

The Safety Net Buyers Can't Afford to Do Without

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Q: I am a first-time home buyer. I have found a house that is about 35 years old and I plan to submit a contract soon. I have been talking to my real estate agent about the need for a home inspection and she has not been very supportive. She has suggested that if I make the contract contingent upon obtaining a home inspection, the seller may balk. What do you suggest?

A: Why would you buy a 35-year-old house without having a professional inspect the property? Do you know anything about structural systems? Or roofs? Or basements?

Unless you are a professional contractor, you definitely need the services of a competent home inspector. Your contract should be contingent on you obtaining a satisfactory inspection. This means that you will have X number of days (the number to be spelled out in the sales contract) to have the property inspected. If you are dissatisfied for any reason, you have the right to terminate the contract and get your earnest money deposit refunded.

In fact, many buyers give the deposit check to the broker, but add language in the sales contract that the check will not be deposited until the inspection contingency has been removed.

There are two kinds of inspection contingencies.

- *General inspection.* If the buyer is dissatisfied with the inspection for any reason, he or she may declare the contract null and void, at his or her sole discretion.
- *Specific inspection.* After the inspection, the buyer provides the seller with a list of specific repairs to be made. The seller has a fixed number of days in which to respond.

For example, let's say you list eight items for consideration by the seller. The seller comes back in a timely manner and agrees to repair six of the problems. You then have a fixed number of days in which to either accept what the seller has proposed, continue negotiations for the remaining two items or terminate the contract.

Sellers and real estate agents prefer the specific inspection contingency. From the buyer's point of view, however, the general inspection clause is the one to use. In this case, the buyer still has the right to advise the seller that there are eight items to be corrected and if the seller agrees to those repairs, the buyer will remove the contingency. But the buyer may be completely turned off from the house based on the inspection, and under the general contingency would have the absolute right to terminate. That option is not available under the specific contingency language.

Under either type of contingency, time is of the essence. If the buyer does not act promptly and advise the seller of the problems (or that the contract is terminated), most standard contracts state that the contingency is "deemed to have been removed" and the contract remains in full force and effect.

How do you find a home inspector?

The best way is word of mouth. If your friends used an inspector and were satisfied with him, that would be the way to go.

Your real estate agent can suggest names. You should insist that you be given at least two names to avoid any suspicion of favoritism.

Unfortunately, over the years there have been many reports of home inspectors who downplay problems because they want to get more business from a real estate agent. The American Society of Home Inspectors, one of the inspector trade groups, has a Web site (<http://www.ashi.org>) where you can find names of inspectors in your area, as well as a lot of useful information about home inspectors, product recalls and state regulatory requirements.

Most states do not require inspectors. For instance, Virginia has a voluntary certification program, but nothing mandatory. The District doesn't require licensing, either. Maryland passed a law several years ago requiring licenses, but due to lack of funding, has never actually put the law into effect.

"One of the costliest mistakes homeowners can make is to hire an unqualified inspector," said Frank Lesh, incoming president of ASHI.

According to Lesh, you should ask the following questions of a potential inspector:

- How long has the inspector been involved in inspections and how many inspections has he done?
- Is the inspector specifically experienced in residential inspections?
- Does the inspector (or the inspector's company) have a policy not to do repairs or improvements based on the inspection? Clearly, if the inspector wants to do the corrective work, there is a potential conflict of interest; the inspector may find bogus problems just to get paid to fix them.
- Does the inspector participate in continuing education programs to keep his or her expertise up to date?
- Is the inspector a member of a professional trade association?

Inspections are important. If that boiler breaks down days after you go to closing, you will have a hard time getting the seller to pick up the tab for repair or replacement. If the inspector catches the problem during the contingency period, you have leverage. You can either get the seller to resolve the problem or you can walk away from the contract.

Inspections are also important for the seller. Because the property will usually be inspected within a few days after the sales contract is signed, the buyer will know up front if he or she wants to buy or walk away from the deal. Otherwise, a seller may learn a day before settlement (or even at the settlement table itself) that the buyer has concerns and will not close unless the seller fixes some problems or gives the buyer a cash credit.

Additionally, should a buyer come to the seller after settlement about problems he or she has now discovered, the seller can say, "You had a home inspector; if that problem was not discovered, complain to your inspector."

Home inspections should be part of every residential real estate transaction.