


Managing Risk Your Pre-Inspection Agreement: **AUTHORIZED AGENTS**

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Two years after an inspection, a multi-inspector firm received a county court summons. Within the summons, the inspection company's former clients made a litany of allegations:

- Termites occupied multiple areas on the first floor, including the garage.
- One of the anchor plates on the basement wall was "moldy musty."
- The bottom of the heating unit was rusty.
- Water wasn't draining properly.
- There's evidence of multiple previous fires.
- A bedroom window refused to open due to foundation sinking.
- Other windows were letting water intrude into the house, subsequently rotting the floor below.
- There were four cracks "around the house."
- The inspector didn't use the correct tools for his roof inspection.

To cover the supposed damages, the claimants demanded more than \$100,000, plus whatever additional costs the claimants incurred during the lawsuit. In their contract, the inspection company had a limitation of liability clause to put a cap on its financial responsibility for missing or omitting defects. But there was one problem: The clients never signed the pre-inspection agreement.

WHO CAN SIGN YOUR PRE-INSPECTION AGREEMENT?

Recently, a home inspector asked:

"I HAVE A REAL ESTATE AGENT THAT SOMETIMES PAYS FOR THEIR CLIENTS' HOME INSPECTION AND ALSO SIGNS THE PRE-INSPECTION AGREEMENT. IF THE BUYER MADE A CLAIM, WOULD THE INSURANCE COMPANY DEFEND ME EVEN THOUGH IT WAS THE REAL ESTATE AGENT WHO PAID FOR THE INSPECTION AND SIGNED THE AGREEMENT?"

We've received questions like this numerous times. As such, this question deserves clarification.



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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.

CARROLL V. BERGEN

In one such case, the 2002 case *Carroll v. Bergen*, the Wyoming Supreme Court overruled a trial court decision, this time ruling in the home inspector's favor.

During the original bench trial, the court overlooked home inspector Dale Carroll's inspection agreement because (a) the real estate agent commissioned and authorized the inspection and (b) Carroll never received payment for the inspection. In absence of a contract, the court ruled that Carroll owed client Thomas Bergen a \$14,954 judgment for his failure to adequately report the property's structural issues.

When the case appeared before the Wyoming Supreme Court, the judge reversed the trial court's decision.

"THE REAL ESTATE AGENT HAD AUTHORITY TO SECURE THE HOME INSPECTION THAT MR. BERGEN REQUESTED," THE COURT STATED. "ACTUAL AUTHORITY MAY BE EXPRESS OR IMPLIED... [AND] THERE WAS NO DISPUTE BETWEEN MR. BERGEN AND THE BROKER/AGENT REGARDING THE MANNER IN WHICH CARROLL'S SERVICES WERE SECURED."

Thus, the Wyoming Supreme Court reversed the charges against Carroll.

CHURCH V. FLEISHOUR HOMES

In 2007, another contract case involving a limited power of attorney ruled in favor of the home inspector.

In *Church v. Fleishour Homes*, Claimants Catherine D. and Catherine S. Church contended that they did not authorize their real estate agent to sign Detective Home Inspections (DHI), Ltd.'s pre-inspection agreement, which contained an arbitration clause. The claimants argued that, because they didn't sign nor authorize the contract, they could take their allegations against DHI to trial court instead of binding arbitration. That initial argument did not hold up in the court of appeals.

Since pre-inspection agreements are contracts between you and your client(s), they must be signed by your client(s) or someone authorized to represent your client(s) through the limited power of attorney.

According to our claims team, a real estate agent may assume a limited power of attorney (also known as a warrant of attorney or a letter of attorney) to act on behalf of the buyer or seller they represent. One right acquired by agents with a limited power of attorney can be the ability to act in the name of the client for the purposes of a real estate transaction. Thus, an inspection agreement that a real estate agent executes for and in behalf of a specific client is often just as enforceable as a contract that the client signs themselves.

(It's also important to note that the homebuyer or seller remains your inspection client. So long as the real estate agent is paying for the inspection and signing the agreement on the buyer or seller's behalf, the agent is acting as an authorized agent—not your client.)

In fact, multiple court cases defend the real estate agent's capacity to sign their clients' pre-inspection agreements. Furthermore, these cases dismiss their clients' attempts to shirk the terms of their inspection contracts since they did not sign the documents themselves.

“The Churches did not offer any evidentiary materials in support of their position that the realtor [sic] did not have express or apparent authority to sign the pre-inspection agreement on their behalf,” the court stated.

“THE ARGUMENTS ADVANCED BY THE CHURCHES AMOUNT TO NOTHING MORE THAN HOLLOW, BALD ASSERTIONS.”

Thus, the court allowed the home inspection company to continue its defense against the Churches based on the dispute resolution provision in their contract.

HOW CAN YOU CONFIRM YOUR INSURANCE COMPANY RECOGNIZES AGENT-SIGNED CONTRACTS?

To confirm that your home inspection insurance allows authorized agents to sign pre-inspection agreements, check your policy definitions for a clarification like this:

‘INSPECTION AGREEMENT’ MEANS A WRITTEN CONTRACT BETWEEN YOU AND YOUR CLIENT(S) FOR WHOM ‘INSPECTION SERVICES’ ARE BEING PERFORMED, PROVIDED THAT THE WRITTEN CONTRACT IS SIGNED OR OTHERWISE EXECUTED BY YOUR CLIENT(S) OR SUCH CLIENT(S) AUTHORIZED AGENT.

If you’re unable to find your insurance policy’s definition, ask your insurance provider to provide it to you.

HOW SHOULD YOU OBTAIN A SIGNATURE FROM AN AUTHORIZED AGENT?

Before allowing a real estate agent to sign a pre-inspection agreement on behalf of their client(s), the inspector should ask if the agent (a) is authorized to sign and (b) has obtained permission from the client(s). The law does not require inspectors to receive authority confirmation. However, home inspectors who do take the time to receive confirmation increase their defensibility against potential claims.

Once a real estate agent confirms their authorization, the home inspector can allow the agent to sign the agreement. We recommend that the agent writes “Authorized Agent” below their signature.

Additionally, do not forget to send a copy of the pre-inspection agreement signed by the authorized agent to your client(s). This ensures that your client(s) cannot state that they were unaware that their agent signed on their behalf.

As with all pre-inspection agreements, authorized agents need to sign your contracts prior to the inspection. Signatures obtained before the inspection starts properly protect you from claims and preserve your insurance coverage. Do not begin performing your inspection until you have the signed agreement.

WHO SHOULD SIGN YOUR PRE-INSPECTION AGREEMENT?

Just because you can have authorized agents sign your agreements, does that mean you should?

NOT NECESSARILY. HERE ARE THREE REASONS WHY WE STILL CONSIDER CLIENT-SIGNED AGREEMENTS BEST PRACTICE:

1. You are more likely to set appropriate expectations.

Because one of the huge advantages to the pre-inspection agreement is its ability to set expectations, our claims team recommends having clients themselves sign your contracts whenever possible.

“If the clients know what to expect from an inspection, they’re less likely to come back after you for something,” said Tom Rees of A Closer Look Home Inspection in Utah.

2. You can make more informed decisions about your clientele.

Having the clients sign your agreement can better help you gauge whether you wish to work with particular clients.

In one instance, a client called Clayton Somers of A Premier Home Inspection, LLC in Virginia, conferred with their lawyer on speaker phone. They asked Somers to go through the entire agreement, line by line. After nearly every paragraph, the lawyer would ask questions. Since that experience, Somers dismisses potential clients who are overly critical of his contract.

“If someone is giving [you] a hard time about signing the agreement, that might be a red flag,” Somers said. “You might want to go ahead and just let them have somebody else do the inspection, [because] they might be looking for a way to get into a lawsuit and make some money.”

3. You can discourage real estate agents from transferring reports.

Having a real estate agent sign your pre-inspection agreement on behalf of your client does slightly increase the danger of that agent passing the report to someone else if the real estate transaction falls through.

Make sure real estate agents understand that their signature on behalf of one client cannot and should not transition to another—even if you’re inspecting the same house. Help brokers understand the importance of commissioning a new inspection for each new client, regardless of previous inspection results.

MANAGE YOUR RISK AGAINST POTENTIAL CLAIMS

Whether your signature comes from your client or their agent, you have the tools to get signed contracts every time. Make protecting your inspection business a priority by obtaining signed pre-inspection agreements for all your property inspections.