

## Use Caution When Dealing with Property Inspections

In May, 2000 Council published a Special Report to all Licensees under the heading "Property Disclosure Statements and Property Inspections". This article expands on that information.

In recent years pre-purchase property inspections have become more common in the marketplace. Council considers this a positive development in that a property inspection will assist the buyer in understanding, prior to the purchase, the condition of the property and what repairs may be necessary.

A buyer's agent should always advise a buyer to have an independent inspection of a property. If a buyer chooses not to have an inspection, the agent's advice to do so should be documented. This documentation can take one of several forms.

For example, some market areas and/or agents have developed a contract addendum that specifies additional terms to be included in all contracts of purchase and sale. Such an addendum might include a clause such as the one found on page 84 of the Licensee Practice Manual, 4<sup>th</sup> edition (LPM), when the buyer is to have the property inspected. In this example, should the buyer not agree to the agent's advice to have the property inspected, this clause would be stroked out and initialed by the buyer.

Alternatively, where such a pre-printed addendum is not used and the buyer chooses not to have the property inspected after having been so advised, the agent should provide separate documentation of this fact by way of a letter addressed to the buyer confirming that on a particular date the buyer was advised to have the property inspected but chose not to do so. A

copy of this confirmation letter should be kept in the agent's transaction file.

On page 138 of the LMP, under the heading "Directing Business to Other Professionals", Council advises that, if a licensee intends to refer clients to other professionals, the safest way to do so is to provide a list of professionals with whom the licensee, or others he or she knows, have dealt and have the buyer or seller call, interview, and select them independently. It is recommended that licensees avoid "steering" buyers towards particular service providers or communicating information about their fees.



Licensees should exercise care in selecting those to be included in this list of service providers. Providing a property inspection is not a regulated activity, meaning that while there are a number of professional/trade associations of which property inspectors may be members, in fact anyone can call himself/herself a property inspector. When considering including a particular inspector on their list of potential service providers, licensees should consider the inspector's background and experience related to inspections, and whether they carry professional liability insurance.

Once a buyer has determined which property inspector is to be used, licensees must respect the client relationship this creates between the buyer and the property inspector. The buyer is paying the property inspector for professional advice with respect to the condition of the property they are considering purchasing. Licensees should not attempt to thwart that relationship either by downplaying the importance of deficiencies noted by property inspectors, or by making disparaging comments about the buyer's choice of property inspectors.

As with any "subject clause" the length of time allowed for its removal should be reasonable while not being unnecessarily long. In the case of property inspections, sufficient time is required to arrange and conduct the inspection, prepare the report, and have the report reviewed by the buyer. The goal is to ensure the buyer has full knowledge of the results of the inspection and, if necessary, clarification from the inspector or any other qualified person as required.

In order to avoid the possibility or even the appearance of a conflict of interest, licensees are advised not to pay the cost of the inspection report on behalf of a buyer. If the licensee were to pay, the inspector could be suspected of not wanting to jeopardize the transaction of the person paying him, who might or might not ask for his services in the future, depending on the conclusions of the inspection report.

Finally, as with any referral, Section 9.06 of Regulation 75/61 of the *Real Estate Act* requires that if a licensee is to receive a referral fee or other consideration from a property inspector, this must be disclosed to the licensee's client.