

You May Be Surprised What Your Home Inspector Does Not Have to Tell You

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PUBLICATION DATE: NOVEMBER 4, 2015

You are resting comfortably in your new house, believing you will not have a major home maintenance expense for several years. After all, your offer to purchase contained an inspection contingency, and the home inspector you hired toured the house and reported no problems. Your belief may or may not be accurate. While a home inspector is obligated to warn a prospective buyer about problems with key components such as windows and roofs, the inspector has no legal obligation whatsoever to mention problems that are spotted involving other equally expensive components of the house.

In Wisconsin, home inspectors are required to comply with the 1997 Home Inspector Act, Wis. Stat. 440.975, et. seq. Wisconsin law requires that an inspection focus on the “observable systems and components of improvements to residential real property that are readily accessible.” While an inspection is supposed to be a “reasonably competent and diligent inspection,” it does not need to be “technically exhaustive.” The law exempts home inspectors from commenting on, among other things, any of the following:

Adequacy of Components. The inspector will tell you if the furnace and air conditioning are operational. The inspector has no legal obligation to advise whether those systems are adequate for the house. You may find out after the sale that the far reaches of the house are a bit too cool in the winter and a bit too warm in the summer because the system components are inadequately sized.

Pests. An inspector is under no obligation to mention the presence of any rodents, insects, or pests (or their “calling cards”) that the inspector may notice during the inspection. Thus, the inspector who emerges from the attic to advise the roof boards are in good shape may not say anything about the mouse or bat droppings he observed while crawling through the attic. He may kindly drop a hint that you should consider a separate pest inspection, but may choose to remain silent.

Underground Items. The inspector will not inspect your septic system or well.

Trees. The inspector is bound to inspect the improvements to the real property. This is generally considered to be the house and its operating components. As a result, the inspection report will not address the health of the trees or other natural features on the property.

Items that are Not Readily Observable. Inspectors are not required to move objects that obstruct visibility. If your inspection is in the winter, this point should be kept in mind; the inspection of the roof may be from the attic-side only. The inspection of the fireplace and chimney is likely to be cursory and may not identify costly problems that would only be revealed by a separate chimney inspection.

With all of these exceptions to an inspector’s obligations, can they be held liable if a problem is missed? By law, the inspector must disclose “any material adverse facts” about the observed items and any conditions that “if not repaired, will have a significant adverse effect on the life expectancy of the identified item.” Inspectors may be held responsible for their failings under a professional negligence standard. Additionally, they are also legally prohibited from including a disclaimer or limitation of liability in their home inspection contracts.

If there is a problem that the inspector should have noticed with an inspected component of the house, a homeowner may have a potential claim against the inspector. For example, an inspector reports that a roof is in good shape even though there are visible marks on shingles made by a prior insurance adjuster noting shingles that should be replaced due to hail damage. The home buyer may have a claim against the inspector (and possibly the seller for a misrepresentation on the real estate condition report) when water intrusion necessitates replacing portions of the roof a few months after closing. Such a claim would have to be initiated within two years of the inspection; the statute of limitations law does not give a purchaser the luxury of waiting until a problem is discovered.

Overall, a home inspector can provide valuable insight into the soundness of a building's structure and its components. Nevertheless, the purchaser of a property should pay close attention to what an inspector is not required to inspect or mention. A clean report from an inspector may not necessarily mean everything is ok.

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