

Building Inspector Liability Factsheet

When assessing the negligence of a building inspector Australian courts have determined that by virtue of their training and expertise a person holding themselves out as a building inspector is subject to a higher standard of care than may otherwise be applicable to other non-professional service providers. Therefore, building inspectors are charged with the duty of discovering and determining the cause and origin of apparent defects that exist in the home at the time of the inspection and accurately reporting such defects.

Courts have recognised that property inspectors hold themselves out as professionals, ready, willing and able to inspect houses and render accurate reports which they know will be relied upon. Property inspectors, as other professionals (e.g., lawyers, medical doctors, accountants, etc.) are justifiably relied upon by the public to render accurate advice and information in areas requiring their technical expertise. Therefore, a property inspector who fails to properly conduct an inspection or to disclose material defects in the home may be liable for court actions in:

- Negligence;
- Negligent misrepresentation; and
- Misleading and deceptive conduct under the *Fair Trading Act 1987* (WA) or the *Competition and Consumer Act 2010* (Cth).

Although the terms of a building inspector's pre-purchase inspection contract may limit the inspector's legal liability for negligence and negligent misrepresentation it would be unwise to rely entirely on the contract to exclude your liability in negligence because the law covering exclusion of liability is constantly evolving. Liability for misleading and deceptive conduct, however, cannot be limited by contract and so it is important to ensure the building inspection report contains information that is accurate to the best of your professional knowledge and ability.

General tips to avoid a lawsuit

1. Ensure the client is aware of the limits of your qualifications, knowledge and skills as a building inspector to avoid misrepresenting yourself. If your inspection is 'visual' only, ensure the client is aware of this;
2. Avoid descriptions such as "structurally sound" as a building inspector is not typically qualified to make an assessment this determinative;
3. If you are unsure as to the cause of an area of damage to the building or whether damage exists, in the summary of the report include a recommendation to obtain a report from a specialist inspector such as a pest consultant, electrician, plumber, structural engineer, a geotechnical engineer, a fire-safety consultant or a surveyor;

4. Prior to the agreement to perform the inspection being entered into, ensure the client is aware of limitations which may restrict the full achievement of the inspection,. Examples of limitations include, legal right of entry, locked doors, security system, pets, furniture, thick vegetation, small roof or crawl space, adverse weather conditions and similar obstructions;
5. Where an area or item is inaccessible make sure to make recommendations to gain access where practicable and considered necessary;
6. Do not explain title and ownership matters to the client or deal with matters concerning easements, covenants, restrictions, zoning certificates or other law-related matters;
7. Do not provide estimates on the cost of rectifying building defects as this is notoriously difficult to estimate reliably; and
8. Where reports involving standard clauses are used, for example 'check box format', care should be taken to ensure that sufficient and unambiguous detail, relevant to the particular inspection, is included. Where necessary, add an annexure to the report to ensure adequate details is reported.

Professional Indemnity Insurance

To reduce your exposure to legal action for your failure to detect or report material defects in the home it is highly recommended that you obtain professional indemnity insurance to cover you in the event of a lawsuit. To increase the likelihood of your insurance company accepting a claim made on your policy you should:

1. Never admit liability for an error or omission you have made during the course of your work as a building inspector which resulted in the client or other third party claimant suffering loss or damage;
2. When applying for the professional indemnity policy ensure you disclose every matter that you know is relevant to the insurer's decision whether to accept the risk of the insurance such as any claims that have been against you in the past or may be brought against you in the future in connection with your work as a building inspector;
3. Keep detailed reports stating why you made particular decisions in relation to your inspections such as why you did not inspect an area of the property;
4. Ensure you notify your insurer asap of any change in the nature of your business as a building inspector;
5. Provide immediate written notice of the claim and provide as much information and documentation of the claim to your insurer as possible.

Case examples

The following Australian case example illustrates how stringent a building inspector's duty to report the cause and origin of apparent defects can be:

Brown v Dream Homes SA Pty Ltd [2007] SASC 443

In May 2003 the defendant building inspector prepared a pre-purchase report for the purchaser of a property in accordance with the Australian Standard for such reports. The inspector reported among other things that he had found some 12 hairline or fine cracks in the walls of the house but that they did not require any repair. He said that the house was structurally sound.

However, the inspector's report did not mention a large crack that proceeded through the mortar joints in about nine courses of brick on the exterior wall to the main bedroom at the front of the house. The crack had been patched but before that repair it must have been about 10 millimetres wide.

The purchaser had not seen the patched crack when she inspected the property, probably because the vendors had placed a large shrub in front of it. The purchaser saw the patched crack for the first time after settlement and after she had moved into the house. She engaged an architect and a building consultant and was advised that the patched crack was the result of footing movement.

The inspector gave evidence that he had seen the crack but explained that he did not mention it in his report because he had concluded that the patched crack was caused by building work that had been carried out on a pergola that had once abutted the affected wall and not by movement of the house footings.

The Supreme Court of South Australia ultimately established that the patched crack had been caused by footing movement and not by work on a pergola.

The purchaser engaged a very experienced civil engineer Mr Goldfinch for the court case and he confirmed that even though the patched crack was caused by footing movement, the house was indeed structurally sound.

However, the Court found that the inspector had breached his contractual duty to the purchaser because he had failed to:

- 1. report the existence of the patched crack;*
- 2. give an accompanying warning that it may have been caused by footing movement and; and*

3. *to advise the purchaser that only an engineer and not the inspector himself could properly advise on the cause and significance of the crack.*

Moore v Scolaro's Concrete Constructions Pty Ltd (in liq)[2004] VSCA 152

On 2 March 1996, Cameron Toomey suffered crippling injuries when he fell over a balustrade in the early hours of the morning and landed on his head on concrete stairs below. The Supreme Court Victoria (Court of Appeal) found the building inspector for the property had been negligent for the injuries suffered by Mr Toomey on the basis that:

1. Either he did not observe the rail height at less than 1000mm, which did not comply with the plans, or else he did not think it a safety issue;
2. Industry expectation was that the inspector should actually measure the height of the balustrade in order to certify compliance;
3. A reasonable inspector would advise the surveyor if he found a difference and not certify the building without any uncertainty being resolved by the surveyor;
4. He was slow to cause difficulties on a project but would certainly do so if he thought safety or health were at risk.

Not Legal Advice

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