

Managing Risk

Your Pre-Inspection Agreement: **SIGNATURES**

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Signatures matter. They provide evidence that the signers agreed to the terms of the contract. When facing claims, signatures may be all you have to prove that your clients knew (or should have known) what was and wasn't covered during your home inspection. Without signatures signifying consent and agreement, it's just your word against your clients'.

But it's more than just a matter of who signs the dotted line (a topic we'll explore in more detail in the Managing Risk column in the November issue of the *ASHI Reporter*). It also matters when they sign.

There are two primary reasons why pre-inspection agreements should be signed prior to the inspection: to provide more protection against claims and to preserve insurance coverage.

TO PROTECT AGAINST CLAIMS

Industry trends reveal that contracts signed after the inspection are less likely to hold up in court. In our experience, few courts will enforce an agreement that imposes restrictions on a client without the client's awareness or consent. In other words, an inspection contract can only contain things that diminish a client's ability to sue for what they want and how they want it if both parties agree before the inspection. For example, if you want to include a limitation of liability or arbitration clause in your contract, both you and your client must sign your contract before the inspection starts. A signature prior to the inspection signals both parties' agreement.

Additionally, if a client signs your pre-inspection agreement after the inspection, an attorney could argue that, because you had already started the inspection before your client signed, you practically forced them to sign without being able to adequately review or understand the inspection terms. Using the same logic, a court could void provisions of your contract or discard your contract altogether due to the possibility that your agreement is unfair to your clients.

TO PRESERVE INSURANCE COVERAGE

Since pre-inspection agreements can provide inspectors with their first line of defense, insurance carriers have become increasingly interested in how their insureds use pre-inspection agreements. You've seen that interest as you've filled out applications to start or renew your insurance policy. Your provider asks, "Do you obtain a signed pre-inspection agreement prior to commencing each inspection from all of your clients?" The answer they're looking for is a resounding *yes*.

Not having a signed pre-inspection agreement can make it extremely difficult for the insurance company to defend your claim. No contract means no parameters and the client can demand almost anything. The cost of such a suit has the potential to make an inspector uninsurable, which can put them out of business.

Since it's so difficult to limit liability without a contract, most carriers won't cover claims arising from inspections lacking a signed pre-inspection agreement. Clients signing your contract before you release the inspection report doesn't cut it. It's important that all of your clients sign your contract before you start the inspection. That way, you stay compliant with your insurance policy and eligible for its coverage.



***Note:** The Managing Risk column with InspectorPro Insurance provides home inspectors with tips to protect their businesses against insurance claims and examines best practices for crafting effective pre-inspection agreements.*

HOW TO GET IT SIGNED—NO MATTER WHAT

While there are many significant reasons to obtain a signed pre-inspection agreement, inspectors have expressed concerns to us about this. Some say that last-minute inspections, out-of-state buyers and contract-wary real estate agents can make it difficult to get a signature. Despite these obstacles, it's possible to get a signed pre-inspection agreement every time. Here are some methods to get your contract signed prior to starting the inspection no matter what.

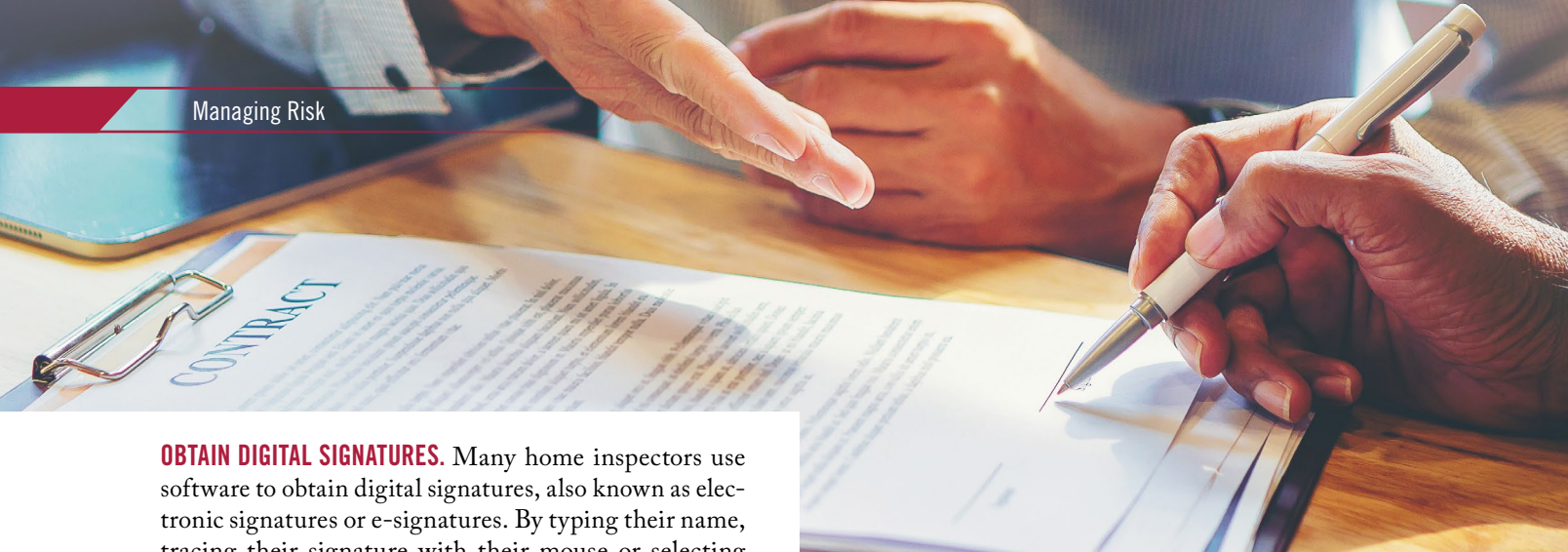
GIVE YOUR CLIENTS PLENTY OF TIME. From the first phone call, Travis McFarran of True Measure Home Inspections, LLC, in Florida sets the expectation that they have to sign the contract before the inspection. He explains over the phone during scheduling what the pre-inspection agreement is and why it's important.

Then, a couple of hours after the initial conversation, McFarran sends his first email with a copy of the agreement. Using his home inspection software, McFarran continues to send reminder emails and texts, prompting clients to sign until two hours before the inspection.

GET AGENT SUPPORT. John Maldonado of WIN Home Inspection Tracy, LLC, in California gets real estate agents' support by illustrating how preparing prior to the inspection is a service—not a burden.

"I train my agents," Maldonado said. "I explain why it's easy for them and for the client. A lot of times, they don't want to [encourage our clients to electronically sign before the inspection]. But after they do it, they realize how easy it is, and they don't want to do it any other way."

Maldonado's agents submit the initial inspection and client information, and follow up with the clients. With the agents' help, Maldonado consistently receives both a signed agreement and payment a week before the inspection.



OBTAIN DIGITAL SIGNATURES. Many home inspectors use software to obtain digital signatures, also known as electronic signatures or e-signatures. By typing their name, tracing their signature with their mouse or selecting from preformatted signature options, clients can accept your contract's terms. Most electronic signature software uses authentication methods to verify the signer's identity. This type of software also typically provides proof of signing through tamper-evident digital certificates embedded into the signed documents that may even include the user's location-specific IP address.

Here in the United States, the Electronic Signatures in Global and National Commerce (ESIGN) Act and the Uniform Electronic Transactions Act (UETA) make electronic signatures just as legally binding and enforceable as their handwritten counterparts. However, not all insurance companies recognize digital signatures as legitimate forms of consent. To verify that your home inspection insurance company allows e-signatures, check how your insurance policy defines "inspection agreement" in the Definitions section. If it's still unclear, check with your insurance provider.

For Tom Rees of A Closer Look Home Inspection in Utah, obtaining electronic signatures has improved his risk management. In addition to more easily obtaining signed contracts prior to inspections, Rees has had more educational conversations with clients.

THEY'LL GET THE INSPECTION AGREEMENT, READ IT AND CALL ME. THEY'LL SAY, 'I DIDN'T REALIZE YOU DON'T INSPECT FOR CODE.' AND I EXPLAIN THAT I'M NOT A CODE INSPECTOR [AND WHAT THAT MEANS]" —TOM REES

Once you establish that you can obtain digital signatures, you must choose how you'd like to do so. One of the more popular services, which both McFarran and Maldonado use, is the Inspection Support Network (ISN). Other well-known software includes DocuSign and Adobe Sign. Ultimately, there are plenty of avenues. Pick what works best for your business.

BRING A COPY TO YOUR INSPECTION. Sometimes, despite your best efforts, clients fail to sign your contract before the inspection. One way to still obtain signatures is to bring hard copies to your inspections.

"I CARRY COPIES OF ALL OF MY PAPERS IN THE EVENT OF SOMETHING LIKE THAT HAPPENING," MALDONADO SAID. "I'VE NEVER USED THEM, BUT FOR ANY SITUATIONS THAT CAN DEVELOP, I WANT TO BE READY."

We recommend bringing paper copies of your pre-inspection agreement as a fallback—not a primary means of obtaining signatures. Additionally, we caution that the client still has to sign *before* the inspection—not after you've been on the roof or started checking the windows. *Before* means prior to any examination. So, don't start without your signatures.

IF YOU DON'T HAVE A SIGNATURE, RESCHEDULE. What if your client doesn't sign ahead of time and isn't there at the start of your inspection? Our advice: reschedule. Letting your contracts go unsigned—or signed after the inspection starts—isn't worth the cost.

MANAGE YOUR RISK AGAINST POTENTIAL CLAIMS. For most of you, getting a contract signed is second nature. But are you getting it signed prior to the inspection 100 percent of the time? If not, you're in jeopardy of losing your insurance coverage and gaining a potential lawsuit. Make the "pre" in "pre-inspection agreement" a priority by making sure your clients sign prior to every inspection.

To learn more about pre-inspection agreements, read this column next month when we explore who can sign your contract.