



Edward J. Witas

Homebuyers v. Sellers: Differing Perspectives of the Professional Inspection Contingency

Buying or selling a home is often referred to as one of the most stressful events of modern day living. It is the largest investment most adults will make in their lifetime.

Often, a frustrating part of the home sale process is trying to understand your rights and responsibilities under the contract. Most residential real estate contracts contain a variety of contingency provisions that are intended to assist the parties in performing their due diligence. One of the most common, and perhaps most controversial, is the professional inspection contingency.

Aside from the occasional circumstance where a buyer's financing falls through, more deals terminate as a result of the professional inspection contingency than any other reason.

The purpose of a professional home inspection is to give the potential buyer an opportunity to investigate the condition of the property and determine if there are any defects that would cause them not to move forward with the purchase. Having a professional inspection performed by a licensed home inspector is important, as it is

the buyer's opportunity to fully investigate the condition of the property they are purchasing. Contrary to what some may believe, there is no law in Illinois that entitles a buyer to perform a professional home inspection. Therefore, it is crucial that the buyer include this contingency as part of the contract when the offer is made. Except in some circumstances, any defects found in the property after the closing has taken place will likely be the buyer's responsibility to repair.

DIFFERING OPINIONS


Buyers and sellers have differing opinions regarding the merits of the professional inspection contingency. From the buyer's perspective, the inspection contingency provides a broad protection that allows the buyer to terminate the contract should any condition of the property be discovered that the buyer is unwilling to accept, with full return of the buyer's earnest money. In some instances, an inspection will uncover a condition of the property that leads the buyer to cancel the contract. It is far more common, however, for the inspection to uncover defects that are reasonably

repairable. Depending on the nature of the defect found, buyers will usually request the seller to make certain repairs prior to closing, or in the alternative, provide a monetary credit to the buyer which can be used toward the buyer's closing costs.

Sellers, on the other hand, tend to see the professional inspection contingency as an opportunity for the buyer to negotiate additional credits or even a further reduction in the purchase price. In most cases, the seller has already agreed to reduce their asking price in precontract negotiations. In the seller's mind, the price of the property has already been reduced to an amount that adequately reflects the condition of the property, and for this reason, sellers are usually not too enthusiastic about receiving buyer's inspection requests.

HOW TO RECONCILE

So how do we reconcile these two competing points of view? The key is to be reasonable. Buyers should remember that, unless they are purchasing new construction, the house they are buying has been lived-in and will likely have some items in need of attention. Sellers should consider the cost of the buyer's repair or credit request, compared to the cost (i.e., mortgage interest, utility costs, property taxes, hazard insurance, general maintenance) they will incur until a replacement buyer is found, should the current buyer elect to terminate the contract. So long as both parties remain reasonable in the negotiations, a compromise is generally reached.

Buying and selling a home is an emotional process for both buyers and sellers. Rely on the team of professionals that you have assembled—your real estate agent, attorney, lender, and home inspector. No matter what situation arises, it is likely that someone on your team has seen it before and their advice is going to be worth listening to. 

.....
Celebrating his 10th year of legal practice, Edward J. Witas III is the principal and founder of Edward J. Witas & Associates, P.C., a general practice law firm representing both individual and business clients, with offices located in Barrington, Schaumburg, and Lockport. He is a life-long resident of the Barrington community, and a graduate of Barrington High School. Witas & Associates, P.C. is located at 600 Hart Rd., Ste. 145, in Barrington. To contact Ed Witas, call 847-230-9037 or email ejw@witaslaw.com.