

Code Inspections and Home Inspections, What's the Difference?

I periodically have to stop reading the posts on the various bulletin boards on the Internet. While there is interesting information to be found on these boards, there is a fundamental misunderstanding of what constitutes a good home inspection.

After spending a lifetime in the Real Estate business and the last 11 years performing home inspections, I have come to realize that when acting as a consultant for a prospective buyer one must be sure to follow the money. Home Inspections are the only documents prepared solely for the prospective home purchaser; Not the Loan Company, Title Company, and certainly not for the Realtors and most certainly not for the Home Sellers. The Real Estate Industry is rife with conflicts of interests. Home Inspectors stand alone in their duty to their Clients, the homebuyers.

Codes are an important part of the home inspection business but not the only part. Codes can be included along with the manufactures recommendations, the quality of the installation, the age and condition of the system. Does it look about right? Is it broken? Does it leak? Is it burned? Is it used up? Is it an imminent safety hazard? These are things a client really wants to know. Not if a wire is bent too tight. The inspector can then use his experience and training in combining all this information to give his only client unbiased purchase information. In my opinion, this requires the inspector to have a superior knowledge of the building codes along with the understanding why systems and components work together in a safe manner.

Home Inspectors as a group have the least amount of influence in the real estate industry. Accordingly, well-trained and experienced inspectors do not receive the industry with wide respect that they deserve. While inspectors may not have industry wide influence, they do have a definite influence on the client. What is not commonly known is that the home inspection report is the only document prepared specifically for the client during the purchase process. **Every other document** has dual functions to benefit the other participants in the purchase transaction and only protects the client secondarily. While the client is presented with mountains of agent disclosures, loan documents, transfer disclosure statements, etc. virtually all of these documents are designed to protect the agent from litigation. It is interesting to note our clients; (the typical homebuyer) do not have representation at a legislative level that they deserve. They are left to the conflicted interests of their agents. Lobbyists represent the lenders, title companies etc; virtually every real estate related business is represented. In addition, one of the most powerful lobbies in the nation represents the real estate industry, the National Association of Realtors (NAR). Even the lowly home inspection industry is represented, barely, but the homebuyer has no lobbyists to protect their interests.

The basic precept in a capitalistic society is that everyone acts in his or her own best interests. While real estate law says that an agent must use fiduciary duty when dealing with their clients, it is rare that agents adhere to this duty. Agents are salespersons in the business of selling property. Anything that interferes with this process is eliminated or minimized. Accordingly, the more detailed an inspector, the less likely he is to receive

referrals from the agents, particularly the higher volume agents. High volume agents need to have easy home inspections in order to close the transactions and make their money. The high volume agents require an inspection that is just enough to convince their clients that an inspection has taken place, but not so much as to jeopardize the close of escrow. Conversely, the lower volume agents tend to have a more personal tie to their clients and are a little more concerned with their client's welfare. These agents usually use a more detailed inspector. This is probably part of the reason why these agents are not higher producers.

Regardless of what any poorly written law says, home inspections should be designed to provide a potential buyer with an unbiased opinion on the condition of the property. The buyer then combines this information with all the other sources of information provided by the Lender, Title Company, Realtors and the Home Seller to Make an **Informed Purchase Decision**.

The Home Inspection is a very specific industry. We provide our clients with a general idea of the condition of the property. In the limited time available and the minimal fee it is not possible to perform an in-depth analysis of the property. Many inspectors strive for validation by obtaining various inspection related credentials, but they lack the *time* required to build experience. They want to be specialists or experts but when held up to the white light of disclosure there are not many inspectors who are truly experts at every part of the inspection. While there are industries that will try to convince the novice inspector to pay for this certification, or go to this training, and after a few weeks one can be a really good inspector. This is far from the truth as it takes many years to gain meaningful experience and become a truly qualified home inspector.

Years ago, I attended a Building Industry Association (BIA) customer relation seminar. In it, they disclosed that there is over 500,000 pieces of things that go into building a home. Of those pieces at least 2/3 are hidden inside walls or other assemblies and cannot be seen. Of the remaining 1/3 portion a trained inspector can see only about 50% on first viewing, and the untrained person can see only about 20%. So if this is correct then an experienced inspector can only see about 1/2 of 1/3 of the home; but he can only report 1/2 of what he sees. So let me see; $500,000 / 1/3 / 50\% / 1/2 = 41,000$ reportable pieces. And if the typical inspection takes 4 hours then we have 240 minutes divided by 41,000 = .05 minutes per piece or .35 seconds per piece. The real question here, what about the 330,000 pieces that are concealed and uninspected? A home inspector processes a tremendous amount of information during an inspection. And this is compounded day after day. It is virtually impossible to report every condition in any given home. All we can do is reduce the probability of missing anything significant. This is not an easy business.

The real estate industry is rife with conflicts of interests. In order to truly understand the intentions of the participants you must follow the money. Many times it is straightforward but in the Home Inspection business, it is not always so clear. The schools entice unsuspecting novices to buy training, not to benefit the inspector but to make money for the training facility. The same is true for the various inspection

associations. You must be a member to stay out of trouble i.e. scare tactics. There are many other reasons to be a member of an inspection association but they can become costly. But, the one industry that is constantly overlaid on the home inspection industry is the government building code regulations. On every bulletin board and in every association there are a handful of individuals who constantly propound the importance of reporting code related issues to their clients. What is commonly overlooked is that these people do not make their primary income from performing home inspections. Many times they are either teachers or expert witnesses who are on the periphery of the industry, or come from a code related background. They experts at codes and have a very biased view of the inspection business. They are very conflicted and do not understand the real estate industry. Usually they do not make their living by inspecting homes. By inserting the building code into the home inspection business these people find validation and personal income but cause incalculable harm to the industry. These people are hugely conflicted by definition, (sometimes knowingly, sometimes unknowingly), and are leading the novice inspectors in the wrong direction. More importantly they drive away intelligent individuals who are offended at this circumstance.

When you try to combine the code enforcement mentality with the informed purchase decision, you find inconstancies and confusion. There are so many minor requirements in the code that can be arbitrarily applied to any home that it becomes impossible for a home to be considered safe. When you perform a code inspection on a home and you point out many so-called important code related safety issues and convince your client that only an electrical specialist can review the electrical system; that it is not up to code, the implication being that the home is unsafe. The client then looks up and down the street and sees similar homes, all built by the same builders, all with the same issues and none of them are burning down due to the electrical problems. The inspector then loses credibility not only with the client but also with the real estate industry as a whole. But, what the inspector has really failed to do is to provide his client with the information to make an informed purchase decision. By including too many code issues, we cloud the client's ability to make intelligent purchase decision.

Building codes are not retroactive for many important reasons. If the houses were truly unsafe then the population as a whole would have demanded that every home, new and old brought up to the current code to protect their children. This is not the case; the older homes are safe, just not quite as safe as new houses. **The ultimate question is how safe is safe enough?**

Every inspector must understand that local code jurisdictions have absolutely no inspection liability! See [Harshbarger v. City of Colton \(1988\) 197 Cal.App.3d 1335, 243 Cal.Rptr.463](#). When a home inspector undertakes a code inspection, he takes on all the liabilities of the previous governmental code inspections. **No home inspector should even talk about code inspections when reading this case law!**

Section 818.6 of the California Code of Civil Procedure States:

A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property...for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

When a home inspector undertakes a code inspection, he takes on the liability of any deficiencies in the original code inspection: **Deficiencies to which the local code authority is held harmless.** In addition, it is impossible to know if the original builder received a dispensation from the code authority to deviate from the building code. In addition, it is impossible to know which code cycle was being followed at the time of construction without reviewing the permit application. Moreover, it is beyond the abilities for the typical inspector to keep track of the changes in the code from cycle to cycle. We just do not know enough about the code for it to be *specifically* applied. Ultimately, what is important is that the inspector understands the *intent* and **reasoning** that went into of the building code so that understanding may be incorporated into the inspection in such a way as to assist the client in making an informed purchase decision and not clutter the report with meaningless information.

Also, our contracts and our standards of practice preclude code inspections. On one hand we exclude code inspections but on the other codes are used as the basis for the inspection. This in my opinion is especially damaging.

Lastly, the California Association of Realtors Purchase Contract specifically prohibits code inspections. The seller must approve in writing any governmental code based inspection. Code inspections would cause a tremendous amount of work, for the sellers, expense and ultimately be impossible to pass. Building codes are designed for new construction and have a limited value for existing housing.

In order to gain recognition from the real estate industry, recognition so necessary in gaining a legitimate voice in the direction of this industry, we must learn to include the only important issues in the reports, explain why this condition was important and what can be done to fix the problem. The inspections must provide an important service to the client to enable him or her to make properly informed decisions, not decisions based on biased or hysterical information.

Any comments or questions are welcomed.

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