

The below is one chapter of a book on buying a home that, unfortunately, I've never had time to complete. But its good information, so I've put it on my web site. Feel free to pass this along to friends or associates who may be buying a home.

Chapter 10 Post-Inspection Negotiations

Negotiations can take place not just when making your offer to purchase, but after you have had your offer accepted, during your inspection contingency period. The home inspection – and the other investigations and testing - you do during your contingency period may reveal problems or 'issues' that you were not aware of when making your offer.

The home inspection, however, does not provide a lot of *advice* on what may be negotiable and how to go about these negotiations. Home inspectors just give you the information; its up to you to decide what to do with it. In this chapter I'll try to give you a few guidelines on what may typically be negotiable and what isn't. A lot of this may come across as 'common sense', but its still useful as what is obvious in one situation isn't in the next, and its important to understand where your interests lie versus all of the other parties in the transaction.

First, however, I should emphasize that I consider the most important negotiations to be those you do up front, when you are making your offer and are reaching an agreement with the seller. This is where, hopefully, you can get the home you want at the best possible price and at the best possible terms. If you can get the home for (well) under 'market value' then this is where you will realize the biggest cost savings. When you get the home on attractive terms, moreover, you may not feel the need to renegotiate on the smaller defects and problems that are typically found at an inspection.

I should also note that renegotiations can arise not just from issues raised by the home inspection. The other investigations and testing your do, such as water quality testing (usually with homes with private wells), radon testing, termite/wood-boring insect inspections, specialist evaluations, lead testing, etc. may reveal problems that you had not known about previously. New information about the property from other sources could even be found during your inspection contingency period that could cause you to reconsider the purchase or the price you are paying. So its not just problems or issues raised by the home inspection that could be an issue. In any case, having an unrestricted contingency clause (as discussed in chapter 7) is critical so that you can protect your interest before you are locked into the purchase.

When to walk away...

The most drastic renegotiation (but not necessarily the hardest) is to simply use your right to withdraw your offer to purchase the property when the inspection reveals such severe or widespread problems with the home that are beyond your capacity to deal with, In this case, you will want to walk from the deal and find another home. In other instances, you may just realize during the inspection contingency period that the home just isn't right for you. Again, this is just too big a purchase not to get things right, so move on. The important point here is that you need to feel comfortable with what you are buying.

This is very often where you will find out whether your real estate agent favors your interest or theirs. In my area – or at least with the agents I deal with – I don't see a lot of problems (at least not nowadays) with agents trying to 'shoehorn' people into properties that buyers want to – or should - be walking away from. But occasionally I do see it, most often with novice or part time agents (successful real estate agents don't need any one deal that bad and most understand that this isn't a way to build a business long term). Agent pressure to go ahead with the purchase can occur, however, and may be the norm in some areas of the country. The thing to realize is: it's your money, it's your decision, and nobody can make that decision but you. Don't worry about hurting someone's feelings. As far as the agent is concerned, if you feel that they are working for your interests, let them find you another home. If not, drop them.

While, in most cases, the inspection does not reveal such serious problems with the home that you will want to back out of the deal entirely, it is typical that problems are found that were not known when you made your offer. In many cases, these conditions are not reflected in the asking price, and very often the conditions need immediate correction or resolution to make the home habitable. In these cases, you may want to renegotiate to get money off the sale price to fix the problem. For problems that need urgent repairs and that will cause more damage if not fixed quickly, it may be desirable to have the problem fixed by the owner prior to the sale (see cautions later in this chapter). Where 'suspected' problems were found by the inspection, you would like to have these problems *resolved* by a contractor or other specialist.

The problem with post-inspection negotiations, however, - unless you have a good buyer's broker - is there is often no one to advise you in terms of what you can and should do to address the inspection issues. Home inspectors, while they can (or at least should be) a valuable source of information, are not there to tell you to whether to negotiate, what to negotiate, or how to do this. The fact is that we do not know what you are paying for the home, what the 'fair market' values in that area are, whether you got a lot of money off up front, or what your specific concerns are. Each situation and each buyer are different: given some deficient condition found, a few buyers will negotiate aggressively while others will not negotiate at all. Sometimes a buyer wants a particular home so bad they will not take a chance on losing the home by renegotiating. Others walk away quickly.

The real estate agent you are working with, meanwhile, unless they are working as a buyer's broker (which means they should be working for you) and, I'll add, care more about your interests than the deal going through, is either a 'selling' agent and is still a subagent of the seller, or a listing agent who directly represents the seller's interest. Many selling agents can be helpful, but they are legally bound in many ways to not compromise the seller's (owner's) interests, so they have limits on what they can (or will) do for you. For instance, if they know the seller is desperate to sell and has to have their money by next month, they may not be able to reveal this to you. If you say to them you will pay the full price for the home even though you are offering less, legally they are supposed to disclose this to the seller (although not all will).

As an aside: I've seen some real estate agents proclaim that home inspections are just for 'information' purposes and are not supposed to be for renegotiations. This is a lot of nonsense (and I could use a stronger word). Why would you even bother to have a home inspection if you weren't going to renegotiate serious or costly problems that you

did not about before you made your offer? So take this advice with the consideration it deserves, which is none.

Buyers sometimes ask me during an inspection what the seller has to fix or take care of. Well, unless you have statutory requirements, (such as the requirement for working smoke detectors in the state of Massachusetts), the fact is that the seller doesn't have to correct anything. But on the other hand, there is nothing that says you can't ask for anything. Everything is negotiable, depending on the situation. But you have to know what is appropriate, what is 'doable', and what is the best way to go about things.

I should note that what is customary in some states is not the norm in others. I've had buyers from New Jersey who were aghast that the sellers would not be 'required' to undertake the repairs of deficient items. That may be the norm in New Jersey, but it is not in most of New England.

The difficulty in the whole subject of post-inspections negotiations is that...

there are no absolute ground rules.

What is appropriate in one situation may not be appropriate in the next. There is nothing that says you cannot negotiate any condition that you are concerned about (whether it arises from the inspection or your other investigations). It is completely up to you to decide whether, after the inspection has been done, to accept the home as is, have the seller fix or resolve certain items, ask for concessions on the price, or simply walk away from the deal. Depending on the situation, all of these options can at times be appropriate.

So what you should you do if the inspection reveals problems to be present with the home. Below are some common sense 'guideline's on negotiations that may help you. (Note: the advice provided will, in some places, be contradicted by the next piece of advice).

#1 Act on the inspection findings...

Occasionally inspectors will find serious problems - or at least evidence that may indicate a serious problem - but we find that the buyer fails to act on this information. Some buyers are not comfortable with negotiations and simply walk away from the property, when the better course would have been to negotiate for repairs or allowances. In any case, home inspectors are not advocates. As noted, even your best inspectors will not tell you whether to negotiate or what to negotiate. Similarly, inspection reports do not overtly indicate whether you should take action or not. Inspection reports, to a large degree, represent an objective summary of the findings. Many checklist reports, I should note, are difficult to negotiate from as they lack a clear description of the problem and its potential ramifications. They are also designed, in my opinion, to minimize many types of problems.

If the inspection revealed the need for critical repairs and you just do not feel that these conditions are warranted and you should not have to pay for these, then speak up. The worst that can happen is they will say 'no'.

2. Decide how comfortable you are with negotiations...

Some people are very comfortable negotiating everything while others prefer to avoid any type of conflict. Most people fall in the middle, but still prefer harmonious relationships over extracting the absolute best deal. In general, I would say, negotiate hard upfront to get the absolute best price you can for the home. In terms of the little defects that you find at an inspection, don't be picky over little things if you've gotten your terms on the big things. New construction, condominiums, and expensive homes may be another matter – especially if you paying close to (or over) the full asking price. When you are paying for perfection you should get something close to it.

You also have to evaluate the seller on this issue. Some people are just tough to negotiate with. Also recognize that many older homeowners are proud of their home and may have spent many years there. In your contacts and negotiations with the owner, you should be sensitive to this – but not so sensitive that you don't pursue your own interests.

Having a good real estate agent (ideally a buyer's broker) is critical in this regard, as they should negotiate on your behalf. This is what they are paid to do. See the next section.

#2 Get advice...

A good buyer's agent can be the best person to advise you in negotiations. A buyer's agent should be working for your interest and can undertake negotiations in your behalf. A buyer's agent should have a good feel for the market and the specific situation in terms of what is 'doable' for negotiations. Where a property is subject to a lot of interest or multiple bids, I've seen buyers agents advise to not renegotiate, as their client simply would not get the home if they tried to get a lower price. This advise not to negotiate can be entirely appropriate. If the home has serious problems, they may (or should) advise 'walking' on the home. In all cases they should give you the information you need to make an appropriate decision on how to proceed. I should stress, however, that it is up to you, the buyer, to ultimately decide what you want to do. Even buyer's brokers have an interest in the deal going through. Good buyers brokers will put your interest before 'the deal' going through - but I've seen buyer's brokers who would not do anything for their buyers.

Also, while I noted that a home inspector does not participate in negotiations, they can still be helpful. A post-inspection discussion with the inspector can be helpful (and is typically done by most good inspectors). In most cases this discussion takes place between the inspector, the buyers, and the buyer's agent (as again, they need to know the problems and what the concerns are if they are going to represent you in negotiations). There are many inspections, however, where it is entirely appropriate for the selling agent (but not the listing agent) to listen to the summary. If you have worked with the selling agent for while and implicitly trust them, then have them there for the post-inspection summary. If you would like all of the post-inspection discussions to be strictly confidential, indicate this to your inspector. Every inspection is different. In many cases there simply are no serious issues and everything can be out 'in the open'. In some cases, moreover, I've had buyers want the listing agent to hear the summary, as there are either no serious problems or they want to listing agent to hear what the problems are.

One or both of the real estate agents will typically be at the inspection. While a few people may not like that, it is normal and does not compromise your interests. Any buyers or selling agent who is going to negotiate for you needs to know what the problems and issues are. In many cases, it is helpful to even show the listing agent where serious or critical conditions were found, so they can deal with the homeowner about resolving these issues, or can at least let the owner know that the issues are legitimate and that renegotiations will be forthcoming. (Occasionally, however, I find that listing agents 'go missing' as soon as serious problems are found, as anything they are made aware of they will have to disclose to any future buyer, if this deal falls through).

In some cases, you will still want to get the inspector aside to ask them about the condition of the home and specific findings. You want to know that what the inspector is saying is not influenced by the presence of the real estate agent – which should never be the case, but this could be a reality. Actually, just so I know the listing agent won't use the information against you, I may be more reassuring about routine or non-critical conditions when the listing agents are not present.

A couple of caveats... First, home inspectors won't tell you to walk away from the property, in most instances. This is not our function and it actually against Massachusetts state law to advise people to walk away. (In a few cases, where the home was a 'disaster', I have sometimes stated to my clients at the end of the inspection that it is against state law for me to advise them to walk away... so they get the message anyhow). But most often, I – and most good inspectors - convey the results in all their gory detail so that the buyer can make their own choice. I don't feel its up to me to make decisions for people to either buy or not buy the home.

Second, while attorneys can provide an invaluable service to buyers in many aspects of the transaction, I think its hard for them to decide what are the critical issues from the inspection unless they were either there or, you go over with them what are the important issues to you. In most cases, the negotiations are best done by you or your buyer's agent. A good real estate attorney (and I stress a real estate attorney, not a divorce lawyer) can be invaluable in protecting your interest on the legal issues involved.

#3 Follow-up on the inspection with specialists or trades people, where the inspection has revealed possible problems, or where the inspector cannot define the degree of the problem.

This advice is important. A home inspection is a limited, visual survey of the home. Its covers an immense amount of ground in terms of the systems and areas it includes. An inspector, no matter how well qualified, acts as a generalist for the purpose of the inspection. The home inspection may not be able to tell you what caused a particular condition or what the extent of damages will prove to be once an area is opened up to full scrutiny. Also, inspections may not elaborate on repair options, and importantly, they do not provide cost estimates.

To get this type of information you need to bring out one or more of the specialists discussed in the last chapter. For instance, if your inspector finds evidence of decay or substantial damage on the home, you may want to bring out a carpenter If the heating system was not working properly or is extremely aged, bringing out a heating system

person who can pull off the burner and look inside may reveal that the system has failed or just needs repairs. If the electrical service or wiring is found to be problematic and you will need to upgrade the system, you may want to bring out an electrician to find out what this will involve and what it will cost, etc. This list could go on for several pages but my point is this:

you need to be diligent about pursuing further investigations on anything where the inspection revealed a problem or where the extent or cost of repairs cost could not be determined.

If you are purchasing a home where the mechanical systems appear to be antiquated or present a high risk, you may want to routinely bring out specific contractors or service people to examine these 'high risk' systems during your contingency period. You could bring out a carpenter, air conditioning technicians, heating system technicians, structural engineers, or any of the 'specialists' noted in the next few chapters. Obviously, however, do this where you have a reasonable expectation that these evaluations may reveal important information. Otherwise, you'll go broke before you purchase the home. If you have a friend or relative who is a heating system service person, an electrician, or other tradesman, consider bringing them out to look to look at their area of expertise during the inspection. Good inspectors generally do not have any problem with this. Licensed trades people and construction professionals can sometimes give you valuable information about specific systems that an inspection cannot provide you with.

Unfortunately, you very often cannot get the contractor, electrician, heating specialist, or whoever, out to the home within the contingency inspection period. So while I can tell you to get further input and cost estimates from a specialist, in many cases this will not be feasible to do on short notice. In these cases you can do one of two things: first, for mechanical systems where the condition is suspect, you can ask that the system be fully serviced by a professional, providing receipts, who can then attest to the 'good working order' (or repairs or replacement needed) of the system. Where the home has a number of 'big ticket' (but not easily resolvable) repairs, and you still want the property, you may simply want to ask for a 'lump sum' reduction in the price that would more than cover the costs of these items.

#3 Be reasonable, when called for... The majority of inspections do not reveal the major deficiencies or serious problems with a home that would necessitate walking away from the deal. In many situations, moreover, renegotiations may not be warranted or prudent. If you thought prior to the inspection that the home was in good condition and the inspection did not reveal any major surprises, then you've probably got a home in good condition. If you knew that the home needed work but you are getting it at a good price, and yes, the inspection does confirm that work is needed - but no more than expected, renegotiations may not be in order. Don't think you have to renegotiate. It's actually a plus when you do not need to.

The question to ask is: to what degree were the problems revealed by the inspection (or your other investigations) reflected in the asking price of the home? And second, to what degree did the inspection reveal problems that were a total surprise to you. Its the major surprises or the significant problems you didn't know about - or think through the implications of - that you want to look closely at. In general, 'older' (anything over 20 years old) homes will always come with some work.

If you are getting the property at a great price, then you may want to let even larger problems go. For instance, in 1992 (pre-real estate bubble), I remember inspecting a home that showed superior quality construction, had been extensively improved, and that had money poured into it over the years. The home was also located on a street of expensive, well-maintained properties. The only problem was that the home had some fairly significant decay on the porch and exterior, for which the repair costs would probably run over several thousand dollars. In this case, however, the buyer (wisely) elected to do let this go. He stated to me that they were getting this property for such an attractive price that they did not feel it would not be 'in good faith' to renegotiate for the porch repairs. In this case, the buyers made a sensible choice.

With the run up in real estate prices over the last fifteen years, however, few homes have been selling at a great price. This may be changing (or have already changed, by the time you read this). In any case, if you are able to get the property at an attractive price, you may not need to be as concerned with the smaller defects an inspection may reveal. (Caution: just getting the home at a lower than asking price may not be a good deal if the home was overpriced to begin with, or reflects the real estate 'bubble' pricing of 1999-2005).

There is no such thing a perfect home (as real estate agents like to say) and every home will come with some work, some conditions that are 'less than optimal' and possibly some areas that will need repairs or maintenance. You can get homes that are in nearly perfect condition: but expect to pay a lot more for them. (On these homes you can be far more picky). You need to decide what you can live with and what will work for your situation.

#4 Keep things civil... If the inspection reveals problems that are not reflected in the price of the home and you feel you have to renegotiate, then use the real estate brokers as intermediaries. Part of their job is to smooth out differences. Good brokers, I've found, are fairly accepting of the need to have adjustments made in the price or have conditions repaired or resolved by the owner. Brokers would rather have the seller compromise or accept a slightly lower selling price than lose the sale completely.

It can be difficult to negotiate directly with a seller when there is no broker involved. Many sellers have an inflated view of the property. Many think their property is worth far more than what they are getting. While some are reasonable and can deal with negotiations fairly and non-emotionally, others are just a pain in the butt. This is a zero sum game: what ever you win they lose, so its hard for many sellers (and buyers) to keep the emotions out of the process. You even need to be careful of getting too close to the homeowners - especially the sweet old couple who have treat you like family - as you may find it harder to back out or renegotiate if problems are found. In one inspection I did, the buyers were so close to the elderly sellers that they couldn't break the news to them that the home was termite riddled (and actually had to be torn down). They left it to me to break the bad news (which I did, as gently as one can do in these circumstances).

Even while always working to get the best deal for yourself, try to maintain a good relationship with the seller, when possible. Assuming this is becoming a buyers market, there is nothing to be gained by extracting every last possible concession from them.

The home buying experience is much more rewarding when you maintain a good relationship with the seller. I've known sellers who, antagonized by the petty or inappropriate demands of a buyer, stripped the home clean of everything that they legally could, even though these items would be of little use to them while they would be useful to the buyer. Some homeowners, however, are impossible no matter how fair you try to be.

#5 Be diligent about looking out for your own interests...

Again, you are the ones who are shelling out all of your money for this property. Your real estate agent, no matter how hard they work for you, have an enormous interest in having the sale go through. You are the one, however, who are going to be paying the bank for the next 15 to 30 years.

Get the best inspection you can possibly have done. Have the appropriate environmental assessments and testing done on higher risk items. Bring out specialists to evaluate systems excluded from the inspection, systems of major importance, or suspect conditions. Take an investigative approach. Read this manual. In other words, do everything you can to look out for your own interests.

If you have some strong reservations about whether you want this property either due to the inspection findings or for any other reason, then use your right to withdraw your offer by the end of your contingency period. (Again, assuming you have included this clause in your offer to purchase). Don't worry about offending your broker. If (s)he has been good to you then have her (or him) find you another home.

If you do not have unrestricted inspection contingencies, you had better be completely sure about the home before you make your offer. Otherwise, you may not be able to withdraw from the contract.

#6 Be savvy about negotiations. Don't give out information that could work against you. Just as during the process of making a bid for a home you don't want to let the selling or listing agent know what you really are willing to pay, don't undercut yourself in post-inspection negotiations by stating that, even if the seller makes no concessions, you'll buy the home. Also, when going through the inspection, if the inspector finds something that's a significant problem or grossly deficient, don't state that you don't care about this because you're able to take care of it yourself. For instance, if the home has a severely substandard or defective electrical system, don't volunteer that your brother in law is an electrician who you will get to do the repairs (after all, your brother in law will still charge you and you may find you can't get him for six months). Many first time buyers do this all of the time (before I can shush them up). But don't overplay your hand either, by over-exaggerating your concern over some minor item.

Also, how much you want the property makes a difference in what you can accept and how aggressively you may be willing to negotiate. With a property that has most everything you want in a home, you may be much less willing walk away from due to problems revealed by the inspection. Falling in love with a home is great, but you've got to stay unemotional until the whole process is over. I've had clients break down and cry after the inspection revealed their dream house to be termite-riddled and structurally unsound. Also, never let the listing agent or the seller know how much you like the

home, as this may work against you if you need to ask for concessions during the buying process.

#7 Look at every defect in terms of the *urgency* (or time frame) for repairs, the *degree of risk* the item poses, and the *seriousness or expense* it will pose. This is a bit of a formal breakdown but it can be useful. For instance, if the roof surface is aging but still should provide several more years of useful life, you may not be as concerned as if the roof needs immediate replacement (see contrary advice in next section). Ideally, you will want to take into account older components and systems when making your offer on the property.

In terms of items needing urgent repairs, these may or not be 'acceptable'. Certainly, if the sink drain is leaking and will cause further damage by the time you move in, you would like to have that item fixed as soon as possible. Major systems that are simply not working represent items that need urgent repairs or resolution. For instance, if a heating system is not working or individual zones would not come on, it is critical that the nature of the problem be resolved within the contingency period.

Unless the house is being sold in 'as is' condition and clearly needs major work, you may not want to have to do a lot of immediate repairs just to make the home habitable. Defects that affect the habitability of the home are probably the most readily subject to negotiation.

Also examine the risks that go with the property. A good example of when you need to evaluate risks is when the probability of there being a problem is small, but the expenses involved in correcting the condition will be enormous. For instance, I've had inspections where buyers determined that, if the septic system failed, there would be no way to replace that system, except by spending tens of thousands of dollars. Even though the septic system was functional at the time of the inspection, they decided they could not live with this risk.

Environmental risks can often be large. For instance, when the home has an underground fuel oil tank, the actual risk of having a failed tank may be small. But if the tank has been leaking then you may face tens of thousands of dollars in repair costs. It may be prudent to avoid any home with large, unknown risks unless they are completely resolved prior to the sale commitment.

#8 Items with large repair costs should matter, even if they are few years down the road. An example: very often the inspector finds a roof surface that is still functional but is aging and will need replacement in a few years. Many reports would rate the item as "functional" - because it is 'performing its functional as intended' But if the roof surface will cost \$6000 to \$10,000 to replace in a few years, should this really be regarded as acceptable, in all cases? If it was disclosed or known the roof surface is older and closet to needing replacement, then that's one thing. When it's a surprise or was unknown to the buyer – or just a lot worse than expected - the fact the repairs may not be immediate should not mean that this is not a concern.

In my opinion, the fair solution in these types of situations is to get a partial allowance for the replacement costs. In one inspection I did, where the roof was still 'functional' but older and would have a limited service life (and an expected replacement cost of \$8000), the buyer negotiated for a \$4000 price reduction based on this. I thought this was fair to both the buyer and the seller. This type of adjustment is seldom done on

components that will have a clearly limited service life, but it should be done more often in my opinion.

Even if the inspection finds that everything is 'functional', you may want to rethink the property (or what you are paying) if you find that a number of major systems and components are aged and present a substantial risk of needing replacement within the next five or so years (assuming the price of the home does not reflect this). You have to 'glean' this information from inspection reports, however, as under most State Standards and Professional Standards of Practice, providing estimates of remaining life is not part of the inspection (and its difficult to do, in any case, with mechanical systems).

Very often the largest cost you will have with a home is the major renovations to the kitchen and bathrooms. These costs may dwarf the repairs and other work indicated by the home inspection. So, consider it a plus when the home has a newer kitchen or bathroom (assuming what you are getting is what you want). Again, if the kitchens and bathrooms are old and worn, this should hopefully be reflected in what you are paying for the home.

#9 Everything counts... I've had buyers who stated that they were only concerned with the structure, or one particular aspect of the home. When I hear this, I have tell my buyer that every expense counts. The home may have been built extremely well, and show no structural issues (most don't), but if all of the windows or storm windows are in bad shape, that's thousands of dollars to correct. Finish work, masonry repairs, and interior and exterior painting, as just a couple of items, are very expensive. Even doing the interior renovations can get expensive if you have to hire someone to do all of the work. Some homes don't have just one large repair cost, but lots of 'smaller' things that add up.

#10 When the market is hot and sales are brisk you may not have as much leverage on negotiating smaller or less critical defects. In hot real estate markets you will have much less leeway on renegotiations than in a slow real estate market. But this also applies to desirable or well priced homes in slower markets. Properties that are desirable due to their location, type, or price may receive a lot of interest after being put on the market. Even in a slow market these homes may have one or more back up offers. In this case, trying to renegotiate the price due to a problem found by the inspection, is much more difficult. In these cases you may have just two choices: accept things as they were or walk away from the deal. This has often been the case during the hot real estate market of 1996 to 2005.

Note: some things are almost always negotiable. If the home has termites this is usually something the seller will be responsible for. As many banks will not issue a mortgage on a home with active termite infestations, these normally get treated prior to the sale or moneys are set aside for this. Defects such as a failed heating system, worn out and leaking plumbing, and other 'non-deferrable' expenses usually never go 'with the home', unless previously disclosed. (Note: see the Addendum at the end of this chapter).

#11 Conditions that were disclosed prior to the inspection *probably* are not going to be negotiable later on. If the seller told you the roof needed replacing, and you made your offer knowing this information, then its a lot harder to turn around later and try to

renegotiate based on this condition. If they told you the roof is aging but not failed and it is really close to failure, you may be able to renegotiate part of the price, but probably not the total replacement cost. The correct criteria for replacing a roof, by the way, is not when it is leaking. I've had numerous times when I indicated that the roof needs to be resurfaced as the shingles were deteriorated or worn through at the slots, when the response from the real estate agent was. 'but its not leaking yet'. You don't wait until you have buckets in the attic to replace the roof!

Importantly, it may be possible to renegotiate even when the property is represented as "as is". I've had inspections where I was told up front that, due to the price negotiated that the buyers had agreed to no renegotiations. Occasionally, however, the inspection then turns up a serious problem (or just a lot of previously unknown defects) that will be expensive to correct, and renegotiations still take place. This occurs when the degree of the problem(s) is such that the buyer will walk away and the property most likely can no longer be sold at its current price. So, while "as is" usually means "as is", it doesn't always. Its not written in stone. Sellers who hold fast to the 'as is' clause 'shoot themselves in the foot' when they are too inflexible to recognize that they may need to lower the price even more if serious or numerous problems are revealed by the inspection.

#12 Look at your abilities and those of the seller. If the homeowner you are buying from is an experienced handyman or builder and you are not, its reasonable in most instances to ask that they complete work that has been started or to fix items that need repairs. On the other hand, if you have the skills to do home repairs and won't have to pay someone to do everything, then you will want to take care of the minor or routine problems yourself. Much of the time, you will not be able to get a seller to do anything. They just want out.

In most cases, however, you don't want to the seller doing the repairs or renovations needed. This is especially true when the homeowners have done a lot of the home repairs and renovations themselves and very little was done right. (Unfortunately, these are the homeowners who will readily volunteer to fix the defects brought to their attention). Be nice about it, but don't let them. In some instances, buyers have even requested that the homeowner stop all renovations, as it is obvious that much of what gets down they will have to undo.

#13 As a corollary to #12, it is usually better if you do not have the owner do the repairs or renovations on defective components – with the important exception noted below. The risk is, of course, that the needed work will be done in the cheapest possible manner. You may simply want to get an allowance to cover the cost of repairs instead of having the owner do the work. That said, there are exceptions. When the owner is competent contractor (or very competent handyperson) they may prefer to do the work, rather than provide an allowance, and this could work for all concerned. When you are buying directly from a builder or are purchasing a very high end property, it is often preferable (and more accepted practice) to simply make a punch list of all the items needing finishing or correction.

#14 If problems are found that affect the functionality of the home, such as a heating system that is not working or that has defective components, then it is reasonable to ask the seller to *resolve* these conditions. For instance, if the heating system was not

working or if it showed evidence of serious defects, then you can either hire your own heating system technician or you can have the owner take care of the problem. In my opinion, it should be the owner's responsibility for making sure that basic systems are operable. If they knew something was not working (or not working properly) they should have disclosed this, so that you could factor in the cost of repairs or replacement.

With bank owned property or homes that are vacant and/or winterized, the plumbing will sometimes be off, the electricity disconnected, or the heating system will be shut down or inoperable at the time of the inspection. While it is always best to try to have these made operable by the day of the inspection, this is not always done. In this case, you (or your attorney) should stipulate that the owner have the major systems in the home in "good working order" at some specified date prior to the closing. These systems should then be inspected by your owner contractor. A re-inspection by the home inspector may even be in order. Note: talk to your attorney about protecting yourself further in these types of situations.

#15 Know when to make requests in writing and when to just leave them verbal. This is something a good buyer's agent can advise you on. There are times when you would like to get money off for some condition found, but you don't want to risk losing the property to another offer. If you make a formal request in writing, the seller could turn around and sell the property to someone else, as you no longer have a legal agreement as to the terms of the sale (I'm not meaning to be an attorney here – so consult one). You or your agent, however, can often broach the repair or allowance for deficient items verbally. If the seller refuses, this should leave you with the 'out' option, or you can take the property 'as is'. Importantly, if you decide to withdraw from the property, you must do this in writing and you must do this within the contingency period. This is important. Consult your attorney about this.

#17 Ask for an extension, when necessary. When the inspection (or other testing or investigations you may be doing) reveals potential problems, you may sometimes need to ask for an extension of your contingency period to resolve these issues. I've found that most listing agents and sellers are accepting of this, as long as the issues can be done in a timely manner. In a hot market or a hot property, sellers may not be as willing to allow extensions, but this is usually not a problem, as long as your request is reasonable.

With items subject to seasonal limitations on their inspection, such as air conditioning systems and pools (and equipment) in more northerly areas, you may try to get some of agreement that these will be in working or 'acceptable' condition upon start up in the spring. This may only be feasible, however, when the time frame between the acceptance of the offer and the time when these areas can be inspected is not too long. In other words, this request may 'fly' in the early spring but not the fall or winter. Unfortunately, in many instances, you simply won't be able to get these items inspected within any type of contingency period extension. Seasonal limitations can be important.

#18 Use escrows where things cannot be resolved in a timely manner...

An escrow, for our purposes, is money held by a third person (usually an attorney) that is released upon fulfillment of some terms. Using escrows is one of the best ways to protect your interest when you simply cannot determine if there is problem until after you move in. For instance, lets say there is two feet of snow on the ground when you make

your offer and the home is vacant. There may be no way you can tell if the septic system is functional until the snow has melted and you have lived in the home for a month. In this case, it would be highly advantageous to have a certain amount of money owed to the seller held in escrow under the condition that, if the septic system proves to be in need of repairs, the money will go towards fixing the system. If the system proves to be in good working order, the money is released to the seller.

Escrows are commonly used in real estate when making an offer - but less commonly in post-inspection negotiations. The down payment made when making an offer is typically held in escrow. If the offer is not accepted or all of the conditions of sale are not able to be met, the money is returned to the buyer.

Holding money owed to the seller in escrow, obviously, will not be very popular with sellers. Many will flatly refuse to go along with this. From their perspective, they lose control of this money and they really can't be sure they will ever see what is owed to them. An unscrupulous buyer could, for instance, claim repairs are needed when they really aren't; or they could claim that moneys spent on normal maintenance represents a 'repair'.

Nevertheless, when you have a situation where some major system or concern cannot be evaluated until after you have moved into the home, you may want to think about having moneys set aside to cover the cost of repairs. The systems/concerns where ideally you would like to escrow money include: septic systems that could not be evaluated prior to taking ownership; radon problems (see Environmental chapter); central air conditioning systems that have not been in use or show signs of problems or advanced age; and pools that are shut down where you have no information on its condition or recent history. You may have to have a strong bargaining position and a compliant seller to be able to use escrows. Note: talk to a real estate attorney on all matters regarding escrows and other legal protections.

#19 Finally, decide what repair or course of action in dealing with problems will be appropriate to your abilities, time, resources - and standards. Similarly, carry everything one step further and look at the implications of each problem or condition found on the home.

This advice is a bit subtle but it can be very important. The systems and components in the property you are looking at may not be in need of critical repairs. They may be functional, but they may be substandard - and sometimes seriously substandard. Unless a component or system is non-functional, however, it may be rated as 'acceptable' from the standpoint of the inspection. It will not be indicated as something needing "repairs". Driveways can be an area where standards are applicable. A worn-out and cracked driveway may be 'functional' for vehicle usage, but it may not be acceptable if you hold it to a higher standard. '*Substandard*' components may be rated or described as 'functional' or 'performing their function as intended' by many inspection reports - but they still matter.

The upshot is that you have to decide what standard you want to apply to the home. You have to think through what repair or renovation would produce the result that is desirable given your circumstances and your standards. In some cases, this will mean far greater repair and renovation expenses than what your home inspection will indicate.

Addendum

Specific problems and issues and how they usually 'play out' in negotiations

As I stated earlier, there are not absolute ground rules in terms of what gets negotiated. But there are conditions that almost always get negotiated and, just as important, issues and problems that almost always 'go with the property'. So, I've listed a number of concerns below and how I usually see them 'play out'.

Termite infestations. Active termite infestations are typically something that a seller would take care of. Many banks will not provide a mortgage on a home that has an active termite infestation (although the trend appears to be to give out mortgage money to anything with four walls and standing up). What gets a bit trickier is finding termite damage on the home during the colder months, when termites are not active. If the home was never treated for termites, it is prudent in this case to have the home treated, as one simply doesn't know if the termites will be back. If it can be definitively proved that the termite damage is older and termites have not been present for some time, the need to treat may be less pressing – but all termite control companies recommend a treatment, if not already done. (I know, I know, they have a self interest in treating, but I can see their point too. They cannot provide any assurance that termites will not come back and at least some homeowners would blame them for not treating a home where the damage was found).

Termite and other damage. It is desirable to replace any wood that is extensively damaged by termites. In most cases, it will be worth getting an estimate from a carpenter on this. As noted in an earlier chapter, you may need to have the interior or exterior sheathings stripped back to ascertain the extent of damage (which most sellers will not allow). In my opinion, structural members with superficial or minimal damage do not warrant replacement. Note: a high percentage of homes contain hidden damage in the walls.

Lead paint. Lead paint, while a significant concern, actually is seldom a negotiable issue. Most buyers assume – or should assume – that lead paint could be present on 'older' homes (or on older woodwork of any kind). Lead paint may be present on any home built before 1978 (or where older lead based paint may have been used). Lead paint is rarely found in 1970's homes, not commonly found on the interiors in 60's homes, and may not be present, at least in high concentrations, on most homes built in the 1950's. If a home was represented to be lead free, or meet the standards for compliance in the state you are buying in, and you find it isn't, then this could be a negotiable issue, but this is rarely the case. Most buyers who don't want a home with lead paint should avoid older homes. Anyone buying an investment property should make sure that the home has been completely 'delead' to the appropriate standard.

Asbestos. The presence of asbestos-containing materials may or may not be a negotiable issue, depending on a bunch of factors. I should note, first, that we always refer to suspected asbestos-containing materials as just that: "suspected asbestos containing materials", as one must do an X-ray spectrometry test to definitively ascertain

whether some material is asbestos-containing. For the older, white, pipe insulation on boilers and heating pipes, and the older white paper insulation on ductwork, in most cases these will be asbestos-containing. Whether the presence of asbestos becomes a negotiable issue depends on: its condition (Is the material basically intact or is loose and hanging down?); is it in a space that will remain unfinished and largely unused (such as many basements in older New England homes)?; prior knowledge or disclosures about asbestos; and lastly, how much, very simply, you care about the presence of asbestos in the home. If largely intact and in an unfinished space, many authorities would not recommend that the material be removed – or at the least, it would not be perceived as critical. What I've found, however, is that buyers' concerns differ widely when asbestos containing materials are found. Some buyers will not tolerate its presence in the home; others really don't care. I'm personally ambivalent, and like to let people decide for themselves on whether to ask for replacement. I do recommend a removal of the materials when the material is deteriorated, as is often the case. The best option, given this material is a 'negative', is to not have the material present on the property.

Asbestos-cement siding. This type of siding is commonly found in New England. The asbestos in this material is 'bound up' with the cement, so it does not readily become airborne. There is no mandate to remove this type of siding and it is not considered a significant hazard. Nevertheless, if removed, it must go to an asbestos dump. The presence of this material, whether exposed or covered by a vinyl or aluminum siding, is not a negotiable item, from my experience.

Liquid underground fuel oil tanks (LUSTS). These tanks are less commonly found, at least in my area, as most have been removed due to the hazard they pose. If leaking (which is actually rarely found) the site remediation costs can run into the tens of thousands of dollars. Banks and mortgage companies typically will not provide a mortgage on a home with an underground oil tank, assuming they know one is present. (Please note that underground propane tanks are common and are not an environmental hazard). Do not buy a home with a LUST until after it has been properly removed and all permits obtained from the state or municipal authority that oversaw the removal of the tank. You don't want the liability.

Radon. Radon is a radioactive soil gas that may be present in higher than desirable locations in many homes. (See the later chapter for more information on radon). Statistically, twenty five percent of New England homes have elevated levels of radon, according to the EPA. I recommend that every home, excepting those on upper stories with no basement, be tested for radon. In older homes with unusable basements this testing should be done on the first floor of living area. The presence of elevated levels of radon levels is typically a negotiable issue. While there is no requirement that a seller correct radon problems, it is customary that the seller correct the problem or provide an allowance to the buyer for this. The usual cost to correct a radon problem is \$1200-1400. A few homes may run much more. Most real estate agents do not have a problem with this, as they know that, should the buyer who did the test not buy the home, they must disclose the radon levels to any future buyer (who would typically ask for remediation). I do not, however, recommend that people walk away from a home with high radon, as this is correctable problem.

Radon in water... Radon in well water is a more complicated issue because, unlike radon in air, where this is an accepted EPA standard, there is no set standard for radon in water. Each state has its own, non-binding guidelines that vary widely. The Massachusetts radon office has an action level of 10,000 picoCuries (pCi/L). (PicoCuries is a unit measurement of radon). Maine and Vermont have action levels 20,000 pCi/L. New Hampshire has a recommended maximum level of 4,000 pCi/L, which is also the proposed EPA maximum contaminant level that has never been implemented.

The problem is that, without one accepted level it is more difficult – but not impossible – to negotiate if the level of the radon in the water is high. It's a matter of a couple of things: first, just how high is the level? It may be more difficult to negotiate if the well water is just slightly above the state standard (or whatever standard you want to apply). Anything over 10,000, however, is more likely to be negotiable concern. But without one set standard, you may need have a strong negotiating position and/or a strong concern, to make this a negotiable issue, from my experience. One more thing: correcting radon in water is expensive – typically \$4000 for an aeration system.

Water quality in private wells. Private wells should be tested for their water quality. The range of tests and possible contaminants will not be covered here (it will be covered in a later chapter). Whether the results of water quality testing can be a negotiable issue comes down largely to whether the item is over the “maximum contaminant level” (MCL) is something that will affect health or just taste and quality. Health related items, such as the presence bacteria or high nitrates, typically are a negotiable issue. Bacteria is commonly found in well water; my opinion is that a good percentage of wells have water with some bacteria. Nevertheless, when the water quality results show the presence bacteria, the wells should be disinfected, and it is common to ask that the seller do this.

More problematic is when the water shows high mineralization or hardness. These are taste and quality issues. While I can't say that poor water quality can't be negotiated (see below) it is typically the case that this concern is taken care of by the buyer. I guess the rationale is that the seller (homeowner) has lived with 'less than optimal' water quality and the buyer can deal with it or not. The costs to correct high mineralization and hardness, however, are not cheap: typically \$1700 up to \$3500 (or more). But again, it can be a matter of degree. I inspected a home last year where the well water obviously had very high mineralization. The sinks showed staining and even the walkway was heavily stained from the lawn sprinkler system. A water purification system was present, but tests showed it was either not working or was inadequate to handle the contaminants present. In this case, the buyers asked that the system be examined by a water quality professional to determine the cost to correct the problem, the sellers refused, and the buyers walked. (Yet another case of a seller shooting themselves in the foot).

Finally, I've seen a couple of homes with such bad water quality that they had \$20,000 water purification systems. Maybe the systems worked, but personally I wouldn't want to buy a home with water this bad.

Energy costs and insulation . Energy costs and insulation are not (or at least, have not been) items for renegotiation. The lack of adequate insulation is common. Adding more is not typically regarded as a 'defect'; adding more is an 'upgrade'. If a seller has

represented the home to be 'fully insulated' and it is not, then this could be an issue. Homes with high fuel or utility costs may be something you will want to think about when buying a home, but they are not typically negotiable issues. With fuel and utility costs increasing, however, it is getting to the point where you may want to have an energy audit, or some type of evaluation of the home, to determine how much the home will cost you and what it may be possible to do to get the fuel and utility costs done (with some homes you can do a lot; with others very little).

Urea Formaldehyde Foam Insulation (UFFI)... This was a type of insulation used in the 1970's up to 1982. When improperly installed the home's occupants were exposed to high levels of formaldehyde and became chemically sensitized. This material is no longer regarded as a hazard as the formaldehyde has typically out-gassed. I do not believe this is a negotiable issue. Some people may want to avoid UFFI homes, if they have any concerns about this or feel this is a 'negative' feature. Testing for formaldehyde is no longer considered warranted.

Code compliance. This is a tough one. First, the home inspection is not a code inspection and older homes and older work very often do not conform to today's standards. Home inspectors commonly see work that does not meet code standards. In general, the home inspector will look at components such as decks, stairs, etc., (items typically done with code oversight) in terms safety and 'serviceability' (durability). A lot of non-approved work is reasonably well done; much isn't. Whether it becomes a negotiable issue really depends, in my opinion, on just how bad the work is. In Massachusetts and New Hampshire, at least, it is not typical for a building inspector to require that something be torn out because someone did not pull permits. They may do this to a builder or contractor (as they should) but they seldom come back on a homeowner, especially one who didn't have the work done. This may not be the case in all states, however, where code officials may have a stricter standard and may mandate a tear out of unapproved work. As a home inspector, however, I am not there to 'enforce' the code.

There is one area, however, where code compliance is extremely important and probably would be a negotiable issue. Specifically, when a structure is built too close to a neighboring property, in other words, violates the required setbacks, this could result in action by a code official. This may not be picked up by a home inspection, however, as we don't measure lot lines or determine the required setbacks (which vary from town to town). A 'newly' installed structure or system that is deemed hazardous or grossly non-compliant could also be required by a code official to be torn down or rebuilt. This could be a negotiable issue (typically to have the system or structure examined by the relevant professional to determine the feasibility and cost of repairs), but the home inspector would not argue this from the standpoint of violating applicable codes. We also lack powers of 'enforceability'.

In general, given the amount of work that gets done that no permits were pulled on, we have to be a bit tolerant on this issue, assuming the work is done in a reasonably workmanlike manner.

Worn and peeling paint – or suspicions of a bad paint job... Despite the fact that it can be expensive to paint the home, whether on the interior or exterior, these conditions

are obvious and are not typically subject to renegotiation. Hopefully, these conditions were reflected in the price you paid.

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