

Permit Me, If You Will, To Inspect; or, A Brief History of the Universe

Let us consider for a moment the universe of problems we experience between buyers and sellers. Surely that universe would consist in large part of the undiscovered-and-undisclosed dark matter of condition problems unknown to everyone, but I would like to focus the Lytlubbe telescope on that part of our universe where I think we could make a significant contribution towards avoiding such disputes and keeping agents out of trouble: known and agreed repairs.

In my experience it isn't so much that agents and parties don't find out about problems, it is that we do such a poor job of clearly stating what we expect to be done about it and then ensuring that gets done correctly. Clauses such as "Seller requests Buyer to replace or repair HI item #5" regularly appear in a PICRA when item number 5 in the home inspection might say "HVAC to be inspected by a licensed contractor" or "Roof near the end of its useful life." What in the world does it mean when you say what you said? How could a court (or the parties, or a contractor, or a settlement agent) possibly understand what you meant by general language such as "Seller *requests* Buyer to replace or repair?" And for what it is worth, stop using the word "requests" unless you are going to add "pretty please" afterwards.

Similarly, I am greatly concerned that too many in our profession – and if this is an indictment it is one against all of us – simply blithely ignore the fact that many, many repairs routinely done in residential real estate transactions require a permit from the City or County and an inspection. Personally, I would like to see that stopped – so that all termite and moisture companies get the required permit and inspection when they sister or replace joists, replace the sill, band, etc., all roofers get the required permit and inspection where 10% or more of the shingles are replaced (differs in some localities), and all plumbers are required to get a permit and an inspection when a gas furnace or gas stove is replaced. These are but a few examples.

Legal Corner

I do not believe a listing agent has a duty to inquire about permits (and I would not want you to assume such a duty), but if you learn and have actual knowledge that work has been done without a permit, or that it required a licensed contractor instead of the unlicensed jackleg who is doing it, then I think your duty may well change and you should seek the assistance of your broker and legal counsel regarding your disclosure requirements under a specific set of facts.

Nor do I believe a buyer's agent has a duty to inquire about permits (and I would not want you to assume such a duty), but I think a buyer's agent has a duty to do a good job of writing repair requests, and I question whether that should include a contractual requirement for, and closing evidence of, a permit and city inspection as part of the PICRA repair request. For example, many agents now write "receipts at closing" for repairs. Would you say it is part of your job to ensure receipts are produced at closing? If so, would you not then also say you should follow up to ensure evidence of permit and inspection were produced at closing? We are in the process of re-drafting the VPAR Standard Clauses (on sale now!) and those standard, suggested, clauses have affirmative language regarding permits, inspections, licensed contractors, etc.

It may well be that you are from Mars and I am from Venus. Your client, however, is from Earth and I suspect you know what he or she would want. Please feel free to email me – Brian "Hawking" Lytle at bdlytle@lytlelaw.com if you have any questions about this article or have a topic to suggest for a future article.