



Duty to Review Inspection Reports

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QUESTION: A property I had listed went under contract and the buyer hired a home inspector. A week later, the buyer's agent emailed me a Due Diligence Request and Agreement (Standard Form 310-T) ("DDRA") listing several repairs that the buyer was asking my seller to complete. The agent also attached a copy of the inspection report to her email. I forwarded the agent's email to my seller client but I never opened the inspection report. When my client refused to make any of the requested repairs, the buyer terminated the contract. I am about to put the property back on the market. I know I have a duty to disclose any material issues listed on the buyer's DDRA, but do I also have an obligation to review the inspection report and disclose anything else material that is mentioned in that report?

ANSWER: Yes and yes. The North Carolina Real Estate Commission has consistently taken the position that licensees have a duty to disclose not only the material facts they are aware of but also the material facts they reasonably should be aware of. In a recently-resolved disciplinary case that was investigated by the Commission's Regulatory Affairs staff, the Commission sent a letter stating as follows: "As the listing agent for the subject property, you had a duty to discover and disclose all material facts. The duty to discover meant that you should have carefully reviewed every inspection report, repair request and repair estimate that you received and then shared material information with all interested persons in a timely manner."

Buyers are not obligated to share inspection reports with sellers or listing agents, and listing agents are not required to request inspection reports prepared on behalf of buyers. However, if an inspection report is received by a listing agent, it cannot be ignored. It must be reviewed, and any material facts set forth in that report must be disclosed in a timely manner.

As a corollary, listing agents are reminded that under section 47E-7 of the Residential Property Disclosure Act (the "Act") sellers have an obligation to deliver a corrected disclosure statement if they discover a material inaccuracy in their existing Residential Property and Owners' Association Disclosure Statement. While that obligation is on sellers, and not their agents, section 47E-8 of the Act imposes on real estate agents the duty to inform each of their clients about their obligations under the Act. If a listing agent complies with this duty to inform, and also discloses all material facts, the agent will not be held responsible if a client willfully refuses to comply with their statutory obligations.

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