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# Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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## Effective Home Inspections

Effective home inspections begin with an educated buyer who appreciates the parameters of the standard home inspection process and understands the options available for tailoring the home inspection and the home inspection report to meet the buyer's needs. An understanding of the home inspection process and the proper workings of the inspection contingency allows buyers to derive useful information from home inspections that can enable them to implement the home inspection contingency in the offer to purchase.

Home inspectors, and consequently, home inspections, are regulated by the Department of Regulation and licensing (DRL). The DRL establishes minimum standards for the performance of a home inspection and the preparation of a home inspection report. However, like other DRL-regulated professionals, home inspectors have the option to provide additional and enhanced services to parties who request them.

The inspection contingency in the WB-11 "Residential Offer to Purchase" is an optional contingency, but it is widely used in its pre-printed form without modification. A complete understanding of the procedures and terminology involved in this contingency are essential to the fulfillment of the buyer's needs. Mistakes with that provision may be costly, because the buyer may unintentionally end up with a void offer on a desired proper-

ty or with a property that has serious defects that the buyer must remedy.

This *Legal Update* examines the regulatory framework for home inspectors and the workings of the WB-11 inspection contingency. The *Update* reviews basic home inspection and inspection contingency procedures, contractual modifications for the home inspector-buyer agreement and the offer to purchase, and tips for REALTORS® who want to assist buyers in reaping the maximum benefit from a home inspection. The discussion includes illustrative Legal Hotline questions and answers and is supplemented with forms and buyer handouts pertaining to home inspections.

### Minimum Standards for Home Inspections

A home inspector is defined as an individual who, for compensation, conducts a home inspection. Home inspectors in Wisconsin must be registered with the DRL. Wisconsin home inspectors must pass an examination to become registered, and they must attend continuing education and renew the registration every two years to stay licensed.

A home inspection is the process by which the systems and components of residential real estate that are readily accessible and observable are examined. A home inspector is obligated to perform a reasonably competent and diligent home inspection to detect

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observable conditions with respect to the residential real property and improvements. A reasonably competent and diligent home inspection is not required to be technically exhaustive—the home inspector need not use extensive measurements, instruments, testing, calculations and other means to develop scientific or engineering findings, conclusions or recommendations.

This inspection must comply with the minimum home inspection standards established in Chapter 440 of the Wisconsin Statutes (<http://www.legis.state.wi.us/statutes/Stat0440.pdf>) and chapter RL 134 of the Wisconsin Administrative Code (<http://www.legis.state.wi.us/rsb/code/rl/rl134.pdf>). The DRL has interpreted these statutes and regulations as applying only to those inspections involving a building with no more than four dwelling units. Inspections of buildings containing five or more units are not, according to this interpretation, subject to the state's minimum home inspection standards. This minimum level of practice includes standards relating to the inspection process and techniques, the home inspection report, and the readily accessible systems and components that must be inspected.

### Home Inspection Requirements

The home inspector is only required to inspect those improvements, installed systems, and components listed in Wis. Admin. Code § RL 134.03, and only if they are present on the property at the time of the home inspection and readily accessible. The handout on pages 16-17 of this *Update* lists those components, improvements and items that a registered home inspector is required to inspect and address in the home inspection report, and those items that a home inspector is not required to inspect. The home inspector may, however, observe and report on additional components beyond those required

under the minimum standards and may exclude any required component upon request by the client.

### Inspection Services

A home inspector is not required to perform the following tasks:

- Offer a warranty or guarantee of any kind;
- Calculate the strength, adequacy, or efficiency of any component or improvement;
- Enter any area or perform any procedure that may damage a property component or improvement or may be dangerous to the home inspector or other persons;
- Operate any property component that is inoperable;
- Operate any property component that does not respond to normal operating controls;
- Disturb insulation or move personal items, furniture, equipment, vegetation, soil, snow, ice, or debris that obstructs access to or visibility of an improvement or component;
- Determine the effectiveness of a component or system that was installed to control or remove suspected hazardous substances;
- Evaluate acoustic characteristics of a property component;
- Project or estimate the operating costs of a property component;
- Predict future conditions such as the failure of a property component;
- Inspect for rodents, insects, wood-damaging organisms and other pests;
- Inspect cosmetic items, underground items, or items not permanently installed (personal property);
- Inspect for hazardous substances; or
- Disassemble any property compo-

ment, except for removing an access panel.

A party who wants an inspector to include any of these services should discuss this with the home inspector and confirm the inclusion of the services in writing.

### **Prohibited Practices**

A home inspector may not:

- Perform or offer to perform any act or service contrary to law;
- Deliver a home inspection report to any person other than the client without the client's consent;
- Perform a home inspection for a client if a member of the home inspector's immediate family or an organization or business entity in which the home inspector has an interest is a party to the transaction and has an interest adverse to that of the client, unless the home inspector has the client's written consent;
- Accept compensation from more than one party to a transaction without the written consent of all of parties; or
- Pay or receive, directly or indirectly, a referral or finder's fee to or from any person who is not a home inspector, with regard to any construction, repairs, maintenance or improvements to real estate inspected by the home inspector. Home inspectors may not receive any fee, commission or compensation in exchange for providing a referral for the performance of any construction, repairs, maintenance, or improvements to residential property that the home inspector has inspected.

### **Home Inspection Contract**

A home inspector **may not**:

- Include any provision in a client agreement for home inspection

services that disclaims liability or limits the amount of damages for any failure by the home inspector to comply with the minimum standards of practice; or

- Include any provision in a client agreement for home inspection services that attempts to limit the home inspector's two-year period of liability exposure to the parties to the transaction for which the inspection was performed. Any action to recover damages for a home inspector's act or omission relating to a home inspection must be commenced within two years after completion of the home inspection.

### **Home Inspection Report**

After completing a home inspection, a home inspector must submit a written report to his or her client. A home inspection report is a home inspector's written opinion concerning the condition of a residential structure and improvements as well as the mechanical and structural components. A home inspector is not required to use a specific report form.

### **Required Report Elements**

A home inspection report must:

- List the components, systems and other items the home inspector was required to inspect;
- List the components, systems and other items that the home inspector has inspected;
- Describe the condition of the components, systems and items the home inspector was required to inspect;
- Describe the condition of any component, system or item that, if not repaired, will have a significant adverse effect on the life expectancy of that component, system or item; and

- List any material adverse facts that a home inspector has knowledge of or has observed.

A "material adverse fact," for purposes of a home inspection, is a condition or occurrence that is generally recognized by a competent home inspector as significantly reducing the functionality or structural integrity of property components or systems, or posing a significant health or safety risk to occupants of the structure and improvements. A home inspector is not required to retain inspectors or investigators to perform follow-up inspections or investigations of any material adverse facts that a home inspector has learned or observed.

### **Optional Reporting**

A home inspector is **not** required to report on:

- The life expectancy of any component or improvement;
- The cause or reason why a major repair to a component or improvement is necessary;
- The method, necessary materials, or cost of any needed repair or correction;
- The suitability of any improvement for a specialized use;
- Whether any component or improvement complies with applicable regulatory requirements; or
- The condition of any component that the home inspector was not required to inspect.

### **Prohibited Reporting Practices**

A home inspector **may not** report, verbally or in writing, on:

- The market value or marketability of a property, or
- Whether the property should be purchased.

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## Legal Hotline Questions and Answers - Home Inspector's Role

*One home inspector has been telling buyers to not give sellers the right to cure in their inspection contingencies. Does the home inspector have the right to give buyers terms that they should write on their contract before inspector has seen the property?*

The practice of home inspectors is regulated in Wis. Stat. §§ 440.970 - 440.975. A home inspector cannot, in writing or verbally, comment on the marketability or value of a property, or whether the property should be purchased. There is no authorization for the home inspector to draft offer to purchase language or give legal advice. Making suggestions to buyer about language for the offer to purchase is a role reserved to attorneys and real estate licensees. The described home inspector is apparently practicing law or real estate brokerage without a license. A complaint may be filed with the DRL.

*What are the rules regarding inspectors giving repair costs to buyers during or after inspections?*

The Wisconsin Statutes and the Wisconsin Administrative Code set the standards of practice for home inspectors. Home inspectors are not required to, but are not prohibited from, giving repair cost estimates per Wis. Stat. § 440.975(4).


## Customizing a Home Inspection

The home inspection rules may seem to limit the scope of a home inspection, however, these regulations only state the minimum standards for a home inspection. These minimum standards serve as the base level for home inspectors with different experience, education and training. A home inspector is presumed to have general

knowledge in many different areas and is not expected to be a specialist or expert, although many home inspectors may have credentials in other fields and have specialized knowledge or expertise in one or more areas. For example, one home inspector may have been an electrician and another may have been a roofer or a general contractor. Thus, minimum standards are necessary and reasonable given the differences in background and training.

The services that home inspectors routinely offer will likely exceed the minimum standards. Because home inspectors have different backgrounds, some home inspectors may be stronger in some areas and have more general knowledge in others. Accordingly, the customary home inspection services offered to the public may be different for each home inspector.

The home inspector's client can customize the home inspection by requesting that additional items be included in the home inspection. Where appropriate, the client may also ask the home inspector to exclude certain of the required inspection items. For example, a buyer may decide to have a furnace contractor inspect the furnace and exclude all furnace components from the home inspection to avoid duplication of services and charges. Once this is recognized, the home inspection rules become extremely flexible, serving only as general guidelines for the content of the inspection.

 **REALTOR® Practice Tips:** When a party engages a home inspector, he or she may start by asking the home inspector for credentials or a résumé of experience, and for a list of the services, components, improvements and other items included in the home inspector's normal home inspection. A

list of desired additions and exclusions may then be prepared and submitted to the home inspector to tailor the home inspection to meet the buyer's needs. If the party does not wait until the last minute to engage a home inspector, the party may be able to shop around for a home inspector who is willing to provide the desired services at a reasonable price.

## Including or Excluding Home Inspection Items and Services

A list of desired inspection item inclusions and exclusions may be most effective if provided to the home inspector in writing before the party and the home inspector finalize their agreement for the home inspector's services. The form for included and excluded home inspection services or items appearing on pages 18-19 of this *Update* may be used for this purpose. Members may copy and use this form, or use it as a model for creating their own form or checklist.

A Wisconsin registered home inspector may not routinely inspect cosmetic items such as the paint and wallpaper because they are not required in the regulatory minimum standards. However, upon a client's request, a home inspector may be willing to include items like the condition of painted walls and wallpaper in the inspection, while others may decline to evaluate the appearance of cosmetic items.

The home inspection rules also do not require home inspectors to inspect items not permanently attached. Inspection of carpeting and household appliances like washers, dryers, refrigerators, freezers, stoves and ovens are not required in the regulatory minimum standards. Buyers may find that home inspectors are willing to test basic appliance operation (e.g., do the

stove burners get hot) upon request. Buyers should first ascertain what appliances are included in the offer before asking the home inspector to inspect them.

For some other items like the chimney or the furnace, the buyer may wish to engage an appropriate expert, such as a chimney sweep or a furnace contractor. Accordingly, the buyer may ask the home inspector to exclude the chimney or the furnace from the scope of the home inspection to avoid duplication of services and costs. The buyer may also want to retain a specialist or other qualified service people to inspect additional items that the home inspector would prefer to not include in the home inspection. The expert's inspection of a particular component may be indicated in lines 299-300 at the beginning of the inspection contingency in the offer. For example, the buyer would write in "chimney and furnace" on the blank lines if the buyer was retaining a chimney sweep and furnace contractor in addition to the registered home inspection to inspect the home.

### **Legal Hotline Questions and Answers - Home Inspection Items**

*After a recent rainstorm, the driveway was washed out. Is the driveway part of the home for purposes of the home inspection?*

Per § RL 134.03(5) 7, the driveway is a required part of a home inspector's standard inspection of the property exterior. Thus, the home inspection report should inspect the washed out driveway and report on its condition in the home inspection report.

*The MLS data sheet states that an intercom system is included in the property purchase price, but the home inspector said he does not inspect intercom systems. The seller said the intercom has not worked for many*

*years. The buyer would like to have an operating intercom system. Can the buyer have the home inspector check on the intercom?*

The home inspector is not required to inspect the intercom under the minimum standards for a home inspection. However, the buyer may request that the home inspector add this to the home inspection. If the home inspector does not want to add this, the buyer should retain another contractor to evaluate the intercom system and modify the offer to allow this separate intercom inspection.

### **Provisions in the Offer to Purchase**

The offer to purchase may also be customized to enhance the buyer's inspection rights and make the home inspection as effective as possible. To begin with, the buyer may write into the offer to purchase that the seller will permit the buyer to accompany the home inspector, and any other inspectors or testers, as they conduct any inspections, sampling, or testing upon the property. The preprinted offer does not require that the seller provide access to the buyer, only to the buyer's inspectors.

The buyer may also write the offer to purchase to require the seller to move all objects that may impede a home inspector from inspecting and observing particular items or parts of the property. For example, home inspectors often find that crawlspace or attic access is blocked. The buyer and any agents working with the buyer may want to try to note any such areas of the house during showings so that the objects that need to be moved may be specified in the offer. Alternatively, the buyer may provide in the offer that the seller must have a person present during the inspection who is capable of moving objects upon the home inspector's request. Some home inspectors prefer to have the seller

available to answer questions that arise during the inspection.

If the property is vacant, the buyer may want to provide that someone will turn on all utilities, including water, electricity, gas, etc. during the inspection.

### **Legal Hotline Questions and Answers -Enhancing Home Inspections**

*An agent is writing an offer on a summer cottage. The water and electricity has been turned off. How can the buyer make sure that the home inspector has lights and can properly inspect these property systems?*

The buyer may provide in the offer to purchase for the seller or seller's agent to turn on the utilities prior to the home inspection. Home inspectors will not ordinarily do so.

### **Inspection Contingency**

An inspection is defined in the residential offer to purchase as an observation of the property which does not include testing of the property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source. The offer provides that the seller must permit the buyer's inspectors reasonable access at reasonable times for those inspections that are necessary to enable the parties to carry out the contingency provisions in the offer. The buyer, in turn, must furnish copies of all inspection reports to the seller and the listing broker. The buyer must also promptly restore the seller's property to its original condition after any inspection unless the seller agrees otherwise.

Lines 298-315 of the WB-1 "Residential Offer to Purchase" state:

**"Inspection Contingency:** This Offer is contingent upon a Wisconsin registered home inspec-

tor performing a home inspection of the Property, and an inspection, by a qualified independent inspector, of \_\_\_\_\_ which discloses no defects as defined below. This contingency shall be deemed satisfied unless Buyer, within \_\_\_ days of acceptance, delivers to Seller, and to listing broker if Property is listed, a copy of the inspector's written inspection report(s) and a written notice listing the defect(s) identified in the inspection report(s) to which Buyer objects. **CAUTION: A proposed amendment will not satisfy this notice requirement.** Buyer shall order the inspection and be responsible for all costs of inspection, including any inspections required by lender or as follow-up inspections to the home inspection. Note: This contingency only authorizes inspections, not testing. (See lines 97 - 110.)

**“Right to Cure:** Seller (shall) (shall not) [strike one] have a right to cure the defects. (Seller shall have a right to cure if no choice is indicated.) If Seller has right to cure, Seller may satisfy this contingency by: (1) delivering a written notice within 10 days of receipt of Buyer's notice, of Seller's election to cure defects, (2) curing the defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the work done no later than 3 days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the above notice and report and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: a) Seller delivers notice that Seller will not cure or b) Seller does not timely deliver the notice of election to cure.

**“Defect' Defined:** For the purposes of this contingency, a defect

is defined as a structural, mechanical or other condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or have a significant adverse effect on the expected normal life of the Property. Defects do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.”

### **Completing the Inspection Contingency Provision**

The inspection contingency provides for a home inspection by a Wisconsin registered home inspector. If the home is not going to be inspected by a Wisconsin registered home inspector, the buyer may wish to modify the inspection contingency to indicate who will be performing the home inspection. The seller may then decide if this is acceptable when deciding whether to accept, reject or counter the buyer's offer. If the buyer does not modify the contingency and uses a home inspector who is not a Wisconsin registered home inspector, the seller may object to any notice of defects and inspection report later tendered by the buyer on the basis that it does not fit what the contingency requires and thus is not a valid implementation of the contingency.

The inspection contingency has been designed so that the parties may also require additional concurrent inspections by qualified inspectors of particular features or components, which may be designated in the blank lines included in the contingency. For some other items like the furnace, the buyer may want to have a furnace contractor inspect that component. The expert's

inspection of a particular component may be indicated in lines 299-300 at the beginning of the inspection contingency in the offer. For example, the buyer would write in “furnace” on the blank lines if the buyer was retaining a furnace contractor in addition to the Wisconsin registered home inspector to inspect the home. A buyer may provide for a roof inspection by a roofing contractor, in addition to the standard home inspection, by writing in the words, “the roof,” in blank lines at lines 299-300 of the residential offer.

### **Legal Hotline Questions and Answers - Completing the Inspection Contingency**

*The listing agent believes that the person the buyers plan to have inspect the home is not a Wisconsin registered home inspector. Is this valid?*

Per the requirements of the inspection contingency, the buyer agrees to have a Wisconsin registered home inspector conduct the inspection. If the buyer submits a notice of defects from a home inspector who is not registered in Wisconsin, the seller may refuse to accept the notice of defects. In addition, the seller may also contend that he or she is not required to grant the non-registered home inspector access to the property. The seller is contractually obligated to provide access to buyer's inspectors if the inspection is reasonably necessary to carry out the terms of the offer. An inspection conducted by a home inspector who is not registered in Wisconsin will not satisfy the conditions of the inspection contingency and thus cannot contribute to the satisfaction of that contingency. The parties may end up having to pay attorneys' bills to sort out the situation.


*An architect registered with the Board of Architects is doing the home inspection for the buyers and says that he is exempt from registration as a*

*home inspector because of this. Can an architect perform a home inspection in place of a Wisconsin registered home inspector without any modification to the inspection contingency provision?*

No, although an architect may certainly be qualified to inspect a structure, the architect cannot substitute for a Wisconsin registered home inspector. If the architect performs the home inspection, the results will be subject to challenge by the seller unless the contingency is modified to provide, "This Offer is contingent upon ~~a Wisconsin registered home inspector~~ an architect performing a home inspection of the Property."

*Re: Line 299 of the inspection contingency. Quite a few people are writing "entire premises" on the blank line. Is this a good idea?*

When the contingency is completed in this manner, it means that a qualified independent inspector will inspect the entire premises in addition to the home inspection of the property performed by a Wisconsin registered home inspector. The provisions for additional inspections should be made on a case-by-case basis, and should be limited to the specific features or components requiring extra attention such as a swimming pool or a high-tech security system.

 **REALTOR® Practice Tips:** The inspection contingency in the offer to purchase provides for a home inspection by a Wisconsin registered home inspector. If the buyer is going to use any other types of inspectors or have additional inspections performed, this must be specified in the inspection contingency. The seller may challenge any attempt to process the results of unauthorized inspections using the inspection contingency mechanisms. Lines 298-300 must be


completed and modified in precise and exact manner.

## **Inspections Do Not Include Testing**

The inspection contingency only authorizes inspections, not testing. A test is not the same thing as an inspection. A test is defined in the offer as the taking of samples of materials such as soils, water, air or building materials from the property for laboratory or other analysis. For example, radon testing and soil borings are tests. On the other hand, the use of the moisture meter is authorized under the inspection contingency of the offer to purchase because no sample is taken.

Buyers who want to have any testing performed should add a testing contingency to the offer. Testing contingencies should specify the area or materials to be tested, the purpose of the test, any limitations on the testing, and any obligations to restore the property afterwards. Testing provisions may also include the buyer's right to be present, if desired.

If testing is conducted without proper authorization in a separate testing contingency, the results are arguably not the basis for a notice of defects under the inspection contingency. Listing test results on a notice of defects may trigger a response from the seller's attorney contesting the validity of the notice.

 **REALTOR® Practice Tips:** If the buyer wants any testing - the taking of samples for lab analysis - a separate testing contingency must be included in the offer. Test results and home inspection reports are not the same thing.

## **Legal Hotline Questions and Answers - Testing**

*The parties have an accepted offer with a home inspection contingency.*

*The seller has not received a notice of defects, but has received part of the inspector's report. The inspector said he would be picking up the radon canisters later. A radon test was not mentioned in the offer. The inspector also said that a different inspector was coming to inspect the indoor inground pool and spa. This also was not addressed in the offer. Can the home inspector test for radon? Does the inspection contingency include the pool and spa inspection?*

The terms of the offer to purchase are clear that testing is not allowed under the standard language in the inspection contingency. See lines 97-110 and 298-315 of the WB-11 Residential Offer To Purchase. The inspector does not have authority to test for radon. Arguably the inspection of the pool and spa may be undertaken as a follow-up inspection under the inspection contingency, but it may have been better if there had been a separate customized provision for the pool and spa inspection, especially if the buyers wanted the water, water pressure, etc. tested.

## **Inspection Contingency Implementation**

The inspection contingency process begins when the buyer retains a home inspector to provide a home inspection report. The inspection contingency process is implemented by using copies of home inspection reports, amendments and notices. For real estate licensees, this means the WB-40 "Amendment to Offer to Purchase" and WB-41 "Notice Relating to Offer to Purchase."

## **The Home Inspection**

When helping the buyer find a registered home inspector, REALTORS® should avoid recommending or endorsing one particular inspector because a recommendation that does

not present the buyer with options may result in liability. A list with the names of at least three reputable, registered home inspectors, should be given, including any available references from past users. A disclaimer that the company's agents cannot personally endorse any inspectors is also helpful.

Once the home inspector has been engaged, the cooperating agent arranges a time for the home inspection through the listing office, and the home inspection begins. REALTORS® may wish to avoid accompanying the home inspector through the house because this may imply that the agent is supervising the home inspector. Reinforce that the buyer hired the home inspector and let the buyer deal directly with the inspector. A relevant story about an agent who becomes too involved during a home inspection can be found at <http://www.realtor.org/rmomag.nsf/0/9e5531a344af21c186256b3e0068e66e?OpenDocument>.

## Legal Hotline Questions and Answers -Inspecting the Home

### *Is an agent required to be at a home inspection?*

There are no laws or regulations governing this practice-it is a matter that may be addressed by the listing broker's office policy. Licensees are not professional home inspectors and if a licensee accompanies the inspector through the house, it may imply that licensee is supervising the inspector. This may create potential liability exposure. On the other hand, some brokers feel that an agent needs to be present to safeguard the house-make sure that the inspector does not damage the property or to make note if the inspector says something inappropriate. This may be acceptable provided that the agent limits his or her role to only these functions.

## Inspection Contingency Focus on Timing

The greatest misunderstanding about the inspection contingency arises out of the notice of defects deadline provision: "This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers to Seller, and to listing broker if Property is listed, a copy of the inspector's written inspection report(s) and a written notice listing the defect(s) identified in the inspection report(s) to which Buyer objects."


This deadline marks the point in time when the contingency is deemed satisfied if the buyer has not given the seller a notice of defects, but much more is involved. Too many licensees do not understand that this is not simply the deadline for conducting the home inspection, reviewing the inspection report and deciding whether to give a notice of defects. The deadline should be seen as the end of a negotiation process that begins when the buyer receives the home inspection report and continues as the buyer uses proposed amendments to negotiate back and forth with the seller and resolve the buyer's concerns about defects described in the inspection report. If the parties cannot reach an agreement, the buyer should have some time remaining before the deadline when he or she can decide whether to risk the deal by delivering a notice of defects.

If this period beginning with acceptance of the offer and ending with the deadline is going to be used for fact finding and negotiation, the parties must be given a reasonable amount of time to accomplish all of these tasks. In most circumstances seven or even ten days may not be adequate to schedule a home inspection, receive and review the report, conduct any follow-up inspections, negotiate with the seller and then decide whether a notice of defects is needed. The number of days allotted should be long enough to

allow two or three proposed amendments to be exchanged between the parties plus encompass the rest of the home inspection activity.

If the buyer's property condition concerns can be resolved with negotiation, the parties generally are better satisfied. Negotiation with amendments allows the parties to explore solutions other than just the seller's repair in a good and workmanlike manner. The parties can agree to particular contractors and materials, specified techniques, allowances or credits in lieu of repairs, escrows, and just about any other non-traditional solution the parties can agree on. Use of amendments empowers the buyer and provides flexibility and solutions outside of the box. Use of a notice of defects is effective, but it involves a rigid procedure with little opportunity for creativity. If the parties are going to have the opportunity to engage in this process of negotiation, they will benefit by having a generous time frame to work in.

Even if the parties do not reach a resolution through negotiation, the process is still helpful to the buyer who may at least have a better sense of what the seller's sticking points might be and what repairs the seller may or may not be inclined to undertake. The buyer often will be making a better-informed decision about how the seller regards the property defects and how willing he or she might be to correct some or all of the buyer's concerns.

 **REALTOR® Practice Tips:** The single most important thing when drafting an inspection contingency is to give the parties enough time to accomplish the inspection, review the report, and complete the back-and-forth negotiations before the buyer decides whether to give a notice of defects. Think long! Give the parties as long as possible to accomplish this critical phase of the home sale process.



## Legal Hotline Questions and Answers - Impact of Timing

*The home inspection report identified several concerns that could be defects. Should the buyer give a notice of defects or an amendment asking the seller to repair the defects?*

The deadline in the inspection contingency should always be long enough to allow the parties time for negotiation – the exchange of proposed amendments before a notice of defects must be given. Amendments may be proposed on lines 8 through 32 of the WB-40 “Amendment to Offer to Purchase.”

With respect to those items that are defects, the buyer may consider giving a notice of defects. The buyer must understand, however, that this is a serious step. If the seller has the right to cure, the seller may choose, in his or her discretion, whether to cure the listed defects or let the offer become null and void. Giving the seller a notice of defects puts the power to decide the fate of the offer in the seller’s hands. This is the primary reason it is so important to provide the buyer sufficient time in the inspection contingency to propose amendments before the deadline for giving a notice.

## Use Of Amendments

Either party can usually take advantage of the option of negotiating a resolution to the buyer’s concerns. Negotiation takes the parties out of the standard, all-or-nothing notice of defects process and gives the parties a way to reach a mutually acceptable resolution tailored by the parties instead of being imposed by the standard inspection contingency provisions.

An amendment to negotiate a solution to the buyer’s property condition concerns may be proposed using the WB-40 “Amendment to Offer to

Purchase.” Such an amendment may state:

“This is not a notice of defects. Seller agrees to (perform the following repairs) and/or (give the following credit at closing) and/or (establish the following repair escrow).”

The proposals should include details, time frames, costs, materials, contractors, consultants, etc. The seller would then have the option to accept or reject the buyer’s proposed amendment, or propose a different amendment back to the buyer. The deadline for acceptance of the amendment should ideally be earlier than the deadline for the buyer giving a notice of defects. This will give the buyer the option of giving a notice of defects if the seller does not agree to the amendment proposal.

If the buyer has already submitted a notice of defects and now wants to propose a different way to handle the situation, the amendment may also state, “The right to cure provisions at lines 306-310 of the offer are deleted and the buyer’s notice of defects is withdrawn.”


## Notice of Defects

The notice of defects generally should be viewed as the buyer’s last resort, because giving a notice of defects puts the offer at risk. The buyer risks losing the deal by giving the seller an ultimatum – a notice effectively says, “make these repairs or I won’t close.”

The buyer must understand that giving a notice of defects is a serious step. If there is no right to cure, the offer will become null and void if the notice of defects is timely delivered. If the seller has the right to cure, the seller may choose, in his or her discretion, whether to cure the listed defects or let the offer become null and void. If the seller has another more desirable offer, one may assume that the seller

will let the offer die. Accordingly, the buyer may not wish to give a notice of defects unless the defects are “deal breakers” which must be fixed if the buyer is to continue with the offer. Giving the seller a notice of defects puts the power to decide the fate of the offer in the seller’s hands.

A notice of defects may be prepared on the WB- 41 “Notice Relating to Offer to Purchase.” This notice should specify, “This is a notice of defects.” The defects are then listed in the notice. The notice must be accompanied by a copy of the inspection report and must be delivered to the seller and the listing broker by the deadline specified on line 301 of the offer.

 **REALTOR® Practice Tips:** A notice of defects goes on a WB- 41 “Notice Relating to Offer to Purchase.” It is extremely helpful if it is prepared to identify what it is - “this is a notice of defects.” The notice of defects just lists the defects. A notice of defects does not specify the details for the seller’s possible repairs (that would require an amendment). A copy of the inspection report(s) must accompany a notice of defects. Note that this means the entire inspection report, not just the summary pages.

## Legal Hotline Questions and Answers - Notice of Defects

*The seller has the right to cure in the inspection contingency. The seller’s counteroffer states that regardless of the results of the home inspection report, the buyer and seller agree that the accepted purchase price of \$80,000 is firm and will not be renegotiated. If the buyer finds a problem that needs to be cured, will the offer be null and void if it is a defect?*

Provided there is a right to cure, the seller will determine whether the

offer to purchase becomes null and void if the buyer gives a notice of defects. The buyer cannot unilaterally make the offer null and void if there are defects – the seller still has the opportunity to cure in a good and workmanlike manner instead of causing the offer to become null and void. See *Legal Update 99.10* ([www.wra.org/LU9910](http://www.wra.org/LU9910)) for more information about how a buyer and seller inspection contingency strategies.

### Notice Form Required For Notice of Defects


Line 303 of the WB-11 offer warns all parties and licensees:

**“Caution: A proposed amendment will not satisfy this notice requirement.”**

This caution warns that if a buyer needs to give the seller a notice of defects – the final “fix it or no deal” ultimatum – the buyer must do so on a WB-41 notice form. A notice of defects must go on a WB- 41 “Notice Relating to Offer to Purchase.”

This requirement exists because it is expected that the parties will often propose amendments before getting to the ultimatum point. It is important for the seller to know when the buyer is proposing a revision to the offer (an amendment) versus saying, “fix these defects or I won’t close” (a notice). Because the content in these amendments and notices is going to be similar in many cases, the form used by the buyer is very important. The amendment is merely a proposal that the seller consider revising the offer to address certain defects found in the inspection. The notice of defects, on the other hand, is the buyer’s unilateral ultimatum to the seller to “fix these defects or I walk.” The form for the buyer’s unilateral demand is the WB-41 notice form. A proposed amend-

ment is not a notice of defects because a proposed amendment is simply a non-binding request to modify the offer’s terms. It is not the buyer’s ultimatum.

 **REALTOR® Practice Tips:** A notice of defects must go on a WB-41 “Notice Relating to Offer to Purchase.” A WB-40 “Amendment to Offer to Purchase” will not work for a notice of defects.

### Withdrawal of Notice of Defects

The buyer cannot unilaterally withdraw the notice of defects. The notice of defects can be withdrawn only with the consent of the seller. One good way to do this would be with an amendment stating that the parties agree that the notice of defects is withdrawn.


### Legal Hotline Questions and Answers - Withdrawing Notice of Defects

*A home inspection was performed, and property condition concerns were found. The buyers gave the seller a notice to cure certain items. The seller has submitted a CAMR to the buyer. Now the buyer would like to give the seller a notice stating they will accept the property “as is.” Can they do this?*

Lines 222-223 of the residential offer to purchase state, “Once received, a notice cannot be withdrawn by the party delivering the notice without the consent of the Party receiving the notice.” In other words, a notice may be withdrawn only if both parties agree to the withdrawal. This is most effectively documented in an amendment to the offer.

In this situation, the buyer gave a notice of defects, then learned that the seller did not intend to cure any defects, but did not want to let the offer become void. The parties still

have the opportunity to withdraw the notice of defects and find another solution to the buyer’s concerns in an amendment.

 **REALTOR® Practice Tips:** A party cannot unilaterally withdraw a notice once it has been delivered to the other party. A notice is withdrawn by agreement of both parties, typically expressed in a WB-40 “Amendment to Offer to Purchase.”

### Notice vs. Amendment

Prior to giving a notice of defects or offering an amendment, brokers should discuss with buyers the ramifications of offering either document. Each transaction must be reviewed independently as the parties may have different objectives depending on the situation. Office policy cannot dictate whether the buyer gives a notice of defects or an amendment. This is strictly the buyer’s decision.

### Legal Hotline Questions and Answers - Amendment and Notice of Defects

*A listing agent is working with a seller who is an attorney. The buyer had a home inspection and found small cosmetic items. The inspector also found what the home inspector said was a heat vent that may not be hooked up. The seller had an expert look at it and found that it is a fresh air intake. The buyer gave a notice to the seller with these items and told the seller how to repair them. The seller does not want to respond to the notice. If the seller does not respond, will the offer be null and void? The seller has stated that it is an ineffective notice and the buyer must proceed to closing. Is this correct?*

Pursuant to the terms of the home inspection contingency, the notice of defects should only contain a list of the defects to which the buyer objects as identified in the home inspection

report. See lines 300-303 of the WB-11 “Residential Offer To Purchase.” A defect is defined in the offer to purchase at lines 311-315. In a case where the parties do not agree that items listed are defects, the parties may be referred to legal counsel for legal advice on how to proceed. Whether the offer will become null and void is a question of fact depending on whether any of the items listed in the notice are in fact defects as defined in the offer to purchase. Note that the buyer cannot use a notice, which is unilateral, to dictate how a seller cures a defect. An amendment would be needed for this purpose.

*The buyer sent the seller both a notice of defects and an amendment. The seller’s RECR disclosed that parts of the roof and some shingles needed to be replaced. In the notice of defects, the buyer objected to the roof because the home inspection report indicated that the roof was near the end of its useful life. The amendment asked the seller to credit the buyer with funds for a new roof. Can the buyer give both a notice and an amendment?*

An effective notice of defects must list property condition concerns that were identified in the home inspection report and that fit the definition of defects at lines 311-315 of the offer. Once a seller receives a notice of defects, he or she has 10 days to determine whether to cure the listed defects. Within those 10 days the seller may hire professionals and obtain opinions and bids to help decide whether to repair the listed defects. If the seller fails to respond in the 10 days or gives the buyer notice of his or her election not to cure, the offer to purchase becomes null and void.

The seller, may, rather electing to cure based on the notice, agree to the amendment proposed by the buyer. The amendment should also include an agreement that the buyer’s notice

of defects is withdrawn so that the offer to purchase does not unintentionally become null and void based upon the seller’s failure to respond within 10 days to the notice of defects.

### **Prior Knowledge of Defects**

Defects do not include structural, mechanical or other conditions if the buyer had actual knowledge or received written notice describing the nature and extent of these conditions before signing the offer. Defects which have been previously disclosed in sufficient detail so that the buyer is aware of the nature and extent thereof cannot be listed by the buyer as a defect when the buyer gives a notice of defects under the inspection contingency.

For example, the seller discloses on the RECR that the roof leaks. This arguably does not reveal the full nature and extent of the defect. If the home inspection report gives a more complete description and explanation, the buyer may list the leaking roof on the notice of defects. On the other hand, if the seller gives a fuller description such as “the roof leaked near the fireplace during heavy rains due to deteriorated shingles which are 23 years old.” it is much more likely that the home inspection will not significantly add any detail about the nature and extent of the defect. The buyer then would not be able to properly list the leak in the roof on a notice of defects.

This encourages the seller to give full disclosure of defects because a “fully disclosed defect” cannot be used as an “out” for the buyer. Even if the seller discloses the full extent of a problem, e.g. a damaged roof that needs to be replaced, sometimes the buyer still wants to investigate the matter further, get estimates for the work and then decide if he wants to purchase the property. In such a circumstance,

it may be necessary to specify that the defect could still be the subject of a notice once the buyer gets additional information regarding the cost, health concerns, impact on value, etc. Adding language that indicates that the parties agree that a identified fully disclosed defect may still be the subject of a notice of defects if the cost for replacement exceeds a given amount, or striking the sentence that excludes fully disclosed defects are possible ways to address the situation.

### **Using a Home Inspection Report with the Inspection Contingency**

The home inspection report describes the condition of the components, improvement and items the home inspector was required to inspect, describes the condition of any component, improvement or item that, if not repaired, will have significant adverse effect on the life expectancy of the item, and lists any observed material adverse facts. Material adverse facts are conditions that may significantly reduce the functionality or structural integrity of property components or systems, or pose a significant health or safety risk to occupants of the structure and improvements.

In the inspection contingency, a buyer must evaluate whether there are any defects listed in the home inspection report to which the buyer objects. A defect is defined as a structural, mechanical or other condition that would have a significant adverse effect on the value of the property; significantly impair the health or safety of future occupants; or, if not repaired, removed or replaced, would significantly shorten or have a significant adverse effect on the expected normal life of the property.

Obviously, the standards used in the home inspection report and the stan-

<b>Matching Defects</b>	
<b>Home Inspection Report Lists:</b>	<b>Inspection Contingency Definition:</b>
The condition of any component, improvement or item that, if not repaired, will have significant adverse effect on the life expectancy of the item	A structural, mechanical or other condition that would have a significant adverse effect on the value of the property
Conditions that may significantly reduce the functionality or structural integrity of property components or systems	A structural, mechanical or other condition that would significantly shorten or have a significant adverse effect on the expected normal life of the property
Conditions that may pose a significant health or safety risk to occupants of the structure and improvements	A structural, mechanical or other condition that would pose a significant health or safety risk to occupants of the structure and improvements

dards that the buyer is to use when using the inspection contingency are similar, but they are not the same. The focus in the home inspection report may tend to be broader in scope because the threshold standard is lower. The home inspection report will tend to list many items that are not serious enough to meet the definition of defect in the inspection contingency.


For example, the home inspection report identifies conditions injurious to the life of a component while the inspection contingency notice of defects only encompasses conditions that have a significantly detrimental effect on the property as a whole. The home inspection report describes conditions that have an adverse effect on the life expectancy of an item while a defect under the inspection contingency is a condition adversely impacting the normal life expectancy of the property as a whole. Both standards include significant impairments to the health and safety of occupants. But the inspection report describes conditions that may significantly reduce the functionality or structural integrity of property components or systems while the defect definition looks for structural, mechanical or other conditions

that would have a significant adverse effect on the value of the property as a whole. Consequently, items listed on the home inspection report may not properly fit the definition of a defect in the inspection contingency of the residential offer.

Thus, if there is an item on the report that poses a significant health or safety risk for occupants, it generally should meet the definition of a defect in the inspection contingency. Other listed items in the inspection report should be evaluated to see if they are serious enough to meet the standards of the inspection contingency.

In addition, the inspection report will describe the condition of the mandatory elements required under home inspectors' minimum practice standards. The report may mention relatively minor items in the home inspector's desire to be thorough and to guard against potential liability. The home inspection report may mention that the light switch plate in the garage is loose and needs tightening, but unless this is a significant safety concern, this is simply does not raise to the level of a defect as defined in the inspection contingency. A buyer who lists minor items on a notice of

defects may draw the wrath of the seller and the listing agent and may trigger a dispute out of proportion with the magnitude of the property condition concern.

 **REALTOR® Practice Tips:** Explain to the buyer that everything listed on the home inspection report does not fit the definition of defect in the inspection contingency. Buyers who list every item identified in the home inspection report on a notice of defects will be engaged in overkill. Many items shown in a home inspection report will not be serious enough to be a defect.

### **Home Inspection Handout for Home Buyers**

It is difficult to explain the home inspection process and the inspection contingency to buyers, but the Home Inspection Handout for Home Buyers on page 15 of this Update may help. It explains home inspection concepts in a plain question and answer format.

### **What Is a Defect?**

A defect is defined as a structural, mechanical or other condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed, or replaced, would significantly shorten or have a significant adverse effect on the normal life of the property (lines 311-314). Whether any item listed in the home inspector's report is a defect will have to be made on a case-by-case decision. The fact that the roof is old does not necessarily make it a defect.

### **Legal Hotline Questions and Answers - Defects**

*The home inspection revealed that the roof is old but in good condition.*

*However, there are four layers of shingles on the roof and the inspector said that only two layers are permitted under the building code. Is this considered a defect that the buyer can ask the seller to repair? Is the fact that the house has fuses a defect?*

Whether the condition of the roof is a defect as defined in the offer to purchase is a question of fact that must be answered in light of the condition of the roof, the inspection contingency and the definition of defect in the WB-11 "Residential Offer To Purchase." Although the buyer may deliver a notice of defects including the roof, the seller may challenge it as not fitting the definition of defect. In the alternative, the buyer may attempt to negotiate with the seller using an amendment. The buyer may wish to discuss this matter with the home inspector, a local building inspector or his attorney.

Although the existence of fuses in a property may raise safety and insurability issues, fuses are not per se a defect. For further information regarding property conditions and the impact on insurability, see *Legal Update 03.04, Addressing Transactional Property Insurance Issues in Wisconsin*, <http://www.wra.org/LU0304>. More information about insurance issues may also be found at the WRA Wisconsin Homeowners Insurance Resource page, <http://www.wra.org/Insurance>.

*The buyers put \$5000 down on a home. The buyers had a home inspection and they now do not want the home. They did not want a modular or manufactured home and the home is a modular home. However, this is not disclosed in the RECR. Does the buyer use an amendment or a notice? Should the fact that it was a modular home have been disclosed on the RECR?*

The fact that the home is manufactured or modular is not a defect per se. Unless there is a specific contingency to protect the buyer if the home is manufactured or modular, the buyer may not have a legal right to terminate the offer to purchase because of the construction method used to build the home.

*A home inspection report noted that the automatic garage doors did not reverse when contacting certain objects per the home inspector's test. However, the contractor that came and serviced the garage door opener said that the old Genie system was up to code at the time of installation and an electric eye with the sensitivity discussed by the inspector could not be added to this particular system. The garage door does reverse when hitting objects but just not with the sensitivity achieved by newer models. The buyers seem to believe that they are owed something.*

Although the electric eye is a safety feature and thus seems to be within the general range of items that might constitute a defect, the standards are not clear regarding what degree of sensitivity is required for a garage door electric eye. The parties can decide whether they want to dispute this item, bring in their attorneys, go to small claims court, etc. Another possible solution would be for everyone to contribute to the price of an upgraded door opener.

### **Follow-Up Inspections**

It is not uncommon for a home inspection report to recommend further evaluation of a particular system or component, such as a suspect foundation wall, by a specialist. If a home inspection report recommends further evaluation, the buyer may choose to have a follow-up inspection per the language of the inspection contingency.

### **Legal Hotline Questions and Answers - Follow-Up Inspections**

*The home inspector said the buyers needed a pool inspection. The pool inspector then said the pool needs \$5,000 of updates. Does the offer give the buyer the right to have a pool inspector inspect the pool?*

Pursuant to the standard terms and conditions of the home inspection contingency, the buyer may only use a Wisconsin registered home inspector for the home inspection. The terms of the offer are clear that testing is not allowed, but the home inspection contingency provides for follow-up inspections. The inspection of the pool may be undertaken as a follow-up inspection if it was determined that the pool inspector was qualified to conduct the inspection. To avoid discrepancies about types of inspections and inspectors, the parties may address specific inspections, i.e. pool inspections and inspector qualifications in the offer.

*An accepted offer on a listing will be closing on 7/29. The buyer has asked that an inspector come back in on 7/28 to comment on something that he missed. The inspection contingency has been waived. Can the seller refuse to allow this?*

Lines 303-305 of the WB-11 "Residential Offer to Purchase" provide, "Buyer shall order the inspection and be responsible for all costs of inspection, including any inspections required by lender or as a follow-up inspections to the home inspection." It may be difficult for the seller to refuse admittance for the basement inspection if it is indeed a legitimate follow-up inspection originally founded in the inspection contingency.

After the home inspection the buyer found some extensive problems with the property. The seller has agreed to

fix these problems. Once the inspector was allowed in the attic, they have now found more defects.

Arguably, a buyer can give more than one notice of defects if the second notice is based on a follow-up inspection. This means that the seller would decide whether to elect to cure separately for each notice.

## Legal Hotline Questions and Answers - Regulation of Home Inspectors

*How can I find out if a home inspector has the proper credentials?*

Visit the licensee lookup at <http://drl.wi.gov/drl/drllookup/LicenseLookupServlet>, click on "Business Professionals," then "Home Inspector," and type in the home inspector's last name or credential number to search.

*How can I file a complaint?*

Go to <http://drl.wi.gov/dept/complaint.htm> and follow the instructions.

*How can I find out if there is discipline or other orders affecting a home inspector?*

Visit <http://drl.wi.gov/dept/decisions/decisions.htm> to review the DRL's reports on disciplinary decisions.

For additional information about the home inspection profession in Wisconsin, go to:

Wisconsin Assoc. of Home Inspectors  
PO Box 93  
Hales Corners WI 53130-0093  
(877) 399-9244  
<http://www.wahigroup.com/>

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## HOME INSPECTION HANDOUT FOR HOME BUYERS

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### 1. How do I select a reputable home inspector?

The Inspection Contingency in the residential offer to purchase calls for a Wisconsin registered home inspector. Ask your REALTOR<sup>®</sup> for a list of competent area home inspectors or look in the yellow pages. You can confirm the home inspector's registration with the Department of Regulation and Licensing online at <http://drl.wi.gov/drl/drllookup/LicenseLookupServlet>.

### 2. Will the home inspector inspect every feature of the house?

No, the home inspector must inspect certain features required by state law and may inspect additional components and features in his or her discretion or by agreement between the home inspector and his or her client.

### 3. Can I ask the home inspector to look at specific components and items?

Yes, as the home inspector's client you may request that the home inspector inspect specific components and items, as long as they are readily accessible. It may be best to make these requests in writing to avoid confusion.

### 4. May all of the problem areas mentioned in the home inspector's report be listed in a notice of defects for the offer to purchase?

No, the home inspection report will look at property conditions in a general fashion and may list many property conditions that are not serious enough to fit the definition of a defect in the inspection contingency.

### 5. What does the home inspector include in the home inspection report?

The home inspector gives a comprehensive report that includes comments—good, bad and neutral—on all of the different components, systems and items the home inspector is required to inspect. The home inspector does report on the condition of any building component, improvement or item that if not repaired, will have significant adverse effect on the useful life of the item. The home inspector also notes any conditions that may significantly reduce the functionality or structural integrity of property components or systems, or that may pose a significant health or safety risk to building occupants.

### 6. How does the inspection contingency in the offer to purchase work?

In the offer to purchase, a buyer must evaluate whether there are any defects listed in the home inspection report to which the buyer objects and which the buyer wants the seller to fix before the buyer will purchase the property. A defect is a structural, mechanical or other condition that would have a significant adverse effect on the value of the property, significantly impair the health or safety of future occupants, or, if not repaired, removed or replaced, significantly shorten or have a significant adverse effect on the expected normal life of the entire property.

### 7. Should I always give a notice of defects?

This decision is made on a case-by-case basis, depending upon the circumstances and what is best for you. Your REALTOR<sup>®</sup> and your attorney can help explain the pros and cons of giving a notice of defects.

### 8. If the seller discloses a problem on the Real Estate Condition Report, may I include that on the notice of defects?

If a defect has been previously disclosed in sufficient detail so that you are aware of the nature and extent, then you generally cannot list the problem as a defect if you give a notice of defects under the inspection contingency.

# MANDATORY & OPTIONAL HOME INSPECTION SERVICES

Wisconsin registered home inspectors must provide a minimum level of service. State standards require a home inspector to inspect those components, systems and items appearing in the second column below, provided that they are readily accessible. A home inspector also may, but is not required to, inspect the items appearing in the optional column. Parties who want to have certain components, features or items appearing in the optional column included in an inspection should specifically confirm this with the home inspector in writing.

<b>COMPONENT</b>	<b>HOME INSPECTOR MUST:</b>	<b>OPTIONAL</b>
<b><i>ROOF</i></b>	Inspect roof coverings, gutters, downspouts, leaders, splashblocks and similar components carrying water off the roof and away from the building, flashings, skylights, roof penetrations, chimneys. Look for leaks or abnormal condensation on building components. Describe roof inspection methods.	Walking on the roof; inspection of attached accessories such as solar systems, antennae, and lightning arrestors; observation of internal gutter and downspout systems and related underground drainage piping
<b><i>EXTERIOR</i></b>	Inspect wall claddings, flashings, trim, decks, balconies, stoops, steps and porches including railings, eaves, soffits, fascias, grading, drainage, driveways, patios, walkways, retaining walls abutting the dwelling, and garage door operators. Determine if garage door operator automatically reverses or stops upon reasonable resistance when closing. Inspect and operate all entryway doors, garage doors, and at least one window per side of dwelling.	Inspection of storm windows, storm doors, screening, shutters, awnings, locks, latches, other security systems, intercom systems, fences, privacy walls, insulation or vapor barriers in exterior walls, safety glazing; garage door operator remote control transmitters, geological or soil conditions, spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, other exercise, entertainment, or athletic facilities, out-buildings other than garages, trees, shrubs and other vegetation.
<b><i>INTERIOR</i></b>	Inspect walls, ceilings, floors, steps, stairways, balconies, railings, counters and all sink base cabinets, a random sample of doors and windows, separation walls, ceilings and doors between a dwelling and an attached garage or another dwelling. Look for signs of water penetration into the building or abnormal or harmful condensation on building components.	Inspection of paint, wallpaper, other cosmetic finish treatments carpeting, draperies, blinds or other window treatments, washers, dryers, refrigerators, freezers, stoves, ovens, room air conditioners, spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, other exercise, entertainment or athletic facilities observe recreational facilities or another dwelling unit.
<b><i>PLUMBING SYSTEM</i></b>	Inspect interior water supply and distribution system including piping materials, supports, fixtures, faucets, functional flow and drainage, leaks and cross connections; interior drain, waste and vent system including traps, drain, waste, and vent piping, piping supports and leaks; hot water systems, including water heating equipment, normal operating controls, automatic safety controls, and exterior surfaces of chimneys, flues, and vents; fuel storage and distribution systems, including interior fuel storage equipment, supply piping, venting, supports and leaks; and sump pumps. Operate all plumbing fixtures, including faucets and accessible exterior faucets	Inspection of water conditioning systems, fire and lawn sprinkler systems, on-site water supply quantity and quality, on-site disposal systems, foundation drainage systems, spas, interior of flues, chimneys and vents, solar water heating systems, exterior plumbing components such as water mains or swimming pools. Operation of automatic safety controls or sump pumps with internal or water dependent switches, any valve except water closet flush valves, fixture and hose faucets. Determine water temperature, sizing, design or use of plumbing materials, if the water supply and waste disposal systems are public or private. Report on effectiveness of anti-siphon devices.



<b>COMPONENT</b>	<b>HOME INSPECTOR MUST:</b>	<b>OPTIONAL</b>
<b><i>ELECTRICAL SYSTEM</i></b>	Determine if electric service is overhead or underground, functionality of the power sources for smoke detectors. Operate representative number of lighting fixtures, switches and receptacles inside house, garage and any exterior walls. Inspect service entrance conductors, service equipment, grounding equipment, main over current device, main and distribution panels, amperage and voltage ratings, branch circuit conductors, their over current devices and compatibility of their ampacities and voltages, any aluminum branch circuit wiring. Observe polarity and grounding of all receptacles within 6 feet of interior plumbing fixtures, in garage and on structure exteriors, and operation of ground fault circuit interrupters.	Inspection of low voltage systems, telephones, security systems, cable TV, intercoms or other ancillary wiring. Measure amperage, voltage or impedance. Insertion of any tool, probe or testing device inside panels. Testing or operation of over current device except ground fault circuit interrupters. Dismantling of any electrical device or control other than to remove the covers of main and auxiliary distribution panels.
<b><i>HEATING SYSTEM</i></b>	Determine presence of installed heat source in each room. Operate heating systems using normal operating controls. Open readily accessible access panels provided by the manufacturer or installer for routine homeowner maintenance. Observe the condition of all heating equipment and distribution systems, normal operating controls and energy source, automatic safety controls, exterior surfaces of chimneys, flues and vents, solid fuel heating devices, observable and accessible heat exchanger.	Determination of uniformity or adequacy of heat supply to various rooms. Operation of heating systems when weather or other circumstances may cause equipment damage, automatic safety controls. Ignition or extinguishing of fuel fires. Inspection of flue interior, fireplace insert flue connectors, humidifiers, electronic air filters, heat exchangers that are difficult to access.
<b><i>CENTRAL AIR CONDITIONING</i></b>	Operate central air conditioning systems, using normal operating controls. Determine presence of installed cooling source in each room. Determine type and energy source and inspect condition of cooling and air handling equipment. Inspect operating controls. Open accessible access panels provided for routine homeowner maintenance.	Determination of uniformity or adequacy of cool-air supply to various rooms, pressure of the system coolant, presence of leakage. Operation of cooling systems when weather or other circumstances may cause equipment damage, electronic air filters. Inspection of non-central air conditioners. Testing of electrical current drawn by unit.
<b><i>INSULATION AND VENTILATION</i></b>	Evaluate insulation in unfinished spaces, Determine ventilation of attics and foundation areas, and condition of kitchen, bathroom and laundry venting systems.	Inspection of concealed insulation, and venting equipment that is integrated with household appliances
<b><i>FOUNDATION</i></b>	Inspect the type and condition of foundation	
<b><i>FLOORING SYSTEM</i></b>	Inspect the type and condition of the flooring	
<b><i>COLUMNS</i></b>	Inspect the type and condition of columns	

Components, systems and items appearing in the second column listing must be included in a home inspection unless the home inspector's client requests that the inspector exclude any particular components, systems and items from an inspection. Parties should provide any exclusions to the home inspector in writing to avoid any miscommunications or misunderstandings.

# HOME INSPECTION CONTRACT

## Included/Excluded Home Inspection Services or Items

As part of the home inspection of the property located at \_\_\_\_\_, the following items shall be included or excluded, as specified below, in the home inspection and the home inspection report:

<b>THE FOLLOWING ITEMS AND SERVICES SHALL BE INCLUDED IN THE HOME INSPECTION:</b>			
<i>-CHECK THE BOX PRECEDING ALL ITEMS THAT APPLY-</i>			
<b>INCLUDED INSPECTION ITEMS -- ROOF</b>			
	Skylights, chimneys, and roof penetrations		Roof flashings, if visible
	Other:		Other:
<b>INCLUDED INSPECTION ITEMS -- EXTERIOR</b>			
	All windows per each side of the dwelling		_____ windows per each side of the dwelling
	Storm windows and doors		Window and door screens
	Shutters		Awnings & other seasonal window accessories
	Insulation presence and rating		Locks and latches
	Fences and privacy walls		Safety glazing
	Garage door openers		Swimming pool
	Tennis courts		Playground equipment
	Saunas, spas and steam baths		Outbuildings other than garages & carports
	Visible insulation or vapor barriers in walls		Other:
	Other:		Other:
<b>INCLUDED INSPECTION ITEMS – PLUMBING SYSTEM</b>			
	Saunas, spas and steam baths		Swimming pool
	Determine water temperature of:		Other:
<b>INCLUDED INSPECTION ITEMS – ELECTRICAL SYSTEM</b>			
	Low voltage systems such as outside lighting		Operate all installed lighting fixtures
	Intercoms		Cable TV
	Other:		Other:
<b>INCLUDED INSPECTION ITEMS – INTERIOR</b>			
	Paint, wallpaper, and other wall coverings		Woodwork
	Carpeting		Washers, dryers, refrigerators, freezers
	Stoves, ovens		Room air conditioners
	Presence or absence of draperies or blinds		Presence or absence of other window treatments
	Other:		Other:
<b>INCLUDED INSPECTION ITEMS – HEATING SYSTEM</b>			
	Operate automatic safety controls		Ignite or extinguish pilot light
	Electronic air filters		Uniformity & adequacy of heat supply to rooms
	Other:		Other:
<b>INCLUDED INSPECTION ITEMS – AIR CONDITIONING</b>			
	Non-central air conditioners		Electronic air filters
	Uniformity & adequacy of cool air to rooms		Electrical current drawn by the unit
	Other:		Other:

<b>INCLUDED INSPECTION ITEMS – INSULATION &amp; VENTILATION</b>			
	Insulation R rating		Integrated venting equipment
	Other:		Other:
<b>OTHER INCLUDED INSPECTION ITEMS</b>			

<b>THE FOLLOWING ITEMS AND SERVICES SHALL NOT BE INCLUDED IN THE HOME INSPECTION:</b>	
<i>-CHECK THE BOX PRECEDING ALL ITEMS THAT APPLY-</i>	
<b>EXCLUDED INSPECTION ITEMS</b>	
<input type="checkbox"/>	Furnace and all related components such as heating equipment and distribution systems; normal operating controls and energy source; automatic safety controls; exterior surfaces of chimneys, flues and vents; solid fuel heating devices; and the presence of an installed heat source in each room
<input type="checkbox"/>	Roof and all related components such as roof coverings, including type, roof drainage systems, flashings, skylights, roof penetrations, and signs of leaks or abnormal condensation on building components
<input type="checkbox"/>	Chimneys and all related components such as flues and vents, exterior and interior surfaces
<input type="checkbox"/>	Home energy audit items such as insulation ratings, window and door seals & tightness
<input type="checkbox"/>	Other:
<input type="checkbox"/>	Other:
<input type="checkbox"/>	Other:
<input type="checkbox"/>	Other:
<input type="checkbox"/>	Other:
<input type="checkbox"/>	Other:

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 (Signature of party)

# SHOP FOR THE FUN STUFF

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