

## **Waiving Inspections Doesn't Really Mean I'm Waiving Inspections, Does it?**

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In the current market, buyers are doing anything to make offers more competitive. From waiving inspections and financing contingencies, to offering a free week-long stay at the buyer's beach house "Down the Shore", nothing seems out of the realm of possibility. This practice has resulted in several hotline calls concerning a buyer's right to perform inspections that are for the buyer's "informational purposes only". Likewise, can a buyer bring along a home inspector, engineer, or anyone else for that matter when the buyer performs one of the two pre-settlement walkthroughs? And while we're at it, does a seller have to provide access to an appraiser if the buyer waived the financing contingency and offered a "cash" purchase?

### **1. *What are the risks of allowing a buyer to perform inspections for informational purposes only?***

The main risk is in the liquidated damages provision of the ASR, Paragraph 26(g). If the buyer has waived the inspection contingency, requested inspections for informational purposes only, and provided a nominal deposit, the results of the inspections may cause the buyer to purposefully default and lose the deposit money rather than close and deal with the problems identified in the inspections. Additionally, if the buyer provides the inspections to the seller (as is required by Paragraph 13(B)), that seller must now disclose any material defects identified in the inspection report. To recap the risks:

- a lost sale,
- time off market,
- deposit money for which the seller will likely have to sue and then split with the listing agent, and
- a disclosure requirement all for "informational purposes."

### **2. *Can a buyer use the pre-settlement walk-through provision of the ASR to perform a home inspection?***

Paragraph 12(A)(2) of the PAR form ASR provides the buyer with two pre-settlement walk-through inspections even if the buyer has waived all other inspections. The purpose of this inspection, however, is limited to "determining that the condition of the Property is as required by this Agreement and any addenda." In other words, although the buyer's right to have these "inspections" are not waived, they are not true inspections such as those provided in the remainder of Paragraph 12 and 13. Instead, these inspections are to make sure:

- the property is in the same condition as when the Agreement of Sale was signed,
- the property is clean and free of the seller's property and debris, and
- any repairs called for in any Change in Terms Addendum (form CTA) have been completed as required.

In the event a buyer attempts to characterize the pre-settlement walkthrough as a home inspection and attempts to avoid the buyer's obligation to proceed to settlement based upon the "home inspection" results, that buyer is likely in default and could lose his, her, or its deposit money.

**3. *Does a seller have to allow an inspector into the home if the buyer has waived all inspections and the seller did not perform any buyer-requested work to the property?***

The answer is: it depends. If this occurs at a pre-settlement walkthrough, the answer is easy: the seller does not need to allow the inspector into the home. Not only is the pre-settlement walkthrough limited to confirmation that the property is in the same condition, but Paragraph 12(A)(1) limits those who are permitted to attend inspections to the parties and their respective real estate licensees. If the inspection is required by a mortgage lender, however, the answer is likely that the seller must provide access. Paragraph 12(A)(1) also requires seller to provide access as may be required by mortgage lender(s) to appraisers and inspectors.

**4. *If the buyer has waived the mortgage contingency and offers cash, but then tries to get financing which requires an appraisal, is the seller required to provide access to the appraiser?***

The simple answer is yes, the seller must provide access to the buyer's lender's appraiser. The reason is the very last sentence of section 3 above: Paragraph 12(A)(1) requires seller to provide access as may be required by mortgage lender(s) to appraisers. Many sellers fear that if the house does not appraise for a value close to the purchase price, the buyer will try to renegotiate the terms of the purchase. Nothing in the ASR requires the seller to renegotiate the terms of purchase in this case. The greater fear should be the buyer's intentional default and loss of deposit money in the event of a low appraisal; however, denying appraiser access could put seller in default.