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Home Inspector

Summer 2017, Volume 4

Piercing Corporate Veil \$300,000 Lawsuit

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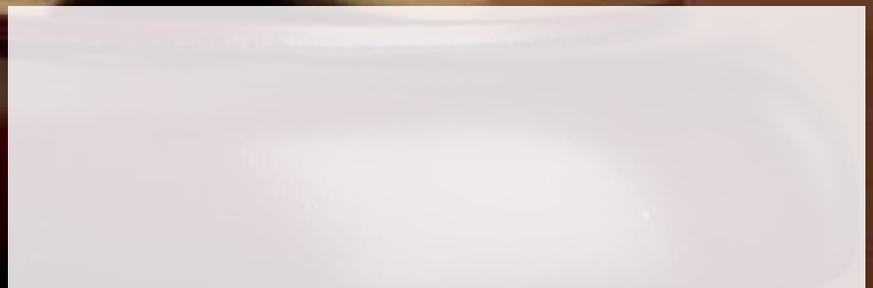
Binding Arbitration:
What's the Deal?

Basement Leaks:
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Agent Referrals: How
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Mission

Working RE Home Inspector is published to help home inspectors build their businesses, reduce their risk of liability and stay informed on important technology and industry issues.

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Working RE is published by OREP, a leading provider of home inspector insurance nationwide. OREP's low-cost, broad coverage policy includes E&O, GL, radon, infrared, termite, pest/rodent, lead paint, and many other coverages for no extra premium (most states). See inside front cover for more or visit OREP.org today! Premiums start at \$1,000 for \$300,000 coverage limits.

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From the
Editor

Evolution of Home Inspection

by Isaac Peck, Editor

The home inspection industry has come a long way. What started out as a relatively simple inspection of what is “readily visible” in the early 1970s has expanded into a profession with its own licensing and niche specializations, including infrared thermography, septic/water testing, sewer line inspections, radon testing, pest inspection, mold testing, and much more.

The same momentum driving home inspectors to increase their value through diversification and specialization has also resulted in inspectors going beyond “inspection” services, with many thousands of inspectors now offering home warranties, recall checks, alarm systems, utility connection services, and even books (See *How to Operate Your Home*, pg. 23) to their home-buying clientele. In a highly competitive marketplace, successful inspectors are wise to constantly search for ways to differentiate themselves from their competition, offer a unique selling proposition (USP), and increase the value of what they can offer to customers.

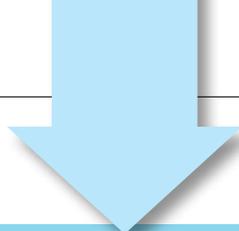
Despite the inevitable complaints from those comfortable with the status quo, many of these changes have been good for the profession, allowing inspectors to increase both the value of their services as well as their revenue streams. These changes have been good for the home-buying public as well, as they give homebuyers more choice, allowing them freedom to pick and choose the services that best meet their needs. Home inspectors themselves also have more opportunities and choices as to how they will offer additional services, learn new skills, and develop as professionals.

With so much happening, we’re proud to serve this important and evolving industry with valuable news and information to help you keep up-to-date and ahead of your competition. Inside these pages you’ll find valuable offers from the industry’s leading vendors, from radon to mold testing, recall checks, sewer inspections, and much more!

Working RE Home Inspector is now mailed to over 16,000 home inspectors nationwide, connecting inspectors across the country. This marks our 15th year publishing to home inspectors.

Working RE Home Inspector is published by OREP.org, a leading provider of E&O/GL insurance for inspectors in 50 states. OREP provides comprehensive coverage for the modern home inspector, with our base policy including coverage for Radon, Infrared Thermography, Pool & Spa, EIFS/Stucco, Indoor Air Quality Testing, Green Building Inspections, Termite/WDI/WDO, Lead Paint, Rodent inspections and much more! Mold and Septic/Water testing are also available. With minimum premiums beginning at \$1,000 for \$300,000 coverage limits, home inspectors can diversify and specialize without paying more for broad, quality coverage. Coverage varies by state. Ask your OREP agent. Give OREP a call at (888) 347-5273 or visit OREP.org. Thanks for reading!

"These changes have been good for the home-buying public as well, as they give homebuyers more choice, allowing them to pick and choose the services that best meet their needs."



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Readers Respond

Excellent articles in the OREP electronic magazine. —*John Paul de Oliveira*



I have to commend you on publishing one of the best, if not the best, periodicals for Home Inspectors. —*Pierre Billard, VP, Home Inspectors of Tennessee Association*



I just received the latest issue of *Working RE Home Inspector* and wanted to say thanks to OREP for putting out such a professional and informative publication. It strikes a nice balance between providing information you can use while promoting companies' brands and services. —*Ken Brittain, CPI*



I am writing to ask your permission to quote portions of your article “Why Home Inspectors Fail or Succeed” from your February 2017 *Working RE* magazine on my website. The article is spot on, and we have designed our model around many of the topics you cover. We are also suggesting your company for inspectors to investigate for their E&O insurance. Thank you so much for your article, and I hope to hear from you soon. —*Dana Stanford, Watch Dogs Home Inspectors*



Great article! I agree 100% that the quality of a report lies in its clarity, detail and accessibility by the customer. —*Vio Russo*



I have received and read the *Working RE Home Inspector*. It is great. Thanks. Now to add the newsletter to my inbox. –Skip Howell, Pillar to Post



I just read your story. It was a great article and I really enjoyed it. Thanks for the information that you send out. –Lamar Wheeler, Pillar to Post



My husband and I read your magazine with great interest; the articles are substantive and very helpful for home inspectors. Best regards! –Connie May, May Indoor Air Investigations LLC



I worked on the proposed home inspector licensing here in Kansas in 2006. A "group" of inspectors wanted to take over the licensing and regulation of all home inspectors here in Kansas. They wanted to create a monopoly. Myself and a few

other inspectors saw this and wrote letters to the Governor, and we got the laws removed. The laws and standards were really bad; worse than other states. Real estate agents wanted the bad laws so it

would be ok for home inspectors to write soft reports. –Gary Farnsworth, CMI



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Piercing Corporate Veil \$300,000 Lawsuit

by Isaac Peck, Editor

In what may be one of the largest public judgments against a home inspector in recent years, a \$300,000 jury verdict in the case of *Mellem vs. Standard Home Inspections, Inc. et al.* is a sobering look at what is at stake when an inspection is performed poorly and how little liability protection incorporating actually affords (Montana Fourth District Court, Cause No. DV-14-257).

The suit names Standard Home Inspections, Inc. (SHI—name changed for privacy reasons), a corporate entity, and the entity's founder, president, and sole home inspector, Tom Smith (name changed for privacy reasons). In what quickly became an exercise in "piercing the corporate veil," this case provides a stark warning for inspectors who believe that incorporating is a foolproof way to limit their personal liability and protect their personal assets.

The Mellems hired SHI, owned and operated by Smith, to perform a professional home inspection before they finalized the purchase of their home in August 2013. After purchasing the property, the Mellems discovered a number of defects in the property that were not disclosed in the home inspection report. The suit, filed by C.J. Johnson from the law firm Kalkstein, Johnson, and Dye P.C., alleges that Smith failed to identify grading and drainage defects, structural defects in basement framing and supports, evidence of long-term moisture problems in the basement, residual mold in the basement and attic, and defects in the siding and gutters.

Structural Problems

After gathering evidence, the plaintiffs focused much of their attack on the fact that Smith failed to note significant structural problems in the basement, including a missing king jack stud, missing structural headers, and large holes through joists, and more.

The deposition of inspector Smith is revealing in regards to the alleged errors and omissions made about the property's structural problems. In his deposition, Smith admits that he entered the downstairs bathroom and did not even look up at



the ceiling. This caused him to miss, among other things, several openly exposed and readily-visible joists which were broken, had rectangular cuts and holes or were missing altogether. (To read the suit and deposition in its entirety, visit WorkingRE.com, search SHI.)

Smith ultimately claimed that he had no memory of seeing the structural problems during his inspection, causing the Mellems to argue that he "exercised no care" and "effectively skipped" this portion of his inspection while falsely marking the framing "acceptable" in his report.

Water Damage

In addition to failing to mention any structural damage, the Mellems argued that Smith failed to report "extensive and significant evidence" of outside water intrusion and water damage in the basement, including efflorescence, also known as salt staining, rusted foundation wall metal, rust weep down the basement walls and stained and rotted wood.

The deposition of the inspector regarding the water damage is also quite surprising. In his testimony, Smith admits to observing rusty metal in the foundation, rusty snap ties and a trail of rust "weeping downwards toward the floor," but confesses that he did not take any pictures of these conditions or mention them in his report. Despite significant and readily visible evidence of moisture and water intrusion, including wood rot, he failed to call out the defects.

The plaintiffs ultimately used Smith's testimony to argue that the inspector had left large areas uninspected and had effectively



Isaac Peck is the Editor of *Working RE* magazine and the Director of Marketing at OREP, a leading provider of E&O insurance for home inspectors, appraisers, and other real estate professionals in all 50 states and D.C. He received his master's degree in accounting at San Diego State University. He can be contacted at isaac@orep.org or (888) 347-5273.

“admitted negligence” with regards to the structural problems and the evidence of water intrusion and damage.

Corporate Veil

Smith’s attorneys initially argued that much of what Smith was being sued for was outside of the scope of the home inspection, but as the case progressed they began to lean heavily on the argument that as a corporate officer, Smith should not be liable for the contract breach of SHI, the corporate entity, and consequently was not accountable for the alleged mistakes. Corporate officers and agents are shielded from personal liability “for acts taken on behalf of the corporation in furtherance of corporate goals, policies and business interests,” his lawyers argued.

The lead attorney representing the plaintiffs argued that this rule does not apply in this case because “the exception to this policy is where the officer personally committed a tort: a wrongful act or an infringement of a right (other than under contract) leading to civil legal liability.” In other words, the corporate protection does not shield corporate officer Smith from personal responsibility because he himself made the error and/or omission.

The plaintiff’s attorney cites a number of different legal cases to support the finding that Smith should be held personally liable for his negligence: “It is well settled that an individual member of a limited liability company or an officer of a corporation may be individual liable for his or her own torts, including negligence.” (Wilson v. McLeod., 327 N.C. 491)

“A corporate agent cannot shield himself from personal liability for a tort he personally commits or participates in by hiding behind the corporate entity; if he is shown to have been acting for the corporation, the corporation also may be held liable, but the individual is not thereby relieved of his own responsibility.” (Sturm v Harb Dev., LLC, 2 A.3d 859)

In other words, if an agent of a corporation or an LLC commits a tort, they can be held individually liable. A tort is defined by the Cornell University Law School as “an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability.” There are a number of different kinds of torts, and to the extent that a lawyer can prove that a corporate officer committed a tort, personal liability exists.

In this case, the plaintiff’s lead attorney argued that Smith should be personally liable because his actions were negligent and against the best interests of the corporation. Under Montana law, where the inspection was conducted, if an officer of a corporation “acts against the best interests of the corporation, for his own pecuniary benefit, or with the interest to harm the plaintiff, he/she is personally liable.”

Findings

The jury ultimately did find that SHI and Smith were negligent, and Smith conducted his home inspection in a manner that was “against the best interests” of his corporation, SHI.

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Smith was consequently held liable as an individual, with a jury finding that his poor home inspection performance constituted “unfair or deceptive acts or practices” which violated the Montana Home Inspection Trade Practices Act and the Montana Consumer Protection Act.

Under Montana law the judge has the option of increasing the award by triple and awarding attorneys’ fees for any verdict that is a violation of the state’s Consumer Protection Act. The Mellemes were awarded \$300,000 in damages and attorney’s fees. The case was thereafter settled confidentially, but if the court had ultimately issued a ruling on the verdict, this amount could have been tripled to \$900,000, plus attorney’s fees.

LLC or Corporation: How Much Protection Is There?

The case of SHI and Tom Smith is a compelling example of how the “corporate veil” can be pierced but it does not mean that corporate forms of organization are categorically useless for home inspectors. Indeed, the degree of negligence involved directly relates to how easy it is for opposing counsel to “pierce the veil” in the manner described in this case. In other words, if the inspector is grossly negligent and it is readily apparent to a jury that obvious defects in a property were missed, it is much easier to prove that the inspector should be personally liable. And it can be asserted that he/she acted against the best interests of the corporate entity. If the claim of negligence is not as clear cut, the plaintiff’s attorneys will have a much harder time proving personal liability.

Additionally, home inspector attorney Joseph Denneker explains that state licensing laws also play an important role in whether an inspector can be held personally liable. “Generally, inspectors in licensed states are individually liable for their actions regardless of whether they operate under a corporate entity. They are individually responsible for inspecting to their state’s standards of practice. That is why E&O insurance is so critical. There is no way to hide personal assets except that in many states there is a homestead exemption and/or an exemption for all marital property.”

E&O insurance is really the only way to protect your assets, says David Brauner, Senior Broker at OREP. “I have been in this exact position. When I was forming OREP I asked everyone I could find for advice—my CPA, my attorney and my mentor at the Small Business Administration whether I should incorporate to protect the few assets I had at the time—namely my house. To a person, they all said incorporating may have other benefits but for liability protection, E&O is the best protection. That, and being careful,” Brauner said.

The state-specific nature of these legal arguments means that home inspector licensing laws (or their absence), usually have a central role in the proceedings. In the New Jersey case of *Kinoian v. Independent Home Inspection Service, Inc.*, homebuyers sued their home inspection company after discovering asbestos in their home a year after the purchase. The home inspection was performed in 1993. The appeals process dragged on until 2004. At that time, a New Jersey Appellate Court rejected the plaintiff’s attempt to hold the individual home inspector liable, in part, because the inspection was prior to state licensing laws taking effect, ruling that the inspector “did not violate any duties specifically imposed by law.”

The Appellate Court addressed the common comparison between home inspectors and doctors, lawyers, and other licensed professionals this way: “So too, certain professionals, such as doctors, lawyers, and accountants have been found liable under both tort and contract theories for economic losses caused by misrepresentations during contractual relationships. Such liability, however, *has not been broadly extended to other classes of service providers and is apparently premised upon duties specifically imposed by law* (emphasis added). We find no basis on the present record to now include home inspectors within the class of those subject to that wider liability.”

In other words, because home inspector licensing designates specific duties and responsibilities to individuals who practice as home inspection professionals, licensing also potentially subjects inspectors to increased liability because, similar to doctors, lawyers or accountants, licensed inspectors have “duties specifically imposed by law” which they are bound to as individuals. Just as a doctor working for a corporation might be held individual liable for violating his standards of practice, inspectors in licensing states are also bound by law and can be found liable under tort and contract theories if found to be

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grossly negligent or acting in violation. It's important to note that in Montana, the state where this suit occurred, there is no home inspector licensing program. However, Montana has passed the Montana Home Inspection Trade Practices Act, which outlines the duties and responsibilities of a home inspector.

Liability Bottom Line

Despite the arguments against the effectiveness of incorporating for home inspectors, some experienced attorneys point out that there is little downside to forming a corporation. Doing business through a corporation has likely never made a home inspector more liable, they argue, and in some cases has successfully protected the inspector as an individual. So despite its less than ironclad protection, inspectors arguably are at least more protected when doing business in a corporate form. But incorporating may be more costly depending on your state. It's best to ask your accountant.

Todd Stevens, veteran home inspector trial lawyer and past President of the San Diego Bar Association, says that while not effective in every case, a corporate form can still be useful. "Corporate formation is an additional layer of protection for inspectors. You certainly aren't going to be scot-free just because you incorporate but it is another layer of protection that I would never discourage anyone from doing. It's especially useful if you've got a bigger operation with lots of employees and independent contractors working for you. There are advantages

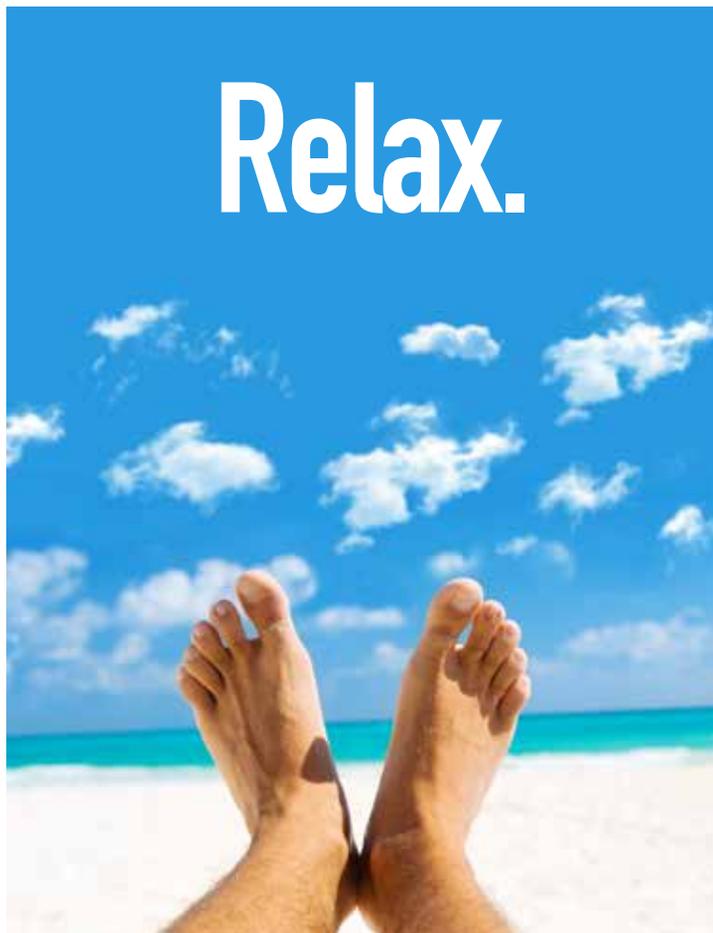
and disadvantages that vary by state in terms of taxes, so I'd definitely recommend speaking to an accountant and a lawyer to decide which form is best for you, but as a method of limiting your liability, it can't hurt," says Stevens.

Other Considerations

The issues explored here, admittedly, are not the only issues that come into play when a plaintiff attempts to "pierce the corporate veil" in a home-inspector related lawsuit. Lawyers frequently attempt to prove that an inspector's corporation is a "sham" corporation, and there is no real difference between the inspector and the corporate entity.

For this reason, home inspectors utilizing a corporate form are advised to observe the required corporate formalities, such as issuing stock, holding shareholder and board of directors meetings, keeping adequate minutes for meetings, and keeping separate financial records and separate bank accounts—ensuring clear financial boundaries between the individual and the corporation. The complexity of these issues is beyond the scope of this story, but inspectors interested in limiting their liability through a corporate structure should research them accordingly and seek professional legal advice. Stay safe out there! **WRE**

To read the suit and deposition in its entirety, visit WorkingRE.com, search SHI.



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Training Agents to Grow Your Business

by Jamison Krugger, Preferred Systems, Inc.

Editor's Note: Learn how holding informational classes for agents leads to referrals and growth.

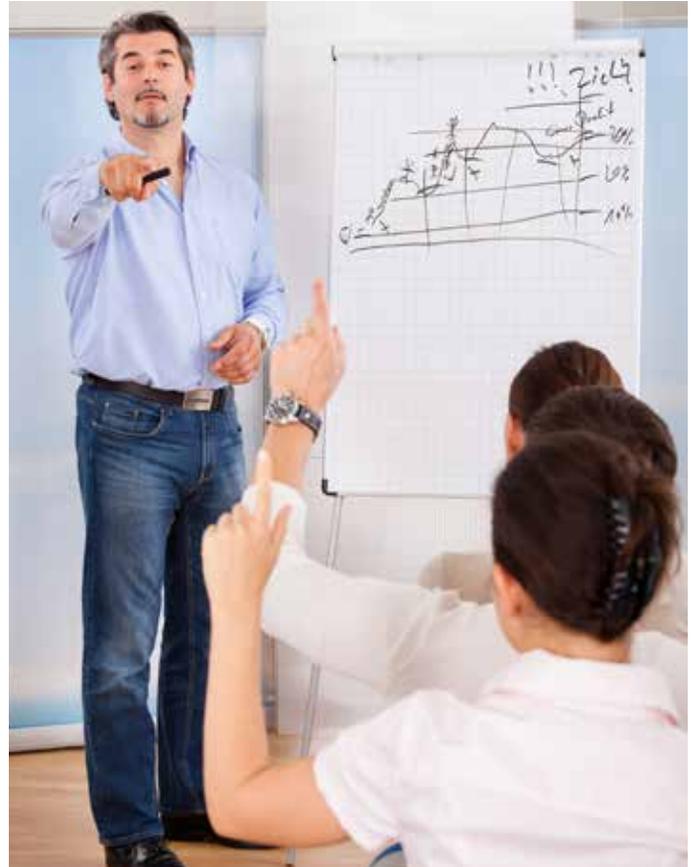
An innovative marketing strategy helped transform a single-man home inspection business doing 110 inspections a year to a multi-inspector company with 10 inspectors, doing over 3,000 inspections per year. Here's the plan.

Jerry Linkhorn began his journey into the field of home inspection by working for a builder, doing quality control and structural inspections. He was responsible for completing foundation, framing and pre-drywall inspections for just over 800 homes per year. His responsibilities also included walking the buyer through the home and explaining how various things operated such as the furnace and water shutoffs. He maintained a detailed list for the superintendent of all the items that needed to be fixed before the buyer could move into the home. This job is what initially got him interested in home inspections.

In 1994 he began doing home inspections on the side. Jerry did about 30–50 inspections per year while running a framing business. He continued doing inspections as a side business until the market went bad in 2006. Jerry recalled a conversation with his wife where she told him that he needed to average nine inspections per week or over 10 times what he been doing, or he would have to find another job. At that time, he looked at her like she was crazy. Jerry knew that he needed to get serious about growing the business and he decided to get certified through the American Home Inspection Institute. After two weeks of training, he was certified and began his full-time home inspection career.

During his first four years as a full-time inspector, Jerry ran the company on his own with no employees and managed to gradually increase the total number of home inspections he did annually to 420.

As Jerry continued to grow his business, he realized that he was wearing too many hats. In addition to doing all the home inspections himself, he was answering phones, scheduling his own inspections, sending out confirmation emails, setting up



the inspection with listing agents, and other administrative tasks. He knew that if he was going to take his company to the next level, he needed to hire additional staff and spend more time focusing on marketing.

Jerry has always been serious about marketing and credits much of his success to Mike Crow, the founder and owner of Millionaire Inspector Community. After joining this group and implementing the marketing strategies that he learned, Jerry's business started growing faster than he could have ever imagined possible. He hired administrative staff to help him better manage the business as well as additional inspectors to handle the growth.

Jerry quickly realized that out of all the new marketing strategies that he had implemented in his business, the one that had the most significant impact and became the key to his success was doing office presentations for real estate agents. Most brokers set aside time each week to provide local businesses with an opportunity to come in to the office either for breakfast or lunch and give presentations to their agents. These office

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Jamison L. Krugger is the Director of Education Systems for Preferred Systems, Inc. and co-founder of the InspectionMarketer Program. The InspectionMarketer Program is a turn-key service that enables home inspection companies throughout the United States to establish and manage a continuing education program. Preferred Systems handles all the paperwork and administrative tasks including instructor filings, course filings, course offering notifications, credit filings for agents and ongoing customer support. To learn more about the InspectionMarketer Program you can attend an upcoming webinar at www.InspectionMarketer.com or you can arrange a private one-on-one demonstration by calling 888.455.7437. For more information about Preferred Systems, please visit www.PreferredEducation.com.

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"I went from being a single-man home inspector doing 110 inspections per year to running a multi-inspector company with 10 inspectors, doing over 3,000 inspections per year. This program has been critical to my success. I would highly recommend this program to any home inspector who is serious about increasing sales."

- Jerry Linhorn, Linkhorn Inspections, Columbus, OH



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presentations, sometimes referred to as “Lunch & Learns,” typically last anywhere from five to 20 minutes and focus on a wide range of topics of interest to agents.

With over 250 home inspectors in his market, Jerry saw these presentations as a great opportunity to set his company apart from the competition and get his name out there. He began developing a series of presentations on various topics including Infrared Technology, Common Defects in the House, Winterization of the House, New Roof Technology, and New Methods in Mold Treatment. He started offering these presentations on a regular basis to as many broker offices as he could.

He knew that the best way for him to gain the respect and trust of more agents was to get in front of them in a room and showcase his knowledge regarding home inspections. These presentations resulted in a steady stream of ongoing home inspection referrals from agents.

While Jerry was happy to get in front of agents for five to 20 minutes, he knew that if he could get more time in front of them that he could greatly improve his results. While speaking to other inspectors from his marketing group, Jerry learned that some inspectors in other areas of the country were starting to teach continuing education courses on home inspection topics.

Offering Continuing Education

The idea of offering continuing education courses really piqued his interest. Jerry knew that real estate agents were required to have a specified number of continuing education credits every few years and if he could provide CE courses it would be of great value to agents. The CE courses could create opportunities for him to get more time in front of agents.

Jerry had no idea what the requirements are to get approved as an instructor in his state so he did a little research and realized that there was a pile of paperwork, substantial fees and ongoing administrative work required to set up and manage a continuing education program. Since this was outside of the scope of his home inspection business, he decided to put the idea on hold for some time.

In 2012 at one of Mike Crow’s Platinum Group meetings Jerry was introduced to Mike Chevalier from Preferred Systems, Inc. PSI offers personalized educational programs to organizations across the country and is approved by 47 certification boards to offer continuing education. After a quick discussion, Jerry learned that Preferred Systems was offering a program designed specifically for home inspectors and that they could manage his entire continuing education program for him. Preferred Systems handles all the instructor filings, course filings, and state reporting requirements. They also provide pre-approved courses on home inspection topics and provide access to an online portal which automates the entire registration process and simplifies everything for the agent.

Jerry immediately signed up with Preferred Systems and started notifying brokers that he could offer continuing education

courses on various home inspection topics ranging from one to three hours. He received great feedback from brokers and they were surprised that a home inspection company could offer CE courses. He began using his office presentations to notify agents about his CE courses, which was a great way to followup with agents and get more time in front of them.

After several months of offering continuing education courses, Jerry noticed a significant increase in the number of referrals he was receiving from agents. At the end of each continuing education course he gave all the agents a coupon for \$50 off an inspection which they could give to their clients. The coupon included the title of the CE course, the date, time and the name of the broker. This enabled Jerry to easily track the results of all his CE courses.

He compared the results of his office presentations to those of his CE courses and it wasn’t even close. Each time he did an office presentation for 10 people, he would get an average of two coupons back. When he did a CE course for 10 people, he would receive an average of eight coupons back. For this reason, he refers to his CE courses as “Marketing Presentations on Steroids.” Jerry directly attributes the extra time that he is spending with agents to the substantial increase in his referrals. Within a period of five years after he started offering CE courses, Jerry grew his business from 880 inspections a year to over 3,000 inspections. Jerry currently has a total of 14 employees including three full-time administrative and office staff members, a dedicated marketing representative and 10 full-time home inspectors.

He has also become a marketing coach and helps other home inspectors across the country grow their businesses using the same strategies he has learned over the last 10 years. The first thing that Jerry tells other inspectors is that they need to start doing presentations and implement a continuing education program as quickly as possible. **WRE**

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Binding Arbitration: What's the Deal?

by Isaac Peck, Editor

Binding arbitration clauses have become increasingly popular in both the corporate and small business environment, as companies actively look for ways to limit their liability and reduce their legal expenses in case of a lawsuit.

These are showing up in user agreements, employee agreements, and contractual agreements, with technology companies, banks and others using them strategically to limit the ability of their customers to bring a class action lawsuit. Large corporations also favor them with highly compensated employees in order to prevent confidential or publicly damaging information from coming to light.

Wells Fargo most recently used this tactic to try to avoid a large class action lawsuit over allegations that it fraudulently opened over two million fake accounts for its customers. Instead of facing its customers in court, it tried to force them individually into binding arbitration. Fox News also deployed this tactic when facing a sexual harassment lawsuit from Gretchen Carlson, using a binding arbitration clause in her employment agreement to force the suit into arbitration before settling it quietly.

Meanwhile, small businesses have caught on to the trend. Home inspectors have been increasingly adopting these clauses under the assumption that they will discourage litigation and assist in a favorable resolution should a potential claim arise.

A sample home inspector arbitration clause from California reads:

Any dispute concerning the interpretation or enforcement of this Agreement, the inspection, the inspection report, or any other dispute arising out of this relationship, shall be resolved between the parties by binding arbitration conducted in accordance with California Law, except that the parties shall select an arbitrator who is familiar with the real estate profession. The parties agree that they shall be entitled to discovery procedures within the discretion of the arbitrator. The arbitrator shall manage and hear the case applying the laws of the State of California to all issues submitted in the arbitration proceeding. The award of the arbitrator shall be final, and a judgment may be entered on it by any court having jurisdiction.

The increasing popularity of binding arbitration agreements raises the question: do binding arbitration clauses actually protect home inspectors?

Less Expensive?

Todd Stevens, experienced home inspector trial lawyer and past President of the San Diego Bar Association, says that many



small business owners are frequently under the assumption that binding arbitration is preferable in the case of a claim because it is perceived as a less expensive alternative to litigation in the court systems. However, Stevens argues that this assumption is not necessarily correct. “Home inspectors and other small businesses are frequently attracted to binding arbitration because they think it will help them avoid expensive lawsuits and insulate them from claims. However, arbitration can end up being very expensive because in most cases you are using private judges. Retired judge fees can easily be \$10,000 per day,” says Stevens.

There is also a perception that arbitration is preferable to the courts because the defendant will not have to face multiple appeals and can finish the case relatively quickly. But according to Stevens, this is both a pro and a con. “Arbitration is not appealable. So if you get a result you don’t like, you can’t appeal and you have no recourse. Of course, that’s good if you get a result you like. In litigation, everything is appealable. So if you win, they can appeal and the case continues,” reports Stevens.

The idea that arbitration leads to quick resolutions is not necessarily true either, according to Stevens. “Arbitration can go on and on, and the retired judges/arbitrators can drag out the case for months. This can get quite expensive very quickly. On the other hand, normal judges in the court system are usually in a hurry to move things along, so a court case actually might be resolved quicker,” says Stevens.

Ultimately, whether arbitration is more expensive or less expensive can vary. “The cost depends. Arbitration can be cheaper, depending on the jurisdiction, but I would not say that it is cheaper as a rule. I’ve seen arbitrators drag it on and on. I’ve definitely seen retired judges keep a matter going way too long,” Stevens says.

Pros and Cons

In many cases, the biggest pro to arbitration is that it keeps the case away from a jury. Stevens reports that large corporations tend to prefer binding arbitration agreements with employees because it minimizes the risk of facing a runaway jury that sees the case as David vs. Goliath and wants to side with the “innocent” employee against the big “evil” corporation. “Arbitration is preferred by many large corporations because they can prevent class actions. They’re also popular in employment agreements because jurors tend to be very sympathetic to employees. It can get very unpredictable when there’s a little employee up against a big corporation,” says Stevens.

While home inspectors are a far cry from big corporations, the same concern might also apply where a jury might be sympathetic to homebuyers who sunk their life savings into a new home only to discover catastrophic defects, even if the home inspector performed a quality inspection to the highest standards. “Small business owners are afraid of unpredictable juries. There is a little more control in arbitration as far as timing and where the hearing will take place, and sometimes you can limit the amount of discovery. So you have a little more control over the process than you do in litigation,” reports Stevens.

Another advantage to arbitration is it can sometimes keep the inspector out of litigation. “I’ve worked with inspectors in the past where we went to arbitration, but we were ultimately on the sidelines. The buyer, seller and Realtor were in court fighting about the home’s defects, and the home inspector gets to sit it out until the other parties reach a resolution. So arbitration can certainly be a good thing in situations like that,” says Stevens.

Many technology companies, or other companies with trade secrets, prefer arbitration because it’s a confidential process, according to Stevens. Arbitration disputes do not occur in a courtroom that’s open to the public and in most cases, arbitration awards don’t become public. “If two sides are fighting out the validity of a patent and confidential documents are coming out, then many companies would prefer to have those conflicts take place in arbitration. In arbitration you can control that process. Additionally, the winner and loser are not necessarily publicly known. This prevents ‘me-too’ lawsuits against larger companies. However, this might work in a small business owner’s favor as well, because if you lose a case it would not necessarily destroy your reputation,” Stevens argues.

A downside to arbitration is that it does not leave much protection for a defendant who seeks recovery of expenses in the case of a frivolous claim. “Arbitration doesn’t have the same protections as the court system and you can’t bring a malicious prosecution case against a plaintiff who brings a dispute against you in arbitration. You should still be able to defend easily against a weak claim, but you’ll still need to get the case in front of the arbitrator, and that costs money. So there’s not much protection against frivolous lawsuits,” says Stevens.

Non-Attorney Arbitrators?

Some home inspectors include provisions in their pre-inspection agreements that specify who will arbitrate a potential dispute. Some of the arbitration organizations chosen, however, are not legal organizations with experienced attorneys or retired judges working as arbitrators. Some agreements include clauses

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that stipulate that organizations such as “Construction Dispute Resolution Services, LLC, an organization made up of experienced construction and real estate professionals,” will resolve the case.

This can present a problem, and may not be enforceable, depending on your state. “In California, at least, the courts look pretty grimly on alternative dispute resolution providers. Credit card companies used to have a clause in their credit card agreements that you had to go to some private arbitration board, but the courts did not look kindly on that. Since then, it’s become difficult to really control the dispute resolution mechanism. Those kinds of limitations are very strictly construed as shady. Any organization that is not staffed by lawyers and doesn’t have arbitrators that are retired judges is going to be a hard sell if challenged in the courts, at least in California,” says Stevens.

Mediation

One suggestion that Stevens recommends to home inspectors, regardless of whether they choose binding arbitration or not, is to include a mediation clause in their pre-inspection agreements. Using the California Association of Realtors’ (CAR) Residential Purchase Agreement as an example, Stevens explains that it contains a mandatory mediation clause. This means that the buyer and seller must first go to mediation before they can do anything with respect to litigation or arbitration. “Mediation can often save both parties a great deal of money by resolving a case before it goes to litigation and sometimes before lawyers even get involved. Mediation can be done before any discovery.

You just need to hire a mediator that everybody agrees to and sit down and talk about the case. The mediator doesn’t force a resolution but it gets everybody to the table to talk about the case. If it doesn’t work out, it doesn’t work out, but there’s nothing to lose. Sometimes, this can nip a potentially expensive lawsuit in the bud,” reports Stevens.

In CAR’s case, the mediation clause has teeth as well, in that if a party does not go to mediation before resorting to litigation, they waive the right to recover attorney’s fees if they were to otherwise win the case. If the case isn’t resolved at mediation, then both parties can seek justice in the court system.

Conclusion

Home inspectors should be fully educated on the pros and cons of including a binding arbitration agreement into their pre-inspection agreements, Stevens cautions. “I would think carefully about including it in a contract. “You might want to see what your insurance company’s view of that is. Some insurance companies don’t mind it. I would definitely get your insurance company in the loop before including that in your agreement,” says Stevens.

The expense and the desirability of a binding arbitration agreement may also vary by state, so home inspectors who are considering using them should also research their state requirements and consider consulting legal counsel. Ultimately, it’s a business decision each home inspector will need to make for themselves. Stay safe out there! **WRE**

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Basement Leaks: Inspector's Nightmare!

by Tom Feiza, Mr. Fix-It, Inc.

The voicemail fills you with dread; the caller who left it is obviously upset. “This is Snidely Whiplash. You inspected my home a year ago, and now I have a leaky basement. Please give me a call ASAP. My contractor says you should have reported this.”

Immediately you search your records. You don't find anything about a basement leak. You do recall some loose paint and salt stains around the sump pump, but nothing so dramatic that it had to be noted in the report. You always report active leaks, and none were visible at this inspection. Your report does not contain any relevant pictures of the basement, and you did not recommend maintenance of grading, gutters and downspouts. You also remember how distracted you were during the inspection as Snidely and his entourage—wife, in-laws and buddies—followed you around, asking question after question.

You call Snidely and arrange a visit to view the leaking basement. You can't sleep that night. You wonder about your E&O insurance.

Just the Facts

Snidely, the homeowner, calls me in as a consultant. Here's how I proceed.

1. I interview the homeowner.

The owner says leaks occur around the sump pump every time it rains; water runs on the floor around the sump pump and dampens the lower block. The owner has made no changes to the basement or the exterior grading, and he keeps the gutters clean and downspouts extended.

A basement contractor brought in by the homeowner recommended digging up the basement floor along the exterior wall, removing about 18 inches of concrete floor and old tile, and checking bleeders to the exterior tile. He will replace all interior tile and core-drill the blocks under the floor so that they drain into the new gravel and tile. He will do the whole basement so he can guarantee the work. He'll charge \$20,000 for the job.

2. I inspect the basement interior. My findings:

- The floor is damp around the sump pump. The wall at the sump pump is damp, with peeling paint and salt stains. A channel has been chiseled into the concrete floor to drain water to the sump pump crock (See Figure 1: Basement Leak).
- There are also stains and damp areas high on the wall (See Figure 2: Basement Leak High on Wall).
- Below the adjacent laundry tub, stains are visible on the lower block of the wall (See Figure 3: Basement Leak at Lower Block).
- The sump pump is not working.
- There are no signs of structural movement.

3. Next I inspect the exterior and note the following:

- The soil is damp from recent rain.



Figure 1: Basement Leak



Figure 2: Basement Leak High on Wall



Figure 3: Basement Leak at Lower Block

- At the corner by the sump pump, soil is low. An 8-foot level shows that soil is pitched into the foundation (See Figure 4: Exterior Grading, Downspout, Pump Discharge). The gutter downspout drains into a black plastic flex tube buried in the ground with no visible termination. The yard is flat, so roof water draining into this tube will not run away from the foundation. The tube will be prone to freezing and breakage, leaving water pooled next to the foundation.



Figure 4: Exterior Grading, Downspout, Pump Discharge

- At the adjacent wall, the 8-foot level indicates that soil slopes toward the basement (See Figure 5: Poor Surface Drainage).



Figure 5: Poor Surface Drainage

- The paver patio also slopes toward the foundation (See Figure 6: Poor Patio Drainage).



Figure 6: Poor Patio Drainage

- The sump pump discharges into a small-diameter flex tube that's prone to freezing. When the tube is frozen, the pump cannot remove water from the crock.

4. I recommend these steps to the homeowner:

- Do not do any major repair until you've completed all of the following maintenance steps.
- Replace the sump pump.
- Set the new sump pump to keep water 12 inches below the top of the basement floor slab.
- Improve surface drainage of all soil around the home so that it slopes away at about a 6-inch drop for every 10 feet.
- Re-grade the patio pavers so they drain away from the foundation with a slope of about ¼ inch per foot.
- Use a large-diameter tube or downspout extension to carry sump pump discharge to an area with sufficient drainage away from the home.
- Test the underground gutter drain. If this drain is blocked, frozen or broken, gutters will dump significant amounts of water next to the foundation (See Figure 7: Storm Sewer Test)
- Maintain the sump pump, grading, gutters and downspout extensions.

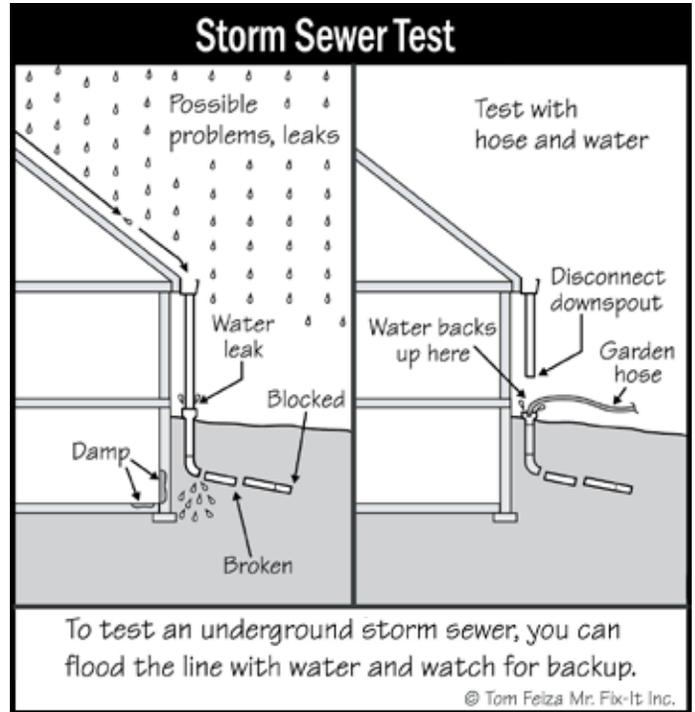


Figure 7: Storm Sewer Test

5. I also recommend to the homeowner that if the basement still leaks after the above corrective measures:

- Always properly control exterior surface water prior to any major repairs for basement leaks.

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- It appears that only a small area around the sump pump needs repair; stains on the lower block normally indicate interior drain tile blockage (See Figure 8: Basement Leaks at Lower Block). Test the interior drain tile to determine the extent of blockage (See Figure 9: Basement - Drain Tile Test).
- Replace the interior drain tile to the extent determined by the test. There is no need to replace the complete system, since there are no other leaks in the basement.

Who Is at Fault?

The homeowner certainly has not maintained surface grading and control of surface water. The stains high on the wall are caused by poor surface drainage and possible gutter issues. The small sump pump discharge and a broken underground drainage tube could contribute to the leaks. The sump pump is not working, and this could have caused the stains low on the wall and leaks into the basement.

The basement contractor typically sends out a salesperson to perform a free evaluation. This salesperson has done a major sales job, recommending repairs costing \$20,000. But the contractor ignores the problems with grading, gutters, sump pump failure, and possible frozen or broken exterior drainage pipe. Luckily the contractor just said the home inspector missed these issues. Or maybe he also provided the name of his favorite attorney so that Snidely, the homeowner, could sue the home inspector and get the repair for “free.”

Is the home inspector at fault? There were no active leaks to report; that’s good. But what were the site conditions: rain, wet soil, dry soil? This would have been important to note during the inspection.

The inspector did not report signs of previous leaks – the salt stains and peeling paint. Most importantly, he did not report

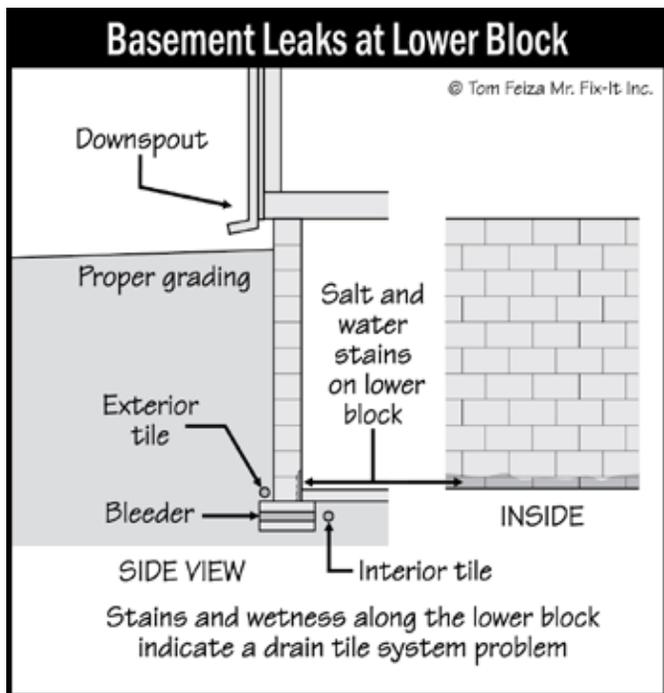


Figure 8: Basement Leaks at Lower Block

the channel chiseled into the basement floor to drain water from the floor surface into the sump crock. This should have been a red flag calling for further evaluation.

The inspector should have identified the issue of the small sump pump discharge tube. The tube will freeze, disabling the sump pump discharge. The inspector also failed to note roof drainage into a plastic underground tube that needed further evaluation because of its potential for causing leaks.

The home inspector did not note the problems with grading of paver patio and soil around the home. A prudent home inspector would note grading maintenance on every inspection.

What Will Happen?

As the basement consultant, I’ve made reasonable recommendations for simple repairs and maintenance. But site drainage problems will be difficult to fix, because the home’s framing is too close to the soil surface. If the basement still leaks after the initial easy adjustments, I’ve recommended limiting repairs to specific areas of interior tile that may have failed. The maintenance and repairs are probably a \$10,000 deal if the complete tile system doesn’t need to be replaced. If the complete

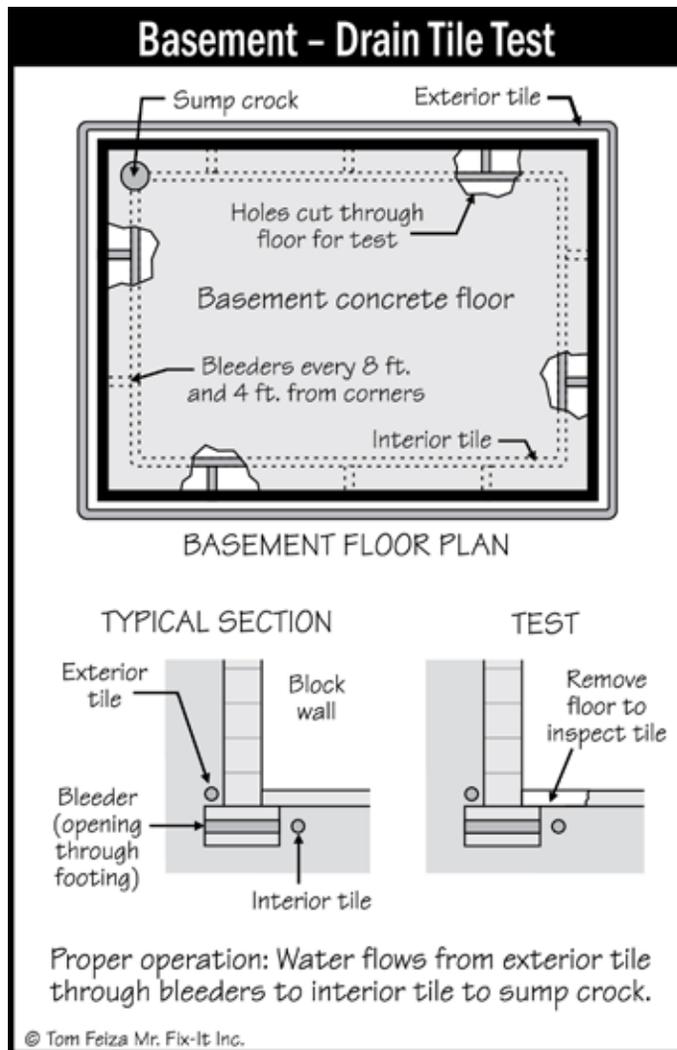


Figure 9: Basement - Drain Tile Test

system is replaced, we are back to an outlay of \$20,000 plus all site grading costs.

The home inspector needs to cross his fingers on this one; an aggressive owner or litigator could make him responsible for a significant part or all of the maintenance and repair. Fighting this litigation could cost as much as paying for the repair.

The home inspector could have easily eliminated his responsibility with a few standard inspection report statements:

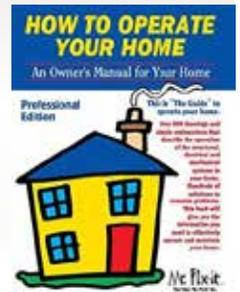
- That the homeowner must always maintain grading, gutters, downspouts and surface drainage. This home shows particular need for maintenance of these systems.
- That the small-diameter sump pump discharge will be prone to freezing and damage, causing leaks in the basement.
- That the underground flex-plastic drainage tube for the roof gutters needs further evaluation, as this can cause leaks into the basement.
- That the channel cut into the basement floor at the sump crock indicates a crude method for coping with previous leaks. Ask the seller to explain this, or get an evaluation by a specialist.
- That stains on basement walls indicate previous water intrusion. These areas may leak again in the future.
- Inspector could provide a book, sketch or article explaining the proper grading and maintenance.

Finally, the home inspector should take pictures of all basement walls. Were leaks or stains visible? Were there limitations to the view of the basement? Save those pictures. Someday, they could save you lots of headaches. **WRE**

Like this information? Catch Tom Feiza's presentations on moisture problems and basement inspections at an ASHI meeting near you.

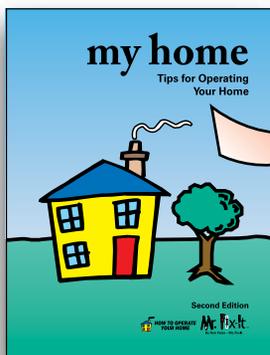
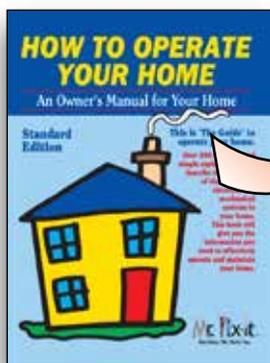
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How to Avoid Wasting Money on Your E&O Insurance

by David Brauner, Senior Broker at OREP.org



What is an insurance broker doing telling you how to avoid wasting your money on E&O insurance?

You work hard on every inspection and earn every dollar right? So when it comes to spending those dollars on insurance, you want to make sure coverage will be there when you need it. One way to ensure that you're protected if trouble brews is to make sure your E&O policy doesn't expire—either by not renewing it on or before the annual expiration date or by being cancelled midterm for failure to pay.

You must keep your *Claims Made* E&O insurance policy in force to stay protected or else you've thrown away all the money you spent on insurance because coverage for prior inspections will be gone. Switching to another insurance provider at renewal time is fine, as long as it's on or before expiration and there is continuity of coverage. Let me repeat and explain: allowing your *Claims Made* E&O insurance policy to lapse means you've thrown away the money you spent on insurance. And here's why.

Every home inspector's E&O policy that I know of is *Claims Made*, which means the policy must be in force at the time the claim is reported. What does that mean? Say a claim surfaces today from an inspection you did one year ago, when you had insurance coverage. If you're still covered without a lapse, the policy should respond to any covered claim. That's the way it's supposed to work. But say you go on vacation a few months after the inspection, forget to renew and let the policy expire—now what? Even though you were covered at the time of the inspection, the policy probably will not respond to that claim because the policy is no longer in force; you aren't protected and the money you spent on E&O is wasted. There is no coverage even if you bought another policy a few months later and are covered today!



David Brauner is Senior Broker at OREP, a leading provider of E&O Insurance for home inspectors and other real estate professionals in 50 states (OREP.org). He has provided E&O insurance to home inspectors for over 20 years. Contact him at dbrauner@orep.org or (888) 347-5273. OREP—Organization of Real Estate Professionals Insurance, LLC. Calif. Lic. #0K99465.

The policy term ended when the policy lapsed. The claim did not surface and therefore was not reported during the policy term so there is no coverage for the claim today. It may seem like a “rip off” but E&O policies all work the same way—for engineers, lawyers, accountants, appraisers, home inspectors and other professionals. Again, switching coverage to another provider is fine, as long as it's done prior to expiration. But if you let the policy lapse, coverage is gone. But there is an alternate happy ending (see below).

Note: if you plan on retiring, call your agent and ask them about “tail” coverage to protect you into the future. They will explain it to you or call us at OREP for help.

Reporting

Another way to protect yourself, your family and your business, in addition to renewing on time, is to report all claims and/or circumstances to your insurance agent/carrier when they happen—even the small stuff.

First, reporting is easy. Companies like OREP provide a free claims help line managed by professionals who can help you nip a complaint in the bud before it turns into a claim. One surefire way to cause yourself grief is to try to “handle” a complaint yourself. Many times a professional can end a “claim” before it begins because of their knowledge and experience. If the issue turns out to be more than a nuisance complaint, professionals are available to take the problem off your hands—so you can focus on what you know—inspecting. Reporting incidents and even claims does not automatically raise your premium either. In most cases we see at OREP, there is no penalty for reporting and getting help.

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ISG. Under this unique program, many of the warranty-related nuisance claims that OREP inspectors affiliated with ISG routinely face are handled professionally by the experts at ISG.

This saves OREP inspectors a possible deductible expense, a ding on their claims history and the anxiety of dealing with issues that are more properly covered under a home warranty. If the problem turns into a claim, deductible forgiveness kicks in, paid for by ISG. OREP insureds can get all the details and learn how to qualify at InspectorServicesGroup.com or email Nathan@NathanThornberry.com or call (800) 544-8156.

Happy Ending

Let's go back to the claim scenario described above: there is a complaint from an inspection you did one year ago but let's say the problem surfaced shortly after the inspection when the policy was still in force (and before you went on vacation). You took my advice (unlike my teenager) and reported it right away when it first surfaced. Even if you let the policy lapse, the policy will respond to that covered claim in this scenario because you reported it during the policy period. Even if you're not insured today!

So rule two on how not to waste the money you've spent on insurance is to report incidents and claims right away, when they happen, to make sure the coverage is there when you need it.

One other thing to keep in mind: it is in your best interests to report all claims and incidents promptly for another reason: you are required to. The language in most E&O insurance policies requires you to report any incident or claim when it surfaces as a condition of coverage.

If you fail to report a complaint when it first surfaces, a carrier can decline coverage later when it turns into something if they feel the delay hurt the defense. It's very unusual but can happen, even if you have maintained coverage. All carriers work the same way. This is another way to waste the money you spend on E&O insurance!

If there is a claim, you want the insurance coverage you paid for, so rule two is don't ignore a claim or incident and fail to report it in the hopes it will go away. If your policy ends and the seemingly frivolous complaint turns into something later, you might not have coverage. Furthermore, if you complete a renewal application "falsely" by checking the box "no claims or incidents" and there was one that turns into something later, the carrier may cancel you.

Summary

To recap: don't let your policy lapse (going to another carrier is fine) and report claims when they happen, and you will not

"One surefire way to cause yourself grief is to try to 'handle' a complaint yourself. Many times a professional can end a 'claim' before it begins because of their knowledge and experience."

have wasted the money spent on E&O insurance, which is the best investment you can make to protect you and your family from financial disaster. If you never need the insurance you pay for, consider it a job well done and a blessing—not money wasted.

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Agent Referrals: How to Succeed Ethically

by Isaac Peck, Editor

Real estate agent referrals are frequently touted as a way for a home inspector to build his or her business and bring a steady stream of work in the door. Proponents of such a dynamic argue that agents are well-positioned to refer quality service providers, including home inspectors, as they can leverage their professional contacts and industry expertise to assist homebuyers, who often have little experience or knowledge of real estate.

Since homebuyers are often inexperienced in matters of real estate, who better to assist in selecting, interviewing and hiring a competent home inspector than an experienced agent, who by law owes a fiduciary duty to the homebuyer, including loyalty, disclosure, reasonable care, due diligence and more?

On the other hand, many inspectors and other industry advocates argue that such an arrangement can have a downside for the homebuyer, as some real estate agents pressure inspectors to not be a “deal killer” and threaten blacklisting should an overly critical report lead to a failed deal.

Of course, not all agents are unethical or attempt to influence inspectors in such an overt manner. Nevertheless, the power dynamic between agents and inspectors means those inspectors who rely on agent referrals for business are often fearful that they may be blacklisted or lose business just for doing an honest, thorough job while trying to protect their client, the homebuyer.

This leaves inspectors in the difficult position of knowing that doing the right thing may cost them business: producing honest, high-quality reports that protect their homebuyer clients can put them at risk of losing future referrals. Can inspectors do honest, ethical and thorough work, while building a network of agents who will continue to refer business?

Some inspectors say it’s not only possible but critical to success. In other words, one of the keys to success for inspectors is to do business with agents who are ethical, both to preserve their reputation and keep their client’s interests as the first priority. This is the challenge of the home inspector.

Dealing with Pressure

A recent letter from a *Working RE* reader demonstrates the pressures faced by inspectors to “perform.” Emilio Bengoa, an



inspector from Idaho, writes “I am a new inspector and as I reach out to real estate agents in my territory, I consistently get complaints about inspectors who report on every little thing. Agents do not want us to mention things that could very well turn into a complaint by the homeowner or even a potential lawsuit,” says Bengoa.

In many cases, Bengoa says that agents are asking inspectors to lower their standards. “Why is it that real estate agents get away with putting demands on us to lower our standards and underreport, but all of them expect us to have E&O insurance? In other words they seem to be strict on the insurance part but not on the thoroughness of the inspection,” reports Bengoa.

Citing examples of things he has heard from agents about his reports, Bengoa says he is often told not to report details or to keep his reporting vague. Bengoa says he has heard things like: “Why are you saying anything about polybutylene tubing? Why can’t you just say: no leaks observed. Or don’t write that the furnace is close to the end of its expected life cycle; you can just recommend it be serviced by a qualified HVAC technician,” Bengoa says. “They tell me if I report like that they will never call me to do another inspection. But if I don’t report this way I may get sued.”

Bengoa believes that unless his home state of Idaho adopts some regulations and licensing standards on inspection reporting, inspectors are likely to face continued pressure

to underreport. "All I can do is continue to report utilizing my Standards of Practice (SOP) and maintain an ethical practice in my community," says Bengoa.

Successful and Independent

Home inspector veteran and President of the Millionaire Inspector Community (MIC), Mike Crow specializes in teaching home inspectors how to market their businesses, including how to market to and network with real estate agents and other industry stakeholders to get referrals. Crow says that over his career his two companies have done over 100,000 home inspections and that when his firm encounters agent pressure, it is the exception rather than the rule. "We have run across agents trying to tell us how to report, but it's not very common. One of the reasons we don't see it very much is because we've weeded out the agents who try to push us around," says Crow.

The solution to building a great inspection business while never compromising your ethics, Crow argues, is to effectively market your business so you can pick and choose whom you work with. This allows you to "fire" agents and others who try to influence your report and not have to worry about where your next job will come from. "When you know how to market properly and you know how to make the phone ring, you're not at the mercy of an unethical agent trying to push you around. Home inspectors talk about the fear of being blacklisted but it also works both ways. We blacklist some agents as well. If there are agents

who aren't working in the best interests of the clients or who aren't ethical, we turn those appointments down," says Crow.

Having a strong marketing foundation and diverse selection of leads, referrals, and new business is the key, according to Crow. "Excellent marketing allows you to pick whom you want to do business with. One of the reasons some inspectors succumb to agent pressure is that they think they need the business. But when you know the phone is going to ring and you're going to be able to replace that time slot with another inspection, you're not as susceptible to pressure," Crow says. "Home inspectors who are feeling pressure from agents should get busy finding new referral sources. Put all your efforts into marketing."

"Home inspectors who are feeling pressure from agents should get busy finding new referral sources. Put all your efforts into marketing."

Good Agents, Great Service

The best agents want a great inspection for their clients, according to Crow. "One thing that many inspectors don't understand is that it's the brand new agents who typically try to influence

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Inspector Advisor Lawsuit Possibility

by Jerry Peck, InspectorAdvisor.com

Editor's Note: This question is from InspectorAdvisor.com, a free inspection support service for OREP insureds.

Question

I used to work for an inspection company that had all of its inspectors as 1099 contractors. The owner paid for all of the insurance. I was released from his company because I refused to do an inspection for free that he had given away as a door prize at a real estate office. In April I started my own company with my own insurance.

I received an e-mail this week informing me that I may be named in a lawsuit that is being threatened resulting from an inspection that I did with another inspector on a million dollar home in February. On that inspection I was responsible for roof and foundation and my colleague was responsible for exterior and termite. The client decided to modify their deck. When the contractor pulled the deck off the wall and removed part of the siding they discovered wood rot and termite damage. They have come to the company saying the company should pay for it. The company owner has informed me that the company as well as the other inspector and I may be named in a lawsuit. He forwarded an e-mail to me and at no point does the client suggest that the inspectors are responsible but suggests the company is responsible.

I do not see myself as being involved in this situation. First, I did not inspect the areas in question because that was the other inspector's responsibility. Second, and more importantly, the company was the one with the insurance policy. Now, he is implying that the other inspector and I take a portion of the responsibility and he is trying to avoid sending this to his insurance company.

There was no contract with the business owner and myself or any of the other inspectors. The disputed amount is around \$7,100.



Do you think I have any responsibility? Do you think this is a business responsibility and he has to either pay it or report it to his insurance? Do I need to get an attorney on this or wait until there is actually a claim filed?

Jerry Peck

First, please understand that this is not legal advice as I am not an attorney. I suggest that you hire one. Having said that, your description indicates that you were not a 1099 contractor per IRS guidelines; it indicates that you were actually an "employee."

Review what the IRS states about 1099 contractors versus employees.

I suspect you will agree that you were actually an "employee." It is common practice (all too common) for companies (especially home inspection companies) to deem their "workers" to be "independent contractors" when the company controls where and when the "worker" goes and what and how the "worker" does the work, and as I understand it, that control typically means that the "worker" is actually an "employee."

The simplest course for you to start would be to go to the company's office and tell them that they need to write a letter which states that they, the company, the owner, all parties, agree to hold harmless, individually, jointly, and/or otherwise, you and your successors and assigns, for all work you did for them, per their requests, under their requirements, and all other work you did under and for the company, the owner, and all parties.



Jerry Peck has been in construction since 1972, first as a contractor then as an inspector; he has been inspecting since 1991. He is the owner of Construction Litigation Consultants, LLC and does construction consulting, construction defect litigation consulting, and personal injury litigation consulting relating to construction of new and existing buildings. Jerry is a licensed General Contractor, Plans Examiner, and Code Inspector in Florida. He also does code consulting related to the Florida Building Codes and the International Building Codes, along with various state codes based on the International Building Codes. Jerry answers your questions at InspectorAdvisor.com.

When they refuse to write such a letter (as they will) you might want to consider informing them that you are leaving their office and heading to the local IRS office to report them (the company) for improper withholding of taxes. The IRS likes to investigate such cases and the company will likely be held accountable for all taxes not withheld for all workers, who will almost surely be deemed to have been "employees" during the entire time the company treated the workers as "independent contractors."

If the company and/or the owner has any knowledge of what the IRS does and can do, and how far back they can go, the company will ask you to wait and they will write the letter then and there. If the company and/or the owner do not understand the gravity of what they will face...and they refuse to write the letter...go to the local IRS office and start the complaint. I suspect the company and the owner will greatly regret not writing the hold harmless letter.

Then, contact your state's labor board and file a complaint—they have a lot of power too, but the IRS can be scarier than the state labor board. However, both will address not only your situation, but that of all workers for that company. Good luck, and please report back when that company writes the hold harmless letter. Again, I am not an attorney and this is not legal advice. **WRE**

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When to Inspect an Attic

by David Brauner, Senior Broker at OREP.org

Editor's Note: Home inspectors share their strategies about how to inspect an attic.

Fritz Kelly, inspecting for 12 years in Arizona, has a problem common to inspectors: "I declined to go into an attic the other day. The access was in the master bedroom closet, full of clothes, etc. When I attempted to open the scuttle cover, it was obvious there were about 15 inches of blown in insulation covering it. I was able to access another portion of the attic so I knew approximately how much insulation was up there," said Kelly. "I wrote that I didn't access that portion of the attic due to excessive insulation on the hatch cover. I suppose I could spend half an hour or so covering their clothing and cleaning up but what do you do when the cover is heavily caulked in place and you will damage drywall removing it? I usually report that the seller needs to provide access but with these short sales, the inspection period is usually very short."

Rick Hurst, inspecting the Dallas/Fort Worth area for 23 years, says he also uses caution when inspecting an attic, from experience. "Several years ago I removed a panel on the ceiling in a master bedroom closet and down fell a large amount of Rockwool insulation all over this lady's clothes, including a mink coat," said Hurst. "She wanted me to pay a cleaning bill of over \$450. I was hesitant at first but paid the bill feeling at the time that I was at fault. Now, if the panel is not fully accessible, I write it up as such and move on. I tell the client that if the homeowner will remove items that are blocking my access, I'll be happy to comeback for a return trip charge. I take pictures of the panel being blocked or that is otherwise inaccessible and put it in my report."

Useful Language

To address this issue, one inspector said he uses language similar to the following: "Inaccessible. Sometimes loose insulation has been blown over the access hatch, in which case it will not be opened. This situation should be rectified after taking possession of the house." Or "Inspector can only review this area if access is made available to the inspector." And "If concerned, client should verify acceptable heating/cooling bills from homeowner. Client has the right to interview the homeowner to assume proper insulation and attic ventilation by confirming if homeowner has ever observed ice damming, icicles on eaves or abnormal melting of snow from the roof compared to other homes in the area—all of which are signs of improper insulation



and attic ventilation. If available, client may wish to obtain design specifications, blueprints, permits, etc. to determine insulation, ventilation, and structure."

Jack Feldmann, inspecting in Tennessee since 1989, says he often goes the extra mile. "It's a tough call. I have also paid a cleaning bill," said Feldmann. "However, I have taken clothes out of the closet with the help of the real estate agent. I've put an old sheet over the clothes, and many, many times I have cleaned up the insulation that fell down. Sometimes when there are two access points, I can climb over to the other side and get in that part of the attic anyway. I don't have a problem cutting a caulk line to get access. I need to get in and it can be re-caulked. Same thing for electrical panels. Most of the time, I will cut wallpaper or caulking to get into one. Many times I have to chip out paint from the screw heads to open it. If you don't go in the attic or anywhere for that matter, document it well in the report as to WHY you didn't go in there. Photos are a plus."

Gearing Up

Jon Errickson, inspecting Twin Cities, Minnesota for two years, says he takes gear along for just such an occasion. "I carry a six by six foot tarp to put down under my ladder to hopefully catch most of the insulation that falls," said Errickson. "The only attics that I don't go in are the ones where the ceiling has the 'popcorn' texture and it seals the attic scuttle. But I tell the buyers I'll come back and look if they don't mind me cutting in to it to get access."

Michael O'Handley, inspecting in Washington since 1996, says, "I move blown-in insulation all the time. I also cut the caulk on access hatches when I need to. Just have the selling agent call the listing agent and make it clear to the seller, through the listing agent, that you have no intention of re-caulking or paying to have it re-caulked. If the seller refuses to allow you to do it or says you have to re-caulk it or pay to have it re-caulked, decline to cut the seal and exclude the attic. It only takes a couple of minutes to hang some old sheets over the stuff in the closet (shoes are great for anchoring the sheets in place on top of

stuff), leaving the floor the only thing that will get dumped on and I have a six by six foot tarp for that. Most of the time the installers around here have formed a dam around the hatch with batt insulation and have cut a large piece of batting to sit on the hatch, so the only thing that falls through is a little over-blow. However, occasionally there aren't any dams and I'll get a little cascade. I just collect most of it when I come back out, toss it up into the attic, and vacuum up the residue," said O'Handley. "For the stuff that inevitably falls down, I have a hand vacuum that I bought for four dollars at a thrift store. It's powerful with a beater bar on it. It will compact a large amount of loose-fill into its little cloth bag in seconds and leave the place nice and clean. In 13 plus years I've never gotten a complaint from a homeowner or had to pay a cleaning fee and I've discovered literally hundreds, maybe thousands of things in attics that would have earned me poor reviews from clients if they'd been discovered after the clients moved in."

Dave Hill, inspecting since 2005 in Arizona, has this take: "I carry several small clips to hold a sheet in place to cover clothes and catch that darn loose fill. I usually state/disclose that I only inspect from the HVAC platform in the attic since most joists are covered with insulation. They can have a handyman come out and do a further evaluation as desired. I don't risk going through the ceiling unless I see something that warrants closer inspection," said Hill, adding this important tip: "I always wear a bump cap. Like a hardhat but similar to a baseball-style cap. My head hit an 'air nail' in the sheathing once and after that I never enter without head protection. My LED headlight is attached to the cap so I have light wherever I look."

Michael Patton, inspecting throughout Cincinnati, Indiana & Northern Kentucky for nine years, has his own way of doing things. "Currently I do not carry sheets or tarps; I probably should but don't. One easy, fast trick that I have been using is to make use of the plastic dry cleaners bags. I pull out a couple of the clothes with the bags over them and hook the hanger perpendicular to the rod and drape the clothes/bags across the other clothes. Usually enough of these are in the closet to provide adequate protection of the hanging clothes. Yes I still have to clean up the floor on occasion but this prevents me from having to go back and forth to the truck with the tarps and sweepers etc.," said Patton. "For the most part, I will open just about any ceiling hatch; yes I have cut them open and yes I have had trouble getting the big Styrofoam-backed panels back in place. Yes, I have emptied closets out, muttering under my breath the entire time."

To Inspect or Not

Jim McMillan, inspecting in North and South Carolina since 1998, says he weighs the liability of each inspection choice. "With many of my inspection-related tasks I weigh what my liability potential is if I do certain things. To me, liability means 'money out of pocket,'" said McMillan. "Whenever I encounter a circumstance that could be a safety hazard or an accessibility concern, I consider as many of the consequences of my actions as possible and make a call on inspecting or not. This includes

"The only attics that I don't go in are the ones where the ceiling has the 'popcorn' texture and it seals the attic scuttle. But I tell the buyers I'll come back and look if they don't mind me cutting in to it to get access."

safely accessing attic and under floor crawlspaces, electrical panels, utility areas, roofs, etc. If, in my mind as a professional, there is a legitimate issue, I will explain to the client or agent what the issue is, ask if the agent or owner has means (within reason) of resolving the issue while I am doing my inspection, and if not, I make the appropriate reference in my report with pictures. In North Carolina the inspection is required to be completed in a single day for reporting purposes. If there are areas or components that I cannot inspect within that day I will offer, for a fee, to return and inspect inaccessible areas or components at a later date."

McMillan continues, "We are being paid to perform a service, and often (due to competition and the economy) that pay is not what I think it should be. However, I still feel that I should do absolutely as much as I can for my clients in order to educate and inform them. As long as we are professional in our demeanor, honest in our actions and reporting, and comply with any inspection regulations that are in effect in our respective states, it is my belief that we have the right to choose not to inspect or access areas/components that in our opinion can't be safely or adequately inspected."

Pre-Inspection Tip

Daniel Rogers, inspecting Southeast Virginia since 1991, says he does a bit of ground work before the inspection that pays off. "The first thing everyone gets from me is an appointment confirmation e-mail. This goes out to the client and agents for both sides. It includes all the pertinent inspection information like day and time, price, payment expected, copy of inspection agreement, what to expect the day of, etc. It also states that utilities have been confirmed to be turned on during the phone call. Also, all areas must be accessible, like the attic, furnace, water heater, electric panel and crawlspace and I ask that they please make any necessary arrangements with sellers to make this happen," said Rogers. "When I arrive at the home, I make a quick walk through to size things up. If I see any inaccessible areas I let them know that they'll need to provide access by the time I get back in and then I go outside and get started. I will not take any liability risk but I do help within reason to get the job done. The opportune word is 'help,' meaning that I might hang the sheet, cut the caulk line, and clear most of the area. However, I solicit and engage and recruit the hearts and minds of the other parties too. If it's not reasonably accessible, then I take photos and document it as an inspection limitation and recommend re-inspection upon access clearance. I even document houses that are dark and cluttered because I know that no one ever remembers that and they'll act like: 'How could you miss that?' Easy, look at the photos."

How to Improve Home Inspecting

by Tom Corbett

The first way we can improve our profession is to stop “passing the buck” to other professionals rather than using our own judgment about the condition of a home. A recent article in *Working RE Home Inspector* notes that many inspectors stipulate in their inspection contracts that they are responsible for only “visual” elements (See *Visual Inspection Isn’t Enough* at WorkingRE.com). Inspectors, first and foremost, are called to use their judgment. This is important to understand if you want to be good at your job. A typical inspection may require 100 visual checks to satisfy professional requirements but this is only the beginning. Small, individual clues that may seem hardly worth noting can often reveal bigger problems when considered together. And this is where the inspector’s true value proposition lies—in uncovering significant deficiencies for the homebuyer.

Some inspectors interpret the standards of practice as limiting their reporting to what can be strictly seen. These inspectors won’t move furniture or probe basement framing where evidence of wood destroying organisms may become visible. Claiming that major deficiencies “could not be seen,” and referring anything and everything “to the experts” is passing the buck and not acceptable practice. Most serious problems require multiple clues to understand and can be missed by this practice. Inspectors who combine visual clues, some important and some not so important, can see a big picture that often leads to uncovering important deficiencies.

For instance, the two-inch black pipe in front of the house that smells like oil can be combined with the strong oil smell in the basement. Disclosure is that perhaps there is “an oil tank on the property.” Pros know that curling shingles around a chimney at the building’s exterior, combined with white powder around the same area in the attic below, mean that there is probably a flashing leak. If a shower volume drops significantly when the vanity sink’s hot water is running and the toilet is flushed, you have a water pressure problem. These problems are not identifiable by observing individual “visual” clues separately but can and do become apparent to the seasoned pro.

Unfortunately, many inspectors receive inadequate training in building systems and components. Illinois requires only 60 hours of training for licensing. (It took me that long to learn how

Tom Corbett has over 34 years of experience as a home inspector and over 10 years of experience as a general contractor in Chicago, Ill. He has conducted over 15,000 home inspections and is the founder of the oldest inspection training school in Ill. Corbett is the former Chair of the ASHI Complaints and Ethical Practices Committee and has been the Inspection World Speaker for ASHI three times.



to cut a flight of stairs.) Many inspectors are not adequately prepared, even after passing a state exam. They simply don’t know what to look for. Adding to the problem, they are often taught by educators who assume the “Agent Referral Marketing Plan” which means growing your business by pleasing agents. Many inspectors are taught a “pass the buck” approach to reporting instead of judgment-based evaluations.

Adequate training for inspectors helps develop the ability to combine visual clues into one big picture. But there is still the pressure on the inspector to downplay the severity of problems. Why? This happens typically due to pressure from real estate agents to make the deal work.

Transparency

In the early 2000s, real estate agents in Illinois adopted “Buyers Brokerage” as the standard for working with buyers. Until that time the industry was awash in litigation brought by buyers who felt misrepresented. Buyers did not know their agents were actually working for the seller. This condition was called dual agency. New laws enacted back then required brokers to declare themselves as either a buyer’s agent or a seller’s agent. Inspectors are paid at the end of their service to the client, who is usually the buyer. We are paid by the buyer but many of us live on referrals from agents, so we understand that we must keep real estate agents happy if we want future referrals. As the past Chairman of the Complaints and Ethical Practices Committee of the American Society of Home Inspectors (ASHI), I had to address numerous complaints against inspectors who were charged as being complicit with real estate agents. It is harder for inspectors to perform independently when relying on agent referrals.

Before the real estate crash of 2008, inspector meetings were abuzz with talk about an expanding market for our services. Inspection businesses were growing rapidly by catering to real estate speculators. While many gained some freedom from

agent pressure, this practice was based in a deeply flawed “objectification” of the houses their clients were buying. Houses became commodities capable of producing quick profits, not places to provide shelter for people. Because someone was going to rehab and sell, the inspector could minimize standards. This hurt us all, as evidenced by the real estate crash that left banks with a burden of foreclosed inventory. There is another way to grow an inspection business that doesn’t trap us with agent pressure nor make us underpaid “grunts” in a commodities game. That way involves homebuyer referrals.

Referral Business

A home inspection business will prosper when built upon solid referrals from satisfied customers. Many newly trained inspectors are in a hurry. Adopting a “House as a Home” business model supports the client and reaps referrals. The “objectification” model forces the inspector back to the agent or speculator for more referrals. Some agents demand the inspector “pass the buck” or minimize possible deficiencies. This does a disservice to the buyer and foregoes long term referrals for the inspector.

Within the last week I had a client hand me a check and say: “This was the best money I have ever spent on a home inspection. I’ve purchased four houses and no one has ever inspected like you did.” My disclosure developed a picture of the large issues from small clues. The house was one year old yet the seller had installed an expensive, redundant interior drain tile system. The basement concrete walls were cracked at the exterior but

the interior basement walls were covered with plastic to “catch the water.” The sellers were proud of their upscale repair. But would it work? The house was less than 10 feet from a one-acre retention pond that was 15 feet deep. There was mud on the basement floor from past water. I wrote: “The retention pond fills the basement with water in my opinion. We need a civil engineer.” The agents were upset but I did my job. This client said she’d be highly likely to refer me.

“Adequate training for inspectors helps develop the ability to combine visual clues into one big picture.”

My conclusion is that the home inspection profession can be improved in several ways. A business model that relies on agent referrals only can lead to “passing the buck” where a seasoned home inspector ought to be able to identify a problem in many cases. It also gives poorly trained inspectors a way out. Agents who promise that “if you do a good job there will be plenty more work,” may really mean more work is coming as long as “you don’t screw up the deal.” And it’s the homebuyer who suffers. Many are purchasing their first home and are overwhelmed by the process. Good inspectors may be hard to find but we are out there. We embrace a business model that advocates for our clients. We are in business for the long term and see ourselves as advocating for the quality of houses as safe homes for families. **WRE**

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Home Inspection Safety - Staying Safe Out There

by Peter Hawley

A few years ago, in my hometown, I was surprised to learn that a home inspector friend of mine had died. It was shocking and surprising because he was a fairly young man and still in good health. When I asked what he passed away from, I was expecting an answer like a car accident or an unexpected and sudden health issue. Imagine my amazement when I was told he died on the job as a home inspector because of a failure to maintain routine safety measures.

This particular incident motivated me to be more careful and to examine the practices and routines that I had settled into so comfortably. I learned that one of the reasons my friend died was very preventable. He had gone to a vacant home to do an inspection where the agent and client were not present. For most of us, this is an ideal situation but he forgot one simple rule: nobody knew where he was. Nobody knew what time he was going to be there. Nobody knew what time he was expected to be finished. Because no one knew where he was, when he injured himself—and I say injured, not killed himself—nobody was there to help.

My friend slipped and fell through a garage ceiling while inspecting the attic and crashed onto the concrete garage floor. During the fall he struck his head and fell unconscious. He was still very much alive and probably would have survived if he had gotten help quickly. Unfortunately, no help was coming because no one knew he was injured. He lay on the floor of the garage for an estimated four to five hours until somebody finally came looking for him and discovered his lifeless body on the floor.

This brings me to my most important safety point: always make sure somebody knows where you are and what time you will return. Better yet, have someone with you whenever possible. This can be your agent or client, the seller or simply your spouse

Author and inspector Peter Hawley is a graduate of the Professional Association of Building Inspectors (PABI) Training Institute with over 145 credited hours of residential inspection procedures and technical training. He is a Licensed General Inspector in Nevada and has 20 years' experience in residential maintenance, remodel and repair; 18 years' experience as a residential contractor; and 15 years of hydraulic leak detection. He is also a registered State of Nevada Radon Inspector.



waiting in the car for you. Make sure you answer your phone when being checked on. This is just one example of how a simple safety measure can save your life.

I know some people think that this is taking safety to an extreme, but a death like this makes you realize that what is considered a mostly safe job can pose serious risks, and that to stay safe, certain procedures must be observed. We are always in an unfamiliar environment and sometimes that environment is hostile, particularly when the sellers learn you are not there for their benefit or if we are forced to enter a place where our safety is in question.

What Is "Safe?"

I live and work in a state that provides licensing and guidelines for home inspectors (Nevada). This is a wonderful thing even though I cringe each time I have to renew my license. The guidelines very clearly state what is considered dangerous and that we are not required to put ourselves into dangerous situations. In addition to these guidelines, however, the state includes into the licensing codes the concept that the final decision as to whether something is dangerous or not is up to the inspector. This statement allows discretion by the inspector

onsite based on each individual situation. This concept is in the ASHI and InterNACHI Standards of Practice and that of other organizations. I encourage all inspectors to keep this idea in the back of their minds when considering a potentially dangerous situation. The basic rule for safety is to never place yourself in any situation that will compromise your ability to continue working at the same level you are currently.

Hook and Ladder

As home inspectors we are constantly on ladders: do you inspect your ladder on a regular basis? Most of us make sure the ladder functions correctly when we buy it, but how many of us check to make sure all the parts are still where they need to be and working correctly? How many of us make sure the ladder is rated for what we do and is considered stable? When you are climbing the ladder, do you make sure it is on solid ground and angled properly to support your weight without slipping?

It's Electric

We are also inside electrical boxes with current that could easily kill or severely disable us. We must recognize the fact that many homeowners think they are electricians and modify the main electrical panel and wiring with alarming regularity. Most of the time, these modifications are far from proper; add another unknown that we are forced to deal with. A simple check for electricity in the metal casing will prevent a shocking surprise. This check should be done on any metal disconnect or panel before you touch it.

Another idea may be as simple as the screwdriver you use: Is it rated for electrical work? Yes, they are more expensive but I promise you they are well worth it. How about gloves? We are all in such a hurry to finish that many of us don't want the hassle of gloves. And every one of us has opened an electrical box while standing in a puddle of water from the previous night's rain or sprinklers that just shut off. Having come from a family of electricians, I have seen many minor jobs have major consequences.

There will always be a small element of the unknown in what we do and where we are expected to go and inspect. We climb over, move through, check behind and look under many things we take for granted. In our own home, we know what to expect but we are not in our own home and we do not have the comfort of knowing what is in that dark, dank space. Remember the last time you opened a cabinet door and a rat/mouse/spider surprised you and you jumped back to avoid it? Gloves would have provided at least a small amount of protection if you had been attacked by that critter. In addition, if you had simply positioned yourself to be able to move quickly if necessary, by taking notice of any objects in your immediate vicinity, you could avoid the possibility of injuring yourself by striking something in the room if you are forced to move suddenly.

Crawlspaces

I know little critters are a favorite of all of us who have to enter crawlspaces (not). I always save that task for last because I really don't enjoy it and of all the places in a home, I think

"There will always be a small element of the unknown in what we do and where we are expected to go and inspect. We climb over, move through, check behind and look under many things we take for granted."

the crawlspace has the most potential for injury. There are so many situations that can occur in a crawlspace that you can be sure I am not going to be able to address them all. My favorite crawlspace story deals with my own unpreparedness. I entered a crawlspace and was at the far end from the opening when the battery in my flashlight died. I did not have a backup and had to crawl in pitch black darkness to the area where I thought the opening was. I was under that house for over an hour trying to get out. You can bet that now I carry a second light source at all times. In addition to the second light, proper attire is also essential: long-sleeved shirt, long pants, boots and even some sort of head protection. This can be accomplished by purchasing jumpsuits for use during the crawlspace inspection.

Attic

Now we can address the other end of the home, the attic. Most of the same things that apply to a crawlspace apply to an attic. And yes even some sort of head protection should be worn: remember all the nails that construction crews put in but do not remove when they miss the truss member when installing roofing material?

How about the roof? How casual have you become because it is "just another roof"? I guess I should consider myself lucky because I have a fear of heights and therefore am very careful on all roofs. Again, we are in unfamiliar territory; this area is exposed to all the elements of weather and rarely checked on. Walk softly and carefully, be aware where the truss or framing members are, and place most of your weight directly on the framing member. If the roof is soft, proceed very carefully and don't walk where you feel it may not be able to support twice your full weight.

Other considerations should be observed also. What is the pitch of the roof and is it safe for you to be on it? What is the weather? Is that aspect going to change the conditions enough to prevent me from doing my job safely? Can I obtain the same results from doing my inspections though binoculars or second story windows and other vantage points at the roof's edge? If you get the same results, why endanger yourself and your livelihood?

One of my favorites is when I enter a home and the first thing I'm asked is to remove my shoes. I always politely decline informing them it is against company policy. I am sure you are asking why decline such an innocent and harmless request, since many of us do this in our own homes. Again, I must remind you that you are in unfamiliar territory. You do not know the condition of the floor or any objects you will be standing on. One inspector in my company stepped on a nail that was protruding from a

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floorboard and spent the rest of the day in a hospital emergency room going through the very unpleasant task of getting a tetanus shot. This is the reason it is now against company policy to remove shoes. Always carry booties as a regular part of your toolbox. You stay safe and your client is not upset at your wearing dirty shoes in the home. This is the very definition of a “win/win” situation and good customer service.

Garage

My last major area is the garage. This is such a distinct area of a home that building codes require different regulations than most other structures. We all have excess stuff in our garage that doesn't belong in the house, like the half-full gasoline can that we use to fill our lawnmowers. We all take gas for granted but fail to realize that not only is gasoline explosive but the fumes from gasoline are explosive also. In a former career, I saw the results of this firsthand when an entire garage was gutted (with two cars and two motorcycles inside) when a homeowner was using gasoline to clean automotive parts and decided he needed a cigarette. Even though he was on the other side of the garage near an open door, it still ignited. We never know what we will run into.

Safety “To Do” List

Simply put, we need to be aware of our situation and act accordingly. I cannot emphasize strongly enough that we are in unfamiliar territory when we are inspecting: we must be willing to explore but must do so with the utmost care and safety.

Safety is in the back of our minds but rarely at the top of our “to do” list. So I challenge you to make a goal to re-evaluate your mindset and thoughts at least once a month. Think about what has happened in the last month and make adjustments for any errors you may have made. Make a pact with yourself to never make that mistake again. Do your own research into any incident you hear about within the home inspection industry no matter how minor. Inspect and repair all your tools at least once a month.

Finally let me make a small list to be aware of for safety's sake. This is far from comprehensive but still is important.

- Dress appropriately.
- Inspect all equipment regularly and replace anything that is defective.
- Make sure you have the proper tools to do your job right.
- Be conscious of your surroundings.
- Make sure someone knows where you are and for how long.
- Never enter any situation that you consider dangerous.
- Never allow anyone to coerce you to do something you are uncomfortable with.

In addition to all this, remember that this is your livelihood. Never do anything or go anywhere that will compromise your ability to provide for you and your family. If you follow that simple rule, you will have a long, prosperous and safe career in the home inspection industry. **WRE**

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For inspector Ted Menelly, inspecting for 20 years throughout the Dallas/Fort Worth area, charging to go back, for a fee, makes better sense than the removal of clothes from the closet, cutting a sealed hatch open, etc. "It is not just a matter of covering clothes most of the time. It is trying to squeeze into a closet and set the ladder up and not mash the clothes or push them out of the way," said Menelly. "I don't think we are inconveniencing a client by charging them to go back. We are the ones being put out. We are the ones taking a risk of damaging great Aunt Mable's blouse that someone puts a \$1,000 price tag on. If the question is how far we should go to make one client happy, in cases where something can be damaged or you have to move personal items, etc., the answer for me will always be—not that far at all. That \$1,000 for Aunt Mable's blouse is three to three and a half average inspections. We go out of our way on most inspections to accommodate our clients but there are limits. It is our job and our livelihood. We cannot afford to give away the next three to four inspections."

Disclaimer: This article is meant to be used for informational purposes only. It is not the intent of this article to provide inspection advice, or advice for any specific fact, situation or circumstance. **WRE**

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Complete coverage should never be optional, according to David Brauner, Senior Insurance Broker at OREP. "If you want to do the best for yourself, your family and your business, be sure to choose a professional insurance policy that will protect you adequately should the unexpected happen," Brauner says. "A broad policy covers you for the threats that you can anticipate as well as the unexpected ones that you don't see coming. A broad policy covers all the bases and keeps you safe." The OREP E&O insurance program includes Errors and Omissions, General Liability, Radon, Termite/WDI/WDO, Lead Paint, Pool & Spa, EIFS/Stucco, Indoor Air Quality Testing, Green Building Inspections, Infrared Thermography, Rodent Inspections and more (most states). Mold and Septic/Water testing are available for a small additional premium. The carrier is "A" Rated and Admitted in most states. Prior Acts, multiple inspectors, commercial, additional insured for agents/referring parties and much more are included. Minimum premiums start at \$1,000 for \$300,000 coverage limits. "First Defense" defends and protects insureds against frivolous complaints, saving inspectors a possible deductible expense, higher premiums and potentially negative claims history. All insureds enjoy automatic membership in the OREP Professional Support Network (\$95 value), which includes free, on-demand inspection support, contract creation service, discounted approved CE, *Working RE* magazine, corporate discounts on office supplies, technology and more. Visit OREP.org. Or call toll-free (888) 347-5273. OREP—Organization of Real Estate Professionals Insurance Services, LLC. Calif. Lic. #0K99465



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an inspection. The best agents, the top performers, don't do that because it's bad for business. The veterans want their clients to get the best inspection they can because they want referrals. They want the client to be 100% informed so they are happy. If they refer a home inspector who misses major defects or fails to call out important items, how likely are they to get a referral from that homebuyer?" says Crow.

"If you're working with good agents, they know what their clients want and need."

to call out important items, how likely are they to get a referral from that homebuyer?" says Crow.

While inspectors should never reduce the quality of their reports or compromise their duty to their clients, Crow says that providing great service to agents is still very important. "At MIC, I teach my students that home inspectors have clients and customers. Our clients are homebuyers. Our customers are anybody who refers us: agents, home builders, past clients, etc. Any time anyone refers us, they want to make sure the person they refer to us is going to get a quality product and great service. They need speed and accuracy. If you're working with good agents, the agents know what their clients want and need. What people don't realize is that the agent is actually looking out for the best interests of the client," says Crow.

Customer service, speed and accuracy, refer to the readability of the report as well. "We tell all our inspectors to stick close to the Standards of Practice (SOP) when reporting. With that said,

I don't know any inspector who only inspects to the SOP. We all exceed it. But in terms of writing a great report, sometimes less is more. Home inspectors over the years have wanted to add more and more to their reports. The average report is 40 pages or more. Our report is 15 pages. Very few buyers or agents want to go through 40 to 50 pages of information. Good reporting is about making your information useful to buyers and agents. Speed and accuracy don't just apply to our inspection work but to the report and the intended users. The readers of your report should be able to understand and digest it easily and quickly," says Crow. "You shouldn't have to sacrifice quality to produce a report that is easy to read and understand. The key is finding the right balance and making sure your clients' interests are protected and your customers are happy."

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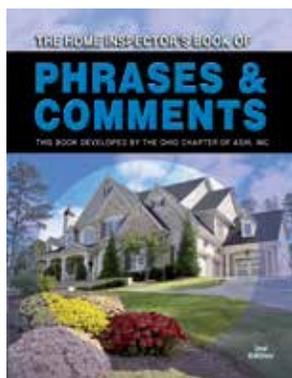
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