

Town Topics, April 27, 2005 Legal Forum:
"The Inspection Phase of a
Residential Real Estate Transaction"
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The inspection phase of a residential real estate transaction begins when the contract of sale is finalized. Even when property is located in a municipality that requires a municipal inspection, most buyers contract a private inspection company to perform various inspections. Professional home inspections help buyers make informed decisions by providing important information about the condition of the home, potential health and safety hazards, mechanical and structural defects, and costly repair and maintenance issues.

The contract is usually contingent upon the buyer obtaining inspections. Depending upon the Contract terms, the inspections must usually be completed and reports furnished to the seller within ten to fifteen days from the end of attorney review. In order to avoid disputes and confusion, the contract should clearly set forth the scope of the inspections, and the rights and obligations of the parties with regard to inspection results.

The following are the most common inspections with regard to residential real estate and are usually paid for by the buyer:

Termite: A clear termite/wood-destroying insect certification is usually required by the lender.

Structural: This inspection includes the major systems, roof, basement, etc., and may include environmental hazards such as mold.

Radon: The contract should specify the maximum level that will be deemed acceptable.

Septic: If there is a septic system, it is imperative that the buyer have it tested by a qualified inspector.

Flood: The contract should provide the buyer an opportunity to cancel if it is determined that the property is located within a flood hazard area.

The following inspections are less common, and are also usually paid for by the buyer:

Lead paint

Above and underground **storage tanks** and surrounding soil

Mold

The following inspections are required by State or local law:

Private Well: If the property is serviced by a private well, the well must be tested in accordance with the Private Well Testing Act, N.J.S.A. 58:12A-26. At closing of title, both parties must certify that they have received the test results. The law does not specify who must pay for the test, and that is a matter negotiated during the contract phase.

Carbon Monoxide Detector and Smoke Detector: State law requires a seller to obtain a Certificate of Smoke Detector and Carbon Monoxide Alarm Compliance (CSDCMAC). In some cases, carbon monoxide compliance is not applicable.

Certificate of Occupancy: Some municipalities require a municipal inspection and issuance of a Certificate of Occupancy (CO) on resales. The seller usually obtains and pays for the inspection, although the parties are free to negotiate otherwise, such as by placing a monetary limit on the seller's obligation to make the repairs.

As when hiring any professional, it is advisable to obtain a recommendation when choosing a home inspector. The buyer should make the inspector aware of time deadlines under the contract, provide a copy of the seller's disclosure statement, and accompany the inspector on the day of inspection.

Due diligence on the part of the buyer during this phase of the real estate transaction is essential in order for the buyer to avoid becoming the owner of a house with significant structural, environmental and mechanical defects. Most importantly, the inspections may reveal potential health and safety risks associated with the property, bring potentially costly repairs and violations of Code standards to light, and significantly improve the buyer's ability to make informed decisions regarding the purchase of a home. From a seller's perspective, even if the contract is eventually cancelled, inspections make the seller aware of defects or conditions the seller may have to address when negotiating with another potential buyer.