

### **LAWSUITS AGAINST HOME INSPECTORS**

Over the past twenty-five years, I have been on both sides of home inspector lawsuits. Some of them have been before juries while many have been before arbitrators. It may surprise most of you to find out that I believe for the most part that judges, juries and arbitrators give home inspectors the benefit of the doubt. If statistics were compiled, I believe home inspectors ultimately prevail in three out of four situations. I will give you some examples.

After moving into a house, the buyer found that a gable in his attic was cracked. From the street you could see a significant sag in the roofline. The inspector missed this entirely. Result. No liability on the home inspector. Another case, involved a buyer who after purchasing a house found that one of his basement walls was 4" out of plumb. The cracks had been filled in and painted over. Again the home inspector made no mention of this in his report. Result. No liability on the home inspector. A third situation involved a severely cracked, bowed and sheared basement wall. Again no mention of the wall in the report, and the crack could be observed in the broom closet where it had not been filled in and painted over. Result. No liability on the home inspector. A fourth example was a case where one side of a house had sagged approximately 4" with several of the floors out of level. Again, no mentioned in the report. Result. No liability on the home inspector.

It is my belief, that if these cases were heard before a blue ribbon panel of the top home inspectors in Wisconsin, fault would have been attributed to each of these home inspectors. However, judges, juries and arbitrators tend to error on the side of the home inspector. This is similar to situations involving doctors and police officers. Patients who sue their physicians, no matter what malpractice was committed, lose nine out of ten jury trials. Citizens who sue police officers for use of excessive force,

beatings, or unjustified shooting, lose nearly every one of those cases that goes to trial. There are just certain groups who are given a certain amount of leeway. While home inspectors probably don't receive the same "immunity" that these other professionals do, there seems to be a certain amount of empathy for them.

The larger problem that I see out there today is not whether inspectors win at trial, but merely the costs of defense. Very often a buyer who has a legitimate claim against the seller, will bring the home inspector into the case just to create an additional source of settlement funds. A seller who is being sued often does the same thing. Misery loves company so the seller joins the realtor and the home inspector in the lawsuit to aid settlement. There are many pro se litigants out there in small claims court who can't afford to hire an attorney who file their own claims against home inspectors. There are many honest lawyers out there who do not understand home construction, who also file claims against home inspections based upon a statement from a basement repair salesman who makes the comment, "I am surprised that your home inspector didn't notice these problems."

Many home inspectors have a \$2,500.00 deductible on their insurance policy, and that's gone as soon as the case is reported to the insurance company. Home inspectors who don't have insurance often must come up with substantial retainers in order to defend cases. If a home inspector must spend \$5,000.00, \$10,000.00 or more to defend a case, whether he or she wins is immaterial. The cure becomes worse than the disease.

WAHI appears to be making great strides with their legal support system. Having a good technical basis to defend lawsuits is important. One of the focuses of the system should be to help home inspectors defend their cases in an inexpensive yet effective manner. The good home inspector who performs a reasonable inspection will probably prevail in the end. There is even a reasonable chance the poor inspector will still prevail. The problem is that he or she may be forced to spend substantial amounts of money to achieve this goal.

There are many ways to keep defense costs down and still provide quality representation.

The key element in keeping defense costs down is to keep the time required by legal counsel to defend the case to a minimum. The more the home inspector participates in the process and the more tasks that the home inspector can accomplish himself, the less defense counsel needs to do. In the beginning, the home inspector can make attempts to resolve the claim himself, with only occasional telephone consultations with a lawyer. A home inspector can visit the property and take pictures of the problems. A home inspector can also hire a second home inspector to come in and evaluate the situation for a second opinion. With this preparation, defense of the inspector becomes simple.

If a lawsuit is involved, the home inspector's lawyer need not attend all of the depositions, motion hearings and miscellaneous procedures that go on in a normal lawsuit if the home inspector does not have substantial exposure. Usually a lawyer representing a home inspector in a legal proceeding, where the seller is the primary target, can stay marginally involved, make some type of offer at mediation, and get out of the case. This can save the home inspector substantial amounts of money.

When a case goes to arbitration, one of the most important factors in keeping the costs down is to reach an agreement, putting time limits on the arbitration. A case against a home inspector, should be able to be arbitrated in three or four hours. If the parties know this in advance and agree to these perimeters, the legal fees for arbitration can also be kept to a minimum.

Most home inspectors today need to worry less about exposure to big judgments or arbitration awards, and to be more concerned about economically defending claims that have questionable liability or limited damages. With effective safe guards and precautions in place, a home inspector should be able to resolve claims for a reasonable amount within a reasonable time period.