MYTHS ABOUT REALTOR® INSPECTIONS - EPISODE 1

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You probably are aware that Civil Code Section 2079 requires licensees to conduct a reasonably competent visual inspection of all reasonably accessible areas of a residential 1-4 unit dwelling. What you may not know is that the Realtor's inspection is one of the most dangerous parts of the average transaction, in terms of litigation threat to Realtors®. In lawsuit claims against real estate professionals reported in the published appellate court decisions, one of the most common legal grounds is the alleged careless inspection. You may not be aware that many things you have heard about these inspections are not true. In this and upcoming bulletins, I'll address some of the leading urban legends in this area, which if you follow, could get you sued.

Myth Number 1: I always recommend a home inspection service, so I can just state "home inspector recommended" in the TDS at Section III or IV.

This is false. Your obligation to inspect is not relieved because someone else more expert is brought in. The appellate case of *Leko vs. Cornerstone Building Inspection Service*, 86 Cal. App. 4th 1109, issued in 2001, addressed that issue. In that situation, a Century 21 agent had hired Cornerstone as the home inspector, but the buyer later sued the agent and Cornerstone, alleging they had both inadequately inspected and had not reported damage from the 1994 Northridge earthquake. The issue of whether or not the agent could use the home inspector to protect the agent from liability was not even argued, and there was no question that the Realtor® could be liable for negligent disclosures as well as the inspector. The court focused not upon whether the Realtor® could be sued, but whether the liability could be split between the agent and the home inspector. The court held that it could be divided up, if the trial court and jury found it appropriate.

Home inspectors have a standard of care, and so do you. Your standard of care must be met by your own inspection. Home inspectors, while a benefit, cannot fulfill your statutory obligation to do your own visual inspection.

It is your liability and responsibility, and no one can relieve you of it. You are not a construction expert, and the law only requires you to be reasonably alert for "red flags". So, as a television character used to say each episode to the Hill Street police officers, "let's be careful out there." All the law requires is that you are careful.

Myth Number 2: The property is being sold "as-is", so that is all I need to note in Section III or IV of the TDS.

This is absolutely false. Your obligation to conduct a reasonably competent visual inspection of all reasonably accessible areas in a residential one to four dwelling building is unconditional.

An "as-is" or "present condition" sale is something that affects the contractual warranty liability of the seller only. It does not affect the seller's non-contract liabilities, such as misrepresentation or concealment, for example. If a seller does not disclose the leaky bathtub in an "as-is" transaction, the buyer still can pursue the non-disclosure. An "as-is" sale only wipes out a buyer's claim of warranty, nothing else.

Since a disclaimer of warranty is the only impact of an "as-is" clause, it has zero impact upon the Realtor's® duties and liabilities (i.e., your risk).

Conclusion.

A careful, diligent, visual inspection of all reasonably accessible areas in a residential one to four dwelling building is always your responsibility. Don't look for loopholes, just do it right.

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