

## " The Home Inspector Killed My Deal"

*by Ted E. Kelly*

If I had five dollars for every time I've heard that statement in the past twenty years, I could retire on my own private island. But, if the truth were known, the inspector didn't kill the deal. Sure, they might have been accomplices to the crime, but they sure didn't pull the trigger.

Rare is the day that passes without at least one agent raging about the problems created by the stressful negotiations surrounding repair agreements, or lack thereof. But, does the real problem lie with the inspection report, or with what happens with the report? I maintain that the vast majority of transactions are "killed" by buyer's agents, seller's agent's, buyers or sellers! *Why?* Because we are dealing with a very stressful and emotionally charged time in what for most of our clients is the largest financial transaction of their lives, and quite frankly, we sometimes blow it.

Now, I'm not saying that there aren't a few inept home inspectors out there, for there surely are. Just as there are some inept real estate practitioners among us too. But, it is up to us as professionals to prepare our clients for any eventuality and to prepare them for what to expect from the home inspection process. When we enter into a listing agreement or a buyer representation agreement and *again* when a contract is executed, we need to cover the inspections provisions of the contract so our respective clients have a clear understanding of their rights, obligations and options as they are *clearly* spelled out in the contract.

The contract delineates *exactly* what systems are covered under the inspections clause and that is it. It says that those systems shall be performing the functions for which intended and **"not in need of immediate repair."** Here, is where the problems begin to arise. People begin to take it upon themselves to interpret that statement or worse, allow others to do so. The buyer's agent turns in the inspector's summary page of an inspection report and says, "My buyers want everything fixed." When quite often the summary contains items that are not germane to the provisions of the contract or contain language wherein the inspector is advising the buyer to monitor a given situation with a system, as a matter of advice for future knowledge and reference. This is what I refer to as "lazy real estate" and it is setting the stage for confrontation and unhappiness. *Why?* Because now the buyer has made the mental shift to thinking they are entitled to this concession from the seller. They're NOT! Or, the buyer's agent and the listing agent have allowed their clients to execute a contract with a low **"Cost of Repair Contingency."** This is just asking for trouble a couple of weeks down the road after everyone has made time and monetary commitments and then tempers will really flare.

If a buyer's agent will pre-condition the buyer at the time of making an offer as to the terms contained in the inspections clause, their expectations will be realistic and make the agent's job easier. Make sure the client receives the entire inspection report and not just the summary page. Most often, the report softens what the summary page, by its very nature, presents as a very harsh and negative snapshot of the property.

It is important that this be handled in person whenever possible. People need to be counseled through this particularly tense and terse phase of the home buying process. Remember, they loved this home when they made the decision to buy it. Now, they are in a defensive state of mind. They have hired an inspector to find things they could not discover on their own and they do not need to be left alone with what seems to be a negative analysis of the property.

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They need reassurance and a calming influence, not a stark, cold, emotionless written document that scares them half to death and makes them think every little flaw could turn their dream house into the proverbial "money pit." Just as they sought your advice on negotiating the price and terms of the contract, they need for you to advise them on how to negotiate the needed repairs. What is in need of immediate repair and what should they begin to budget for in the future? What is serious and what is penny ante? Are they buying their dream home or are they buying a \$200,000 loose hand railing?

Listing agents, listen up! So, you've gotten an offer for your seller and everyone is excited. Slow down. Take a look at the Cost of Repair Contingency. This is one of the most misused and misunderstood provisions of our standard forms. The original concept of this particular provision was to protect against the unforeseen or hidden defect such as a major structural problem, something about which no one had any prior knowledge. It originated with the situation that called for major (\$20,000+ as an example) repair, that even though the seller might be willing to make the repair, the buyer didn't want to deal with the possible stigma upon resale. It has degenerated into a de-facto "escape clause" that is being widely abused, and is causing widespread unhappiness and in some cases, litigation. Advise your seller that the home inspector has been hired by the buyer to pick their house apart. It's not personal; it's their job! So they should not allow there to be an artificially low Cost of Repair Contingency amount. Ask the selling agent if it is an escape clause and remember it is a negotiable figure. It's better to negotiate the amount on the front end than trying to salvage relationships when a buyer is backing out on that particular provision.

Should listing agents find themselves dealing with a seller that doesn't want to make a requested repair, they only need to advise their client that it is certainly their right to refuse to do so. However, they will need to amend their Seller Property Condition Disclosure to reflect the present status of the defect of which they now have knowledge, and you will be responsible for ***disclosure of that material fact*** as well.

Both agents should remind their clients that home inspectors are required by the Standards of Practice of their industry to address far more issues for a buyer than those covered by the sales contract. They're required to cover a vast array of safety, property, general observation, exterior issues, retaining walls, etc., that are not germane to our contracts. That is all wonderful, because we want the buyers to know everything possible about their new homes. However, it is our responsibility to differentiate between what the parties' contractual rights, obligations and options are. We must be able to do so in a non-confrontational, yet firm manner. Remember, they expect us to conduct ourselves as the professionals and they directly react to our level of composure. If we're uptight and high strung, they will be too.

In summation, we all deal with buyers and we all deal with sellers. Some days we present inspection reports with repair requests on behalf of buyer clients and some days we present those requests to our seller clients. It is our responsibility to be very well versed in the terms and conditions of the contract. It is also our responsibility to make sure our respective clients have realistic expectations about the inspection/repair process. We can't beat a seller to death on his price and then beat them again on repairs. Every transaction has to be at least a semblance of win/win for both parties. The most important thing to remember is; "We don't really get paid for listing a property or for writing up a sales contract. We get paid for talking people off the ledge." If the transaction doesn't get to closing, there is no satisfaction for anyone!