

Check sealed areas



Bob Aaron
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When conducting an inspection, is a home inspector required to gain access to sealed areas like an attic or crawl space to conduct a complete inspection? If those areas aren't viewed, can the inspector be held responsible for repairing defects which would have been disclosed?

Those were the questions facing an Ontario court in a recent case between two unhappy home buyers and a Toronto home inspection company which has — based on my own clients' past dealings with them — a very good reputation.

Audrey and Victoria Li had submitted an offer to purchase a house on Macdonnell Ave. in Toronto. Before waiving the condition on having a home inspection, they retained John Johnson of Baker Street Home Inspection Services to perform a building inspection for them.

During his visit, Johnson discovered that the hatch to the third floor attic had been sealed with a three-quarter inch bead of caulking and then painted over.

He told the purchasers it was not proper practice for a home inspector to cause any damage to an owner's property during an inspection. Forcing entry to a sealed space, he told them, can expose the inspector and anyone with him to health and safety hazards and is likely to damage the vendor's property.

He suggested that the purchasers could ask the vendor directly to open or give permission to break open the hatch. The request was never made to the vendor or agent, and the purchasers acknowledged that

Johnson would prepare his report without looking into the attic.

Shortly after the transaction closed, the purchasers accessed the attic and discovered that the roof joists were cracking and splintering.

Trudel and Sons Roofing provided three repair estimates ranging from \$4,000 for the simple replacement of the roof joists to \$20,000 for a more extensive job involving the joists and removal and replacement of the old layers of shingles.

Two years ago, the Li sisters sued Baker Street claiming damages to repair the defects not disclosed in their report.

At trial last February, John Caverly, a founding member of the Ontario Association of Home Inspectors, or OAH, gave evidence as an expert witness. He explained the standards expected of an inspector during a home inspection.

In his report, Caverly noted that inspectors generally should attempt to enter and view the attic space by means of a hatch or door typically installed for that purpose.

The OAH standards of practice state that a home inspector is not required to enter an under-floor crawl space or an attic which is not "readily accessible," and is "sealed in place."

In explaining this guideline, Caverly's opinion was that where attic access has been sealed with paint, tape or other means, the inspector is not required to open the area.

Terry Carson, of Guardian Home Inspectors, also gave expert evidence at the trial. His opinion was that it is not reasonable to expect a home inspector to open a sealed attic access and risk exposure to damage from insulation or toxic animal and vermin droppings.

Engineer and home inspector David Hellyer, of Hellyer Engineering, agreed with the other experts and added that he usually offers to return once the owner unseals the attic access

door.

Justice Gerald F. Day released his decision a few weeks ago. He agreed with Caverly that the home inspector should have asked the purchasers' agent to seek permission to open the sealed attic.

However, in the written report Johnson prepared after the home inspection, he noted that the roof was in fair condition for its age, but could fail at any time.

The report also contained a notation stating "re-activate small access" to the attic, and had a question mark beside the area for noting the condition of the structural portions of the roof.

The final paragraphs of the Baker Street report offered a free follow-up inspection to avoid unnecessary costs associated with repairs.

In the reasons for his decision, Justice Day emphasized that according to OAH standards — supported by the evidence of Carson and Hellyer — inspectors are not required to determine the condition of systems or components that are not readily accessible. In this case, the judge noted that the pop-up access hatch was in fact sealed and not accessible.

Based on the conclusion that the inspection was considered to be within the OAH standards, the judge dismissed the claim of the homeowners.

It may or may not have been a factor in the court's decision that the purchase price was reduced by almost \$40,000 following the delivery of the Baker Street home inspection report.

Purchasers conducting home inspections in future — whether the homes are new or resale — should always clarify with their inspector what is going to be inspected, and more importantly, what is not.

If an important area is sealed, ask for it to be opened to permit a thorough and complete inspection.

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