

Commission Position 25 - Resolving Inspection Issues

(Recodification adoption June 7, 2022: CP-43 Commission Position on Property Inspection Resolutions recodified to CP 25 -Resolving Inspection Issues)

The Commission has received inquiries and complaints claiming that Brokers misrepresent property conditions and negotiate repairs in a manner that conceals issues from the buyer's lender, particularly when the property's condition would affect a lending decision. The Commission issues this position statement to clarify how Brokers can advise buyers regarding inspection objection issues and maintain compliance with Commission Rules. Brokers must understand that in working with their clients to resolve inspection issues, Colorado law imposes upon Brokers the duty to avoid misrepresentations (*see* C.R.S. §§ 12-10-217(1)(a) - 217(1)(c)).

Other than terminating the contract based on inspection, there are generally five alternatives available to address property condition issues in a sales transaction: (1) the seller can repair the property prior to closing; (2) the seller can agree to pay a concession or contribution (e.g., a portion of the buyer's closing costs); (3) the buyer and the seller can negotiate a modification to the sales price; (4) at closing, the seller can escrow funds or pay a contractor (if allowed by the lender); or (5) after closing, the buyer can make the repair without assistance from the seller.

If the buyer is obtaining a loan to fund the purchase of the property, any of these alternatives can affect the mortgage financing. Prior to negotiating any of these alternatives, the Broker should advise the buyer to ask their mortgage loan originator or lender whether the resolution may (1) have a detrimental impact on the buyer's ability to get the loan; (2) cause delays in the lender's processing and funding of the loan by closing; and (3) require further inspections and repairs.

Once items to negotiate have been identified, the buyer's Broker should use the Commission-Approved Inspection Objection Notice to identify the inspection issues that the buyer seeks to have resolved. (Note: The Commission-Approved Inspection Objection Notice is a notice form and is not part of the contract). If buyer and seller are able to reach a resolution, the Brokers should memorialize the terms on the Commission-Approved Inspection Resolution or the Commission-Approved Agreement to Amend/Extend Contract.