

Broker may be held liable for hiring an incompetent inspector

-by Christopher A. Combs and K. Michelle Lind

A West Virginia real estate broker hired an inspector to inspect the heating systems of a house prior to its sale, to make sure that the heating system functioned properly. Unfortunately, the inspector hired by the broker was not certified to work on heating systems. The "inspection" consisted only of listening to the furnace while it was running, after which the inspector signed a certification stating that the furnace functioned properly. Having received the certification, the buyer purchased the home.

After close of escrow, the buyer discovered that the furnace did not function properly. The buyer was informed by a certified technician that the furnace had many problems and was unsafe to operate. Upon learning this information, the buyer sued the inspector and, of course, the broker

who had hired the inspector.

The broker argued that she could not be held liable for actions of the inspector. However, the court felt that the broker may have been negligent in hiring the inspector, who was not certified to inspect heating equipment. The court stated:

While a real estate broker bears no responsibility to conduct an independent investigation of a latent defect, when such broker volunteers to secure an inspection of the premises, or some part thereof, by retaining on behalf of the buyer a third party to conduct the inspection, then that real estate broker may be held liable to the buyer for civil damages if the broker in retaining said third party is negligent in the selection and

retention of the third party and if such negligence proximately causes harm to the buyer.

Arizona courts have recognized that if a person is negligent in hiring a contractor (such as hiring a person not qualified to perform the work required), the person who hires the contractor may be liable for negligence. Arizona courts also have recognized that even if a person has no duty to act, if a person voluntarily undertakes to act, the person must exercise due care in doing so.

So, what do we learn from this case? Give the buyer the names of three qualified home inspectors and insist that the buyer determine for himself which inspector should be hired.

Thomson v. McGinnis, 465 S.E. 2d 922 (W. Va. 1995)