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BE CAREFUL ABOUT PRESALE INSPECTIONS

A presale inspection is where a customer is planning on selling his or her home and they want the home inspected. The supposed purpose of this inspection is to inform the seller of defects in the house prior to marketing it. From a practical standpoint, this makes little sense. A homeowner is only required to disclose what they know, and a presale inspection only serves to put the owner on notice of many more defects or potential defects.

For example, a homeowner may not be aware of the fact that they have a cracked heat exchanger. Many homeowners don't know that their wiring is not up to code. Basement defects are often difficult for the average homeowner to assess. Most homeowners don't understand the impact of negative grading. When the home is inspected the home inspector puts the homeowner on notice of potential problems, requiring the homeowner to pass this information on to prospective buyers. The homeowner really should provide this presale inspection report to all potential buyers in order to comply with Wisconsin's disclosure requirements. I don't know why any homeowner would want to be in this situation.

Let's assume the homeowner does have a presale home inspection. This can create a potentially dangerous situation for the home inspector, particularly if the seller has concealed defects or problems with the home.

In the past, real estate agents were subject to lawsuits claiming that they were aware of defects that were not disclosed. A seller would testify that the agent was aware of problems, and though the agent informed the buyer. The real estate agent denied being aware of problems. The real estate condition report was developed by the real estate industry, to protect real estate agents in this situation. The real estate condition report affirmatively shows what defects were disclosed to the real estate agent and this information is then passed on to the home buyer.

A real estate condition report is usually not given to the home inspector in a presale home inspection. The seller may have filled in cracks in the basement walls and painted over

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them. The seller may have put drywall up or paneled over bowed walls. The seller may have faulty wiring hidden behind paneling. The seller may have covered up a deficient rood with tar.

What the seller may be doing in this situation is using the home inspector to sell a property with concealed defects. The home inspector is not told about these defects and inspects the home. The home inspector's report does not indicate any defects, because the home inspector did not observe any problems.

A problem may later arise when a prospective buyer learns about the concealed problems. The buyer may assume the home inspector was in on the fraud. After all, the buyer has no faith in a home inspector hired by the seller. If it turns out that the same real estate agent has recommended the home inspector in the past, the buyer may become even more suspicious. From the buyer's standpoint, it looks like the home inspector; the seller and the real estate agent are all part of the same conspiracy.

Where the real problem comes in is if the seller now claims to have discussed all of these issues with the home inspector, assumed that the home inspector didn't consider the problems to be serious, and that is why the problems were not listed in the inspection report. The home inspector can deny being told about these concealed problems, but it's the home inspector's word against that of the seller.

The way a home inspector can protect his or hers, when there is a presale inspection; is to insist on receiving a real estate condition report filled out by the seller. The condition report protects the home inspector against claims of the conspiracy to defraud. The home inspector, like the real estate agent, can use the condition report to establish the information that he or she was provided with. If there is a claim that the seller told the home inspector about certain problems that did not show up in the home inspector's report, the home inspector can produce the condition and maintain this was the information provided by the seller. Without the condition report, the home inspector has no proof as to what he or she was told and a weak defense to claim that the seller, the real estate agent and the home inspector all conspired to defraud the potential buyer.

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