

To attend or not?

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Here's the scene. An inspection of the on-site sewage disposal system reveals a failure. The sewage enforcement officer (SEO), a man from the septic repair company, the listing agent and buyer agent meet at the property to discuss what's to be done. The SEO states that it is his belief that a crushed pipe from the tank to the drain field is responsible for the failure and that if the repair company certifies its repair and that the system is working, the SEO will issue the appropriate approval. While this discussion is taking place, the repairman is toeing the gravel at his feet, digs his hands deep into his pockets and finally offers that he is not interested in the job. These repairs are finicky, he says, and not only that, the lot is small and septic systems just don't do well on lots this size. He doesn't want to take the risk of making the repairs and certifying the system and suggests that they look for someone else.

After the septic repairman exits the scene, the listing agent gives the name of a septic repair company with whom she has had good experiences. The buyer agent calls the company and after a representative speaks to the SEO, the company agrees to take on the work. They repair the pipe, certify the system and the transaction settles. One month later the septic system fails.

Here is a variation of this scene. Everything is pretty much as described above, except that the buyer also attends the meeting where the SEO gives his requirements and where the first septic repair person expresses his uneasiness and unwillingness to become involved.

Okay Realtors, put your risk reduction hats on and tell me which scene you prefer. Of course you prefer the variation where the buyer attends the meeting. By attending the meeting, the buyer is privy to that information that can't be found in the permits, the inspection report or anywhere else. Concerns and reservations are frequently communicated nonverbally and they may prompt others to ask questions or engage in an investigation.

It is not necessarily so that had the buyer attended the meeting she would have, sensing the reluctance of the first repair person, walked away from the transaction. The problem is, that since the buyer did not attend, she now can make the arguments that the buyer agent failed to tell her all and that she failed to thoroughly investigate the matter in her stead. With the benefit of hindsight and the knowledge that the system has now failed, the first repair person may credibly claim that he was right not to have attempted to fix the system. His recollection may be that he was emphatic in explaining to the buyer agent and others why an attempt at repairing the system was a losing proposition.

Home inspections result in fairly detailed reports that usually include all of the inspector's reservations and worries. Other inspections are expected to give a pass or fail, though the

inspector, if questioned, may provide more nuanced reasons than will be available in a written report. Regardless of how detailed the report, a buyer's attendance at inspections and any follow-up discussions cannot hurt. From this example, you can see how it might also preclude litigation that frequently follows a post-settlement problem.

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