Lead Committee: Transactions and Regulatory
Level of Government Committee: Legislative

12/15/2013

HOME INSPECTOR LIABILITY LIMITATIONS

THE QUESTION

Should C.A.R. Sponsor legislation to expand the existing prohibition on a home inspector attempting to limit liability to the cost of the inspection to also prohibit any contractual attempt to cap the inspector's liability for his or her own fault?

ACTION REQUIRED? Optional

POSSIBLE POSITIONS

1. Sponsor legislation to prohibit liability limitations
2. Sponsor legislation to require any attempt to liquidate damages bear a reasonable relation to the potential harm that could be caused in the particular transaction.
3. Other
4. Take no action

DISCUSSION

Home inspectors have been the subject of multiple legislative attempts at regulation. Please see "Home Inspector Licensing" in the committee's materials for the October 2013 meeting. The paper set out additional history of legislation regarding home inspectors, and raised the question of whether C.A.R. should sponsor legislation to license inspectors. After discussion, the committee did NOT pass a motion for C.A.R. to sponsor licensing legislation, but invited future discussion of incremental improvements in inspector practices.

Home Inspectors do not have to have a state license. However, as the result of C.A.R.-Sponsored legislation in 1996 (later modified by legislation sponsored by the inspectors themselves), there are some general standards of practice

contained in Business and Professions Code Sections 7195 and following. Many of the provisions were enacted in response to complaints of abuses by inspectors' standard form contracts.

Business and Professions Code Section 7198 specifically prohibits an inspector from requiring a customer to waive the right to hold the inspector responsible for breach of the duty of care set out in the statute itself, and prohibits contract language that would limit the inspector's liability to the cost of the inspection. Some inspectors have reportedly responded by attempting to limit their damages to the cost of the contract plus a nominal sum (e.g. $100), without regard to the cost to the purchaser of the defect that was missed in the report.
How common is such a contractual cap on damages? Is the practice sufficiently egregious that a prohibition ought to be added to the existing professional standards for home inspectors?

Should C.A.R. sponsor follow-up legislation to refine the rule to so it also prohibits limiting liability to a refund plus a fixed fee?

A separate agreement alternative. In the alternative should C.A.R. sponsor legislation to require any attempt by the home inspection contract to pre-calculate (or liquidate) damages for negligence to follow a model similar to the Residential Purchase Agreement? In the RPA, the liquidated damages clause must be separately agreed to and initialed, and limited to amount that is set by the deposit. Should a liquidated damages provision for home inspection contract be required to be reasonably related to the potential loss? One possible measure might be the earnest money deposit put at risk by an undiscovered defect discovered after the contingencies were removed or after escrow closed. In such a model, the home inspector could not cap its liability at less than the amount of the earnest money deposit.

Should C.A.R. sponsor the legislation to expand the professional standards section for home inspectors?