

CHAPTER 06

INSPECTOR AND LENDER RELATIONSHIPS AND DUTIES IN THE REAL ESTATE TRANSACTION

Learning Objectives

After this chapter, you will be able to

- Describe the standard to which an inspector conducts business.
- Identify which party to the transaction receives the inspection report.
- Identify who should be allowed on the premises or to accompany an inspector on an inspection.
- Define the basic duty of a mortgage loan officer.
- Describe the license holder's responsibilities to the buyer concerning lenders and mortgage loan originators.



Inspectors are individuals licensed by TREC to perform inspections of real property when it is part of a real estate transaction. Inspectors provide information on the performance of certain systems in the property. For residential properties, they are required to use the TREC standard report form and are guided by rules known as “Standards of Practice” to ensure consistency throughout the home inspection process. A home inspection is a limited visual survey and basic performance evaluation of the systems and components of the house. It does not require the use of specialized equipment and is not a comprehensive investigative or exploratory probe to determine the cause or effect of deficiencies noted by the inspector. TREC does not require inspectors to inspect to any of the various building codes. However, an inspector is free to inspect to a

higher standard (such as to various codes or recognized safety hazards), as long as they do so competently.

An inspector cannot:

- * Perform a hydrostatic test unless they are also licensed as a plumber;
- * Perform a mold assessment unless they are also licensed by the Texas Department of Licensing and Regulation;
- * Test for the presence of wood-destroying insects unless they are also licensed by the Texas Department of Agriculture;
- * Accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice within 12 months of the date the inspector performed an inspection on the property;

- * Disclose inspection results or client information without prior approval from the client;
- * Pay or receive a fee or other valuable consideration to or from any other settlement service provider (newsflash – brokers and sales agents are considered settlement service providers).

Inspector FAQ's

Should a buyer's or seller's agent ask the inspector for a copy of the inspection report prepared for the buyer?

To answer this question, you need to remember who the inspector's client is and which party you represent. Who is the inspector's client? The person who contracts with the inspector and pays for the inspection services (usually this is the buyer). See the article below.

Where Does That Inspection Report Go?

After an inspection is performed, often times the inspector will go over the findings with the potential buyer to let them know about all of the deficiencies that the inspector observed during the course of the inspection. By rule, the inspector must have the report sent to the client no later than 48 hours after the inspection is paid for, unless otherwise agreed to in writing. In most cases, the agent or broker that represents the buyer would like a copy of the inspection report sent to them as well. The inspector is only allowed to send the report to the inspector's client, as they are the ones that own the report. If the buyer's agent would like a copy of the report, the buyer must give their permission to the inspector in order for the inspector to do so. If an agent is unable to attend the inspection with the buyer, then it would be a good idea to inform the buyer to ask the inspector to send them a copy of the inspection report at the time of the inspection. This will help ensure that the inspector obtains the permission from the buyer to do so, and it makes sure that the agent gets the report at the same time the buyer does. In most situations, it is a good idea for the buyer to allow the inspector to send the agent the report. However, there are some situations where that may not be a good idea. One situation in particular is when there is an intermediary situation. In that situation, the inspector may choose to not send the report to the agent directly. It would be best, in that scenario, for the buyer to send the report to the agent themselves if they choose to do so. The issue here is that if a broker represents a

buyer and a seller and has not appointed separate agents to each party, neither the broker nor the broker's agents may give advice to either party in the transaction. Further, if the broker or an agent gets a copy of the report, they are now aware of material defects in the property. Being that they also represent the seller, that information must be conveyed to the seller as well. If the seller is aware of the material defects to a property, then they should modify the Seller's Disclosure Notice to reflect the known issues.

Contributed by Lee Warren, Chair of the Texas Real Estate Inspector Committee. Mr. Warren is a licensed Professional Inspector and a Broker.

Can an inspector allow the buyers to accompany him/her during the inspection if the buyer's agent and the sellers are not present?

Presumably, the buyer has a signed contract where the seller has already given consent to allow access the property "at reasonable times." Section 7 of the One to Four Family Residential Contract states that the "Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections." So, as long as the seller is notified and agrees to the time of the inspection, both the buyer and the inspector have the seller's permission to be there, with or without the buyer's agent.

Is it a violation for the inspector to provide access to the home since the inspector is not a broker or agent?

The inspector has not committed a TREC violation simply by allowing access to the property. Remember, licensed inspectors, like real estate license holders, go through a criminal background check and this distinguishes them from an unlicensed assistant. Whether or not an inspector can access the lockbox to enter a home depends on whether the MLS rules in their area allows them to have access, and whether the rules allow access for just the inspector, or the inspector and the buyer. If the MLS rules do not, the seller, seller's agent or the buyer's agent will have to be present to provide access to the buyer for the inspection.

Is the inspector or the buyer's agent liable if the buyer damages or removes something from the home during the inspection?

The question of liability is a civil matter. The answer

would turn on the particular facts of the case, including local MLS access rules, the terms of the listing agreement and contract, any directions given by the seller regarding the need for an agent to be present and whether the inspector or agent knew or should have known what the buyer was doing.

Lender Relationships and Duties

The basic duty of a mortgage loan officer is to provide the best information possible about the mortgage loan process and give the consumer the choices that are available to them to make the best choice about a mortgage loan.

Mortgage loan originators are licensed through the Nationwide Multistate Licensing System (NMLS).

Education requirements for licensure of mortgage loan originators (MLOs) includes annual continuing education. The SAFE Act requires state-licensed MLOs to complete:

- a. Three hours of federal law and regulations;
- b. Two hours of ethics that shall include instruction on fraud, consumer protection, and fair lending issues;
- c. Two hours of training related to lending standards for the nontraditional mortgage product market; and
- d. One hour of undefined instruction on mortgage origination.

Consumers and real estate license holders should consult with a mortgage loan originator before determining the timeframes put in the Third Party Financing Addendum to ensure the timeframes are realistic. Connecting a buyer with a mortgage loan originator early in the process of a home search is the prudent action to take. And assisting the consumer in understanding it not just a “suggestion” that the consumer’s financial documents be sent to the lender, it is the **ONLY** way the lender can make an informed decision about approving this consumer for a mortgage loan.

As a real estate license holder, one of your responsibilities is to offer choices to the buyer consumer about mortgage lending and to help the consumer understand a contract is an obligation with real deadlines to meet and consequences for not meeting those deadlines. Furthermore, in the current environment with many choices for lending, some lenders are not competent to handle a mortgage loan that does not fit into a strict criteria. Be aware, some lenders have no interest in your particular consumer - it is just another application in a long line of applications. Another of the real estate

license holder’s responsibilities is to make certain the mortgage lender and title company have all the amendments to the contract as soon as they are executed.

What a lender doesn’t want to hear:

“We lowered the price last week, why can’t you close it tomorrow?”

“The seller is giving the buyer cash in lieu of repairs”

“We don’t have to tell anyone the buyer has to sell the home they have in order to buy this one, do we?”

“Couldn’t you just create a pre-qualification letter and talk to the buyer later?”

“The buyer is not working now, couldn’t we just use the job they used to have?”