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LIMITING LIABILITY IN YOUR CONTRACT

Recently I've had some discussions with a representative of the Department of Regulation and Licensing. An issue that they are focusing on these days relates to Wisconsin Statute §440.976 disclaimers or limitation of liability. This statute states that no home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability or limits the amount of damages for liability, of the home inspector for his or her failure to comply with the standards of practice. . . The Department considers it a violation to even have this language in the contract whether or not the home inspector attempts to assert it or not. In other words, if you have some phrase in your contract that attempts to limit your liability or damages, the Department may consider it to be a violation worthy of prosecution.

Sometimes it is easy to overlook these clauses in your contract because of the way they are phrased. The suspect clauses or statements in your fee agreement could include the following: The liability of the home inspector is limited to the cost of the report. The home inspector is not liable for his own negligence. Phrases like this are important, anything that limits liability of the home inspector to the corporation will do. It may even include phrases that state the home inspector is not liable for damages unless he or she is allowed to come back and re-inspect the property before the homeowner takes any action. It may include phrases that state that the homeowner is not liable for damages related to mold or other toxic substances.

Wisconsin Statutes limit and protect the home inspector from certain areas of liability. If the home inspector attempts to expand that protection by including phrases in the contract providing additional exceptions from liability, the home inspector risks problems with the Department of Regulations and Licensing. Much of the problems are dependent upon what language is used in the contract. The key points that the home inspector should look for, relate

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to the words, “responsible”, “liable”, or “liability”. If your contract uses any of words along with the word not or no, there is a potential risk.

You can discuss what services you provide and what you don’t do, to put the buyer on notice of the services offered, but be sure not to discuss what you believe you’re liable for or not liable for. Many home inspectors have multi-state generic agreements. These agreements are designed to function under the laws of a number of different states. Some of these agreements contain language that says, “Any provision that is contrary to the laws of the State in which the inspection is being done shall be stricken.” From my discussions with the Department, this phrase will not protect you. You need to make sure there are no phrases in your contract limiting or restricting liability.

Usually homeowners don’t file complaints because a liability limitation paragraph is included in a fee agreement. However, if the Department happens to investigate you for some other reason and they notice this phrase in your contract, you may be cited. Take a minute to look over your contract and see if there is any limitation language that may be suspect. If in doubt, give the Department a call and get their opinion on it. It is better to be safe than sorry.