

# Stevens & Kuss S.C.

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## **TELL THE SELLERS TO POUND SAND**

Recently I was confronted with two situations where a home inspector was the object of criticism from a home seller or the seller's real estate agent. In neither of these situations was the home inspector hired by the seller. In one, the seller's real estate agent complained that the home inspector had done some tests at the residence determining that lead solder was used on the water pipes. In the second situation the seller complained that the home inspector notified his client of a previous home inspection done at the residence, with permission of the prior client. In both of these situations the home inspectors involved were concerned.

There are several legal points to keep in mind in these types of situations. First of all the home inspector typically has a contract with the buyer not the seller. Since there is no contract with the seller, the home inspector has no contractual duties to the seller. Second of all, the home inspector has no statutory duty to the seller. Nothing in Chapter 440 of the Wisconsin Statutes or Chapter RL 34 of the Administrative Code, speaks of any obligations to the seller. The seller has a contract with the buyer and as such, may have some recourse against the buyer for any conduct that violates that agreement, but not against the inspector.

Real estate agents employed by sellers, frequently point to language in the Offer to Purchase related to prohibitions against testing. The Offer to Purchase is a contract between the buyer and the seller. The home inspector is not expected to know what terms were negotiated between the buyer and the seller. The home inspector's job is to follow his other statutory obligations, and perform the inspection requested by his client. The home inspector is not a lawyer, is not required to read the Offer to Purchase prior to performing a home inspection, and is not required to understand and conform his or her conduct to the language in the particular Offer to Purchase. Buyers and sellers frequently negotiate differing terms in the Offer regarding inspection and testing, and it is not the home inspector's obligation to request the Offer to Purchase and interpret the contract.

Most of the complaints from sellers or their real estate agents relate in some way to a disclosure or uncovering of defects in the property. The home inspector by either testing or

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sharing his report provides information regarding defects in the property to people who may not have received it otherwise. How can a seller complain about defects in their property being disclosed? Is it the seller's intention to lie or conceal these defects and when their plan is foiled they are angry?

The home inspector's only liability to sellers is to make sure that he or she has permission to be on the premises, and that nothing is damaged during the course of the home inspection. When the home inspection accomplishes these two requirements, the seller is in no position to make any demands, threats or further requests of the home inspector. When an inspector receives a complaint from a seller or the seller's real estate agent, the inspector should consider the following replies. "I have no contract with you or your clients and my obligation is to the person that hired me." "You have paid me no money nor have you retained my services so why do you think you should be able to tell me what I can or can't do?" "You have a contract with the buyer so you should contact the buyer or the buyer's real estate agent." "It is not my obligation to read or know the terms of the contract between you and the buyer. I just perform an inspection as requested by the buyer."

Ultimately in analyzing these situations, the inspector must look at the worst case scenario. The seller cannot legitimately sue the home inspector because the home inspector has not breached a contract with the seller and additionally has no duty to the seller. More importantly, the seller could never prove that he or she has sustained any damages. Can a seller complain of a lost sale because he or she has sustained any damages? Can a seller complain of a lost sale because he or she was not allowed to misrepresent the condition of the property? Always remember, your loyalty is your client, and you do not need to be intimidated by sellers or their real estate agents.