

Sellers Choosing Buyer's Vendors

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Many recent hotline callers seem to be asking the same question: can a Seller really make a Buyer use a certain inspection company, mortgage lender, appraiser, or other vendor? As with most good questions, the answer is "it depends." Whether it's an appraiser's perceived lack of regional competency, an inspector who is renowned for making mountains out of mole hills, or a mortgage lender's inability to close loans on time, Sellers seem to be seeking to limit access to their property, and forcing Buyers to use (or not to use) certain vendors.

As an initial matter, the standard Pennsylvania Association of REALTORS® Agreement of Sale provides in paragraph 12(A)(1) that "Seller will provide access to insurers' representatives, and as may be required by this Agreement or by mortgage lender(s), to surveyors, municipal officials, appraisers, and inspectors." Based on the foregoing language, unless there is language in the Agreement of Sale, or any addenda thereto, to the contrary, the Seller cannot deny the Buyer's vendors (appraiser and inspector) access to the property after the Agreement of Sale is fully ratified.

If a Seller desires to limit the Buyer's vendors in such a fashion, the Seller must put that limitation in the Agreement of Sale; otherwise, paragraph 12(A)(1) controls and the Seller is required to allow access to Buyer's chosen vendors. That may seem like an easy answer on paper, but how does it play out practically?

When a Seller and the Seller's agent receive an Agreement of Sale as an offer, it is very unusual for the offer to contain the company the Buyer desires to perform the inspection. If the Seller receives the offer and certain inspections have been elected, the Seller has the option of sending the offer back and requesting the Buyer to provide the name of the inspection company who will be performing the inspection. After the Buyer provides that information, if the Seller does not wish to allow that inspector access to the property, the Seller can counter the Buyer's offer and require the Buyer to select another inspection company. Another option is for the Seller to counter the Buyer's offer by requiring the Buyer to select from a Seller-approved list of inspection companies.

The same applies to mortgage lenders. If a Seller or Seller's agent have experienced issues with a certain mortgage lender, and an offer is submitted indicating that financing is to be obtained from the mortgage lender, the Seller is free to counter the Buyer's offer to require the Buyer to select a different mortgage lender, or to select from a Seller-approved list of lenders.

As a word of caution, it may not be in the Seller's best interest to force a Buyer to use specific vendors. If the Seller is interested in limiting the Buyer's use of vendors, the best practice is to allow the Buyer to choose, subject to the Seller's approval.