a successful outcome. ★

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