



## Who Owns the Inspection Report?

A buyer finds a home, has it inspected, and then, for whatever reason, the deal falls apart. So, what about the inspection report they paid good money for? Do they toss it, keep it, give it to the seller, or maybe try to sell it to the next buyer?

While opinions of inspectors may vary, most take umbrage at the notion of their past client selling the report to someone else. Some don't care one way or the other. Those in the first category believe the report is their intellectual property protected by copyright and therefore cannot be sold, transferred or relied upon by anyone else. Inspection contracts generally address this issue specifically and in more detail. Regardless, many inspectors are willing to revisit the site with the new client, creating a new report for full or partial fees.

One inspector in the second school of thought summed up his position well: "... we as professionals need to meet the needs of our public, not create drama... I think it is worthwhile for inspectors to be less concerned about landing in court, and more concerned about meeting the needs of the public in exchange for financial consideration".

### Are There Laws or Statutes That Address This?

Washington has no specific verbiage I can find about the issue. South of us, Oregon Administrative Rule spells it out quite clearly: "This report is intended only for use of the person purchasing the home inspection services. No other person, including a purchaser of the inspected property who did not purchase the home inspection services, may rely upon any representation made in the report."

In Washington, if a pest inspection, (Complete Wood Destroying Organism Report), is performed, the guidelines for performing that inspection are described within **WAC 16-228-2045**. Two sections of the WAC address the issue:

**Section (4)a:** "Washington state department of agriculture inspection control number (WSDA ICN): A WSDA ICN must be obtained in accordance with the provisions of **RCW 15.58.450** and be prominently displayed in the upper third of the front page of each report. This number must be unique to the structure(s) subject to the report. The assigned WSDA ICN must follow the original report and supplemental reports (if any) pertaining to the sale, exchange, or refinancing activity on a property for a specific client. A new WSDA ICN must be issued for any subsequent sale, exchange, or refinancing activity".

**Section (4)c:** "Parties involved in the real estate transaction: The name of the property owner, their designated representative, or purchaser of the inspection report must be identified on the first page of the report".

### What About Copyright?

Referencing an article by Paul Duffau, "The Myth of the Free Range Home Inspection Report", selling the report to another buyer could violate federal statutes and infringe on the copyright of the inspector who produced it. The tests to determine if something is protected are straightforward: If the report shows some originality, such as including commentary on items inspected, it is protected. If it has some type of, "fixed form", a physical presence, it is protected. If there is at least some creativity involved, some judgement needed to prepare the document, it is protected.

The buyer can do anything with the report they choose, even selling it, but legally, they may not reproduce it or modify it. However, since the inspector owns the rights to the document, they control the legal distribution of the report and as mentioned already, most inspection contracts have language prohibiting use of the inspection report by third parties.

## When the Inspection Report Gets Sold

From a pragmatic standpoint then, what are the issues? I am just one person and I choose to operate my business in a manner that may differ from others. Regardless, here are my proverbial two cents on the topic:

1. An inspection being such a critical process, it is important that home buyers take the time to interview inspectors carefully, so they find the right person for them. It is likely the new buyer purchasing the report will be making a major financial decision based upon the opinions of someone they have not met and know nothing about.
2. An inspection should be more than a simple transaction where money is exchanged for a service and it ends there. It should be the beginning of a relationship where the new homeowner knows they have someone to call on down the road if they have questions or concerns, someone who isn't going to charge a fee just to stop by and provide some advice or help. It is doubtful an inspector is going to offer that level of service for someone who is not their client.
3. Being able to interact with the inspector during the inspection goes a long way with respect to gaining a better perspective and understanding of the issues at hand. Obviously, this cannot happen when one is simply relying on print and pictures. In addition, the new buyer has no idea about the thoroughness of the inspection since they were not present for it. Was it a "whiz-bang" hour long inspection likely to miss critical issues, or a truly thorough and professional inspection?
4. An inspection is a snapshot in time and conditions change, sometimes quickly and dramatically. Imagine, for example, the inspection was performed during a long spell with no rain. Two days after the inspection it rains. Is that old report still reliable?
5. An inspector faces many challenges that affect their ability to perform their job: Utilities that may have been off; Personal possessions in the way; Difficulties accessing areas, fixtures or appliances; Dogs barking or underfoot; People in the way or causing distractions; Other trades people on site like movers packing and loading furnishings, house cleaners, or people measuring for new flooring. The list goes on and on. Not knowing what things might have impeded the inspector in their efforts may make the report unreliable.
6. If the new buyer has questions about the report, the inspector is not likely going to be willing to spend the time with them since they were not their client.
7. If something was missed, the new buyer has no contract with the inspector and likely has no recourse.
8. Personally, I do a lot of inspections for military families where a spouse may be deployed while the other is charged with finding a home. I always offer a complimentary revisit to review the report when the spouse returns stateside. I am not going to do that with someone who was not my client.
9. An inspector is not likely to do a re-inspection of work performed for someone who is not their client.

### In Conclusion

Inspections are not cheap, there is no question. But a home buyer trying to save money while making a major financial decision based upon a second-hand report generated by an inspector they do not know can be a huge mistake that leaves them holding the bag.

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