Protecting Your Client from Property Defects

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Who would want to buy a defective home? Most clients wouldn't but then again what is a defect or problem to one client would be an opportunity to another. Most homebuyers hire home inspectors to discover all the defects in a home. The reality is that home inspectors can only find patent defects. It's important to differentiate this with our clients. A <u>patent defect</u> is a visible deficiency in a piece of property, such as a cracked basement slab or a sagging porch. The opposite is latent defect.  A <u>latent defect</u> is an invisible problem in a piece of property such as bad wiring, termite damage or lead paint.

The reason why a home inspection will not catch latent defects is the inspection is a visual, non-invasive, non-technically exhaustive, assessment of a property. In the classic 2200 square home, a home inspector may spend two hours. In that time he/she will inspect the site, the foundations, the framing, the roof, the heating system, the cooling system, the plumbing system, the electrical system, and so on. This two-hour process, while covering all areas of the home is really intended to alert buyer to major concerns. Most inspectors such as those who belong to National Association of Home Inspectors (NAHI) inspect to a set guidelines called Standards of Practice. The Standards of Practice define what gets inspected in a home. While most inspectors will exceed the standards, it still will not protect clients from latent defects.

When a buyer and seller enter into a contract, a seller has certain obligations to disclose any known defects, needed repairs, and violations of law, which the home may manifest. This is where the Seller's Property Disclosure is used to notify the buyers of any issues with the property.  Until disclosures and home inspections, a homebuyer needed to follow the creed "caveat emptor" meaning "buyer beware". According to Colorado law, a seller is liable for not disclosing defects in the property. This means that if a seller knows about a defect in the property, he or she must inform the Buyer about it or risk being sued. It bears noting that in Colorado, property sellers and Brokers are not responsible to disclose any defects about which they have no knowledge.  This seems reasonable, but in some states like California, sellers and Brokers are responsible to disclose any defects about which they should have had knowledge.

There are several steps that can be taken to protect clients from defects:

- o Clients should be told that inspections are visual and not technically exhaustive. Most inspectors will be happy to explain this to customer and review the standards of practice. This will help set the clients expectation of what they will get from the inspection.

o   The client should plan on attending the inspection. At minimum they should plan on attend the end where the inspector can review the inspection findings

o   If the client has areas of concern they should discuss those with the inspector prior to arriving onsite. This will give the inspector the opportunity to plan the inspection and be able to address those concerns as he/she inspects the property.

o   The inspector should get a copy of the property disclosure. If there are non-standard entries, they can physically review those items as they inspect the property.

o   The final step is the walkthrough. While this may be routine, it is the last line of defense against defects. In most cases the sellers have removed their belonging exposing area that may have been intentionally or unintentional concealed. This last inspection ensures that no vital areas of the property are concealed from sight; that no defect discoveries are unreasonably prevented. In many cases foundation problems, mold issues, and various other defects become apparent. If the defect is significant the purchase can be put on hold, and negotiations with the sellers could have been reopened. If the clients do not feel comfortable doing the walkthrough themselves, arrangements can be made to have the home inspector do the walkthrough with the client