

What You Should Know About Your Right to Inspect

Buying a property can be hazardous to your wallet if the upkeep on a property's major systems (plumbing, electric, heating and cooling), materials (roofing, siding, foundation, drywall, decks and patios), and fixtures (carpeting and pad, built-in appliances, cabinets, etc.) have been seriously neglected and particularly if evidence of this neglect is not obvious. Today's properties are staged to LOOK their best and one would hope that means they would be in their best structural and functional condition as well.

However, without a thorough inspection of the property by a qualified expert in home repairs and maintenance, some very expensive repair and replacement costs might be well hidden by great decorating. **However, Buyers should also be aware that the house does not have to be perfect, totally updated, nor free of any signs of wear and tear and age; at a minimum. In terms of Buyer's rights it needs to be safe – free of safety and health issues.**

When a buyer and seller enter into a contract, the Seller has certain obligations to disclose any known defects, needed repairs, and violations of law, which the home may manifest. Colorado law follows a doctrine of "implied habitability" rather than "caveat emptor" ("buyer beware"). This means that Sellers are presumed to be selling a home that is habitable, structurally sound, and functional unless the Seller otherwise informs the Buyer. As a result, home Sellers must disclose any significant problems they have experienced with their homes and what (if anything) they did to remedy the problems.

Sellers Property Disclosure Form: Sellers disclose by completing a Colorado Real Estate Commission approved form that includes questions about appliances, mechanical systems (electrical/plumbing/heating systems), roof, site conditions, and known easements and encumbrances. By law, a Buyer must receive a copy of this form during the contract negotiation process and a Buyer may rely on the Seller's representations in determining whether the property condition is satisfactory. Failure to honestly disclose may result in serious issues for the Seller if a Buyer experiences problems with the property.

Lead Based Paint: Lead is a common ingredient in house hold paint prior to 1978 and can pose a problem for children and pets when ingested. A lead based paint disclosure identifying that the buyer understands the risks is required to be signed prior to making an offer on a property built before 1978. Buyers always have the option to test for lead based paint during the inspection period.

Radon: Radon is a known carcinogen. It is a gas that vaporizes from decomposing limestone and enters the home through the foundation. It is recommended to conduct a Radon test during the inspection period for piece of mind (good results), mitigation (high results), and for resale purposes in the future. It is also important to understand the risks of Radon so you can make an informed decision. More information can be obtained from

<http://www.ext.colostate.edu/pubs/consumer/09953.html> and <https://www.epa.gov/radon/radon-resources-home-buyers-and-sellers>.

Inspection Rights: A Buyer's inspection rights are virtually unlimited under this provision. It is usually recommended that the Buyer hire a professional inspector or specialized technical engineers to inspect the property. If the Buyer finds any objectionable items, the Buyer and Seller have until a given time (Resolution Deadline) to agree on any repairs to be completed by closing. If the Buyer and Seller cannot agree, the contract is null and void and all earnest money is returned to the Buyer.

This process involves 7 formal steps:

1. Buyer hiring an inspector, scheduling an inspection date and time prior to the Inspection Objection deadline in the Contract and having other specialists provide more specific opinions if necessary (i.e. roof, furnace, radon). The Buyer may waive their right to inspect in writing, though this is not advised. In addition, Buyers rights may be limited by the type of sale. Many homes being sold today that have been foreclosed on or that are subject to a "short sale" are sold "as is." This means the Buyer assumes responsibility for any repairs or replacements needed. They may still inspect and retain the right to withdraw the contract and have their earnest money returned if the repair costs are too high.
2. Buyer receiving an Inspection Report from the inspector based on their findings.
3. Buyer giving the Seller an Inspection Objection potentially including a request for repairs and/or replacements that turned up on Inspection.
4. Seller providing the Buyer with an Inspection Resolution describing what, among the Buyer's requested repair and replacement items, the Seller is willing to do.
5. Buyer accepting or rejecting the Seller's Resolution and negotiating until they reach mutual agreement on work to be done, if any, or the Buyer withdrawing the offer and asking for the return of the earnest money.
6. Seller providing evidence of work done, if any.
7. Buyer walking through the property prior to closing to verify work is completed and condition of the house when vacated.

The Buyer's Agent may assist in the Inspection process in the following ways:

1. Going over the Buyer's right to inspect with them;
2. Providing the names of several Inspectors;

3. Giving the Inspector access to the property and attending the Inspection with the Buyer so that items that are found and that appear on the Inspector's Report are better understood;
4. Writing up an "Inspection Objection," based upon directives from the Buyer on what they want as a result of the Inspection. Among these could be to:
 - a. Accept the property "as is," or
 - b. Request that the Seller make repairs or replacements as necessary; or
 - c. Agree to share the cost of the repairs and replacements needed if any, or
 - d. Withdraw the Buyer's offer on the property;
5. Reviewing the Objection notice with the Buyer and send to the Selling agent;
6. Reviewing the Seller's response with the Buyer, formally referred to as the "Inspection Resolution," which will typically include:
 - a. Agreeing to some or all of the repairs and replacements requested by the Buyer; or
 - b. Agreeing to part of the repairs and replacements requested; or
 - c. Agreeing to credit the Buyer at Closing for the costs of repairs and replacements that cannot be executed prior to Closing, or which the Buyer may prefer to handle with their own contractor; or
 - d. Refusing to do any of the repairs and replacements requested;
7. Communicating the Seller's decision to the Buyer;
8. Assisting the Buyer in reminding the Listing agent of the need for receipts or other confirming documents showing that the work has been done;
9. Assisting the Buyer with a property "walk thru" prior to closing to confirm that work was completed to the Buyer's satisfaction.

The Buyer's Agent does NOT assume any responsibility for the following:

1. Inspecting the property and finding any problems that exist for the Buyer;
2. Choosing an Inspector for the inspection;
3. Guaranteeing or affirming the quality of the Inspector's work;
4. Making judgments for the Buyer on what work should be required of the Seller;
5. Influencing the Seller or Buyer's selection of repairmen to do the work;
6. Guaranteeing the quality of the work performed by repairmen used by the Seller and/or Buyer.

If a Buyer has any questions about this process, the Buyer should consult their Buyer's Agent during contract writing and negotiations.