

# Managing Risk

## Your Pre-Inspection Agreement: Your First Line of Defense

By Stephanie Jaynes, Marketing Director  
at InspectorPro Insurance

*Note: The Managing Risk column reviews the most common allegations in the industry and provides tips to make inspectors better equipped to prevent claims. The following is a real home inspector errors and omissions insurance claim from our archives. To protect the insured's identity, all identifiable characteristics—including names, associations and locations—have been omitted or removed. This article was originally published on the InspectorPro website on September 1, 2018.*



Stephanie Jaynes is the Marketing Director for InspectorPro Insurance, ASHI's one and only Premier Insurance Partner (<http://ipro.insure/ASHI-partner>). Through risk management articles in the ASHI Reporter and on the InspectorPro website, InspectorPro helps inspectors protect their livelihood and avoid unnecessary risk. Get peace of mind and better protection with InspectorPro's pre-claims assistance and straightforward coverage. Learn more at [www.inspectorproinsurance.com](http://www.inspectorproinsurance.com) (<http://ipro.insure/ASHI-column>),



In California court case *Moreno v. Sanchez*, the home buyers sued their home inspector for breach of contract, negligence and negligent misrepresentation. The buyers had discovered dust and asbestos, an inoperable drain, defective windows and wall cracking. They believed that the inspector should be responsible for the damage.

The inspector's primary defense: his inspection agreement, which included a one-year statute of limitations that required claimants to file any complaints within one year of the inspection. Based on just one line of the inspector's contract, the court dismissed the charges.

"Generally, the reason you get a signed writing is because the contract the [client] signs is going to have a variety of terms in it that are beneficial to the home inspector to give them some light legal coverage," said Mark Gergen, professor of tax law and policy at University of California, Berkeley.



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While not required by the statute of frauds nor by all 50 states, Gergen explained, signed contracts can be advantageous to inspectors because they provide some protection of inspection terms, like the standards of practice and the scope of the inspection.

In *Moreno v. Sanchez*, even if the statute of limitations clause hadn't held up in court, the agreement would have provided additional defense. According to court documents, the contract “specified the home inspection was limited to a visual inspection” and “excluded, whether or not concealed, soil conditions and asbestos.”

## WHAT IS A PRE-INSPECTION AGREEMENT?

Your pre-inspection agreement is your first line of defense. It is your contract between you (the home inspector) and your client (the person[s] for whom you are performing a property inspection). The agreement's purpose is to protect both you and your client by setting correct inspection expectations, including services you'll perform and the payment they'll make.

The Definitions section of most home inspection insurance policies outlines parameters for what basic elements inspectors' contracts can or must include to qualify for coverage. The following is the definition of “inspection agreement” found in the InspectorPro with the ASHI Advantage insurance policy:

“Inspection agreement” means a written contract between you and your client(s) for whom “inspection services” are being performed, provided that the written contract:

1. Specifically identifies the premises, including systems and components, that are the subject of “inspection services”;
2. Is signed, which shall include electronic signatures, by your client(s) or such client(s)' authorized agent before “inspection services” are commenced;
3. Requires the client(s) to pay a fee for the specified “inspection services”; and
4. Is in the form attached to this policy as provided in the Inspection Agreement Schedule for all examinations performed.

## INSPECTING WITHOUT AN AGREEMENT, OR HAVING CLIENTS SIGN YOUR CONTRACT AFTER YOU BEGIN THE INSPECTION, ISN'T WORTH THE COST.

**IDENTIFIES THE PREMISES:** Providing the address of the inspection property is your first step in identifying the inspection premises. By elaborating on which systems and components are included and excluded from your inspection, you will set client expectations and limit your liability.

**Is signed:** To adequately protect inspectors against claims and preserve insurance coverage, inspectors must get their agreements signed prior to the inspection 100 percent of the time. (In a future article, we will explore the legal reasons why contracts need to be signed prior to inspections.) This section of the policy also specifies who can sign and how. Read this definition to answer questions like “Does my policy allow real estate agents to sign my pre-inspection agreements on my clients’ behalf?” and “Can I obtain digital contract signatures and still receive coverage?”

**REQUIRES THE CLIENT(S) TO PAY A FEE:** Note that many home inspection insurance policies do not provide coverage for free inspection services. However, most policies do not dictate how much a home inspector needs to charge so long as the client pays something.

**IS IN THE FORM ATTACHED TO THIS POLICY:** Ever wonder why insurance providers ask for a copy of your pre-inspection agreement when you make your initial purchase or renew? It’s because insurance carriers make your contract an official policy document. As such, you must update the insurance company whenever you modify your agreement so that they can revise your policy.

## WHY ARE PRE-INSPECTION AGREEMENTS IMPORTANT?

According to Clayton Somers of A Premier Home Inspection, LLC, in Virginia, there are three primary reasons why home inspectors need to obtain signed inspection contracts prior to every inspection:

1. **Contracts set expectations.** By putting inspection parameters in writing, clients are more likely to understand the benefits and the limitations of their home inspections.
2. **Some regulated states require inspectors to obtain signed contracts.** Check the laws affecting your state and region to confirm.
3. **Most insurance carriers won't cover claims arising from inspections lacking a signed pre-inspection agreement.** This policy condition is due in part to how difficult it can be to limit liability without a contract. **No contract means no parameters, and the client can demand almost anything. Furthermore, the cost of such a suit has the potential to make an inspector uninsurable, which can put them out of business.**

Additionally, when confronting allegations, claims professionals often use signed pre-inspection agreements as the home inspector’s first line of defense by emphasizing the limitations of liability and inspection scope outlined therein. Frequently, claims adjusters can dismiss frivolous allegations against a home inspector with the help of the inspector’s pre-inspection contract—much like the California court dismissed *Moreno v. Sanchez*.

## MAKE YOUR PRE-INSPECTION AGREEMENT A PRIORITY.

According to *Moreno v. Sanchez* court documents, when the buyers arrived at the home inspection, they didn’t want to sign the pre-inspection agreement. In fact, they asked the inspector to remove the statute of limitations clause from the agreement. Imagine how different the case would have played out if the inspector had dismissed the clause or, worse, the entire contract.

Inspecting without an agreement, or having clients sign your contract after you begin the inspection, isn’t worth the cost. Make your pre-inspection agreement a priority by getting it signed before every inspection. And read the Managing Risk column throughout this year to get additional tips on how your contract can protect your home inspection business.