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## Attorneys at Law

### **DECIDE WHOSE SIDE YOU ARE ON**

Whether you want to or not, eventually you will be sucked into some form of litigation. A buyer will sue the seller and possibly the realtor with regard to defects, usually basement problems. The buyer's attorney must make a decision as to the liability of the home inspector. Very often the liability of the home inspector is somewhat debatable. Usually the home inspector noticed some things and made certain comments, but the question is whether they were sufficient. Did the home inspector merely point out past stains? Did the home inspector indicate that there were no ongoing problems? Did the home inspector miss cracks that were patched? Did the home inspector refer the buyer to a basement expert? Did the home inspector look at the condition report and take this into account when rendering his opinion?

While most home inspectors prefer to remain neutral and not take sides, sometimes they have no choice. They may be sued by the plaintiff. They may be brought in as a third-party defendant by one of the other defendants. It is important early on to determine how things are unfolding and determine which party or parties the home inspector is best aligned with.

If there appears to be impending litigation, the home inspector should contact the plaintiff's attorney and find out whether the plaintiff's attorney feels the home inspector has some fault and whether the plaintiff is intending on proceeding against the home inspector. If it looks like the home inspector is going to be a definite target of the plaintiff, then the home inspector needs to align him or herself with the defense. Defendants necessarily must stick together for their mutual benefit. What becomes important is how the inspector phrases any responses to issues raised.

This doesn't mean that you should lie, exaggerate, or misstate your testimony. However, you don't need to make statements or take positions that are going to harm your case. If after talking to the plaintiff's lawyer and after reviewing the situation, it appears that you're going to be aligned with the defendants, then you should keep in mind the following points:

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1. It cannot be stated with certainty as to whether the problem pre-existed.
2. It cannot be stated with certainty the frequency or nature of the occurrence.
3. It cannot be stated with certainty as to whether the problem has stabilized or is continuing.
4. It cannot be stated with certainty whether the problem needs to be repaired or the cost to repair it.
5. It cannot be stated with certainty that the sellers were aware of the problem.
6. It cannot be stated with certainty which repairs are required if any.
7. There are probably inexpensive solutions to curing the problem.
8. That any of the actions taken by the seller are consistent with normal repair and/or home maintenance by non-professionals.

When defendants start pointing the finger at each other and taking pot-shots at one another, then all of their cases are weakened. It is best that they stick together and form a combined defense for each of them to benefit.

If after evaluating the case and talking to the plaintiff's attorney, you reach some type of assurance, you are not going to be a defendant and can actually be of some benefit to the plaintiff in exchange for not being made defendant in the case you can take the following position.

1. There is evidence that the problem pre-existed.
2. There is evidence that the seller was aware of the problem.
3. There is evidence that there were efforts made to conceal or hide the problem.
4. The repairs in this case could be significant.
5. That the level of concealment or the conditions existing at the time prohibited any home inspector from identifying a future problem.
6. That the seller's condition report was inconsistent with the nature of the problem.

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7. That adequate repair in this case may be expensive.
8. That the buyer's situation is much more serious than the home inspector believed it to be, based upon observations at the time.

The savvy home inspector can sometimes negotiate his or her way out of liability by talking to the plaintiff's attorney in particular. The home inspector can be a real asset to a plaintiff in his or her case against the seller and on the other hand can do a significant amount of damages to the plaintiff's case if the plaintiff chooses to make the home inspector a target.

In most cases, the real target is the seller. The seller lived there a number of years, and the seller was the one who concealed any problems. It is the seller who would have falsely filled out a condition report. It was the seller who would have gotten estimates for repairs from other people prior to selling the house. The seller is the one who might have been put on notice of problems by earlier repair people. It is the seller who would have observed the condition of the house through different season and different climatological events.

Find out early what's going on in the case. Talk to the lawyers involved, and decide what position you are going to take in order to protect yourself as the litigation proceeds.