

EXECUTING A WORKAROUND

# Pre-Offer Inspections Increasingly Popular as Buyers Waive Contingencies

**New Approach May Not Be Valuable or Legal**

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By [Jim Morrison](#) | Banker & Tradesman Staff | Mar 11, 2018



Anxious prospective homebuyers have found a workaround to waiving home inspection contingencies, asking inspectors to do condensed “pre-offer” inspections – which may not be legal, or of much value.

Pre-offer inspections do not meet the state’s [definition of a home inspection](#) and do not follow the state’s [standards of practice](#). Typically, they consist of a 30- to 45-minute walk-through a home with a licensed

home inspector who will verbally point out obvious, major defects for a reduced fee, with no contract and no written report.

Some home inspectors gladly do them. Some refuse because they think they're not legal or good for the profession. Others don't like to do them but are guilted or cajoled by real estate agents or former clients.

"I don't do them because I'm concerned about the legality of it," said Mike Atwell, owner of J. May Home Inspections and president of the New England Chapter of the American Society of Home Inspectors. "I'm also concerned for the profession. I don't want to see these mini-inspections become the new norm."

"It already has a name, the pre-offer inspection. It's becoming a real thing. I'm afraid agents will tell people to just get a pre-offer inspection, and that's not good for a buyer because they're not getting the protection of a real inspection. I work for homebuyers and I don't think homebuyers would be well-served by that."

Agents occasionally ask Atwell to do pre-offer inspections for their clients, but more often the request comes from prospective homebuyers.

"Often the homebuyer will refer to the agent, and say, 'The agent told me that you would do a pre-offer inspection.' It sounds like the buyer was coached," he said.

Other inspectors, like Lenny Licari, owner of B Sure Home Inspections, try to talk clients out of doing them and only rarely agree to do them when that fails.

"Some guys do them, a lot of guys don't want to," Licari said. "I've done a few of them, but I hate them. Nine months down the road something's going to happen. I do them for people I've done a few other inspections for and the offers weren't accepted. I get guilted into it. I always ask them to call me after they buy the house for a full inspection so they can really understand what they've bought, but only one has."

Another school of thought holds that pre-offer inspections are better than nothing and provide a real service to homebuyers. Peter Ottowitz, of Hawkeye Home Inspections, says he does them for buyers and they're

getting more common.

“I do it as a consultation,” Ottowitz said. “I think as long as there’s no reference to 266 CMR [the state law that governs home inspections], I personally think it’s OK, but I know some inspectors say they wouldn’t do it. It’s a service. I always recommend a full inspection but if you’re making that kind of investment you want a consultation, at a minimum.”

The number of homebuyers who call Walsh Home Inspections asking their inspectors to pretend to be a relative and accompany them to an open house and secretly do a pre-offer inspection is increasing, according to Director of Operations Lee Abdella. She said the company doesn’t do pre-offer inspections at all.

“We don’t do them because we don’t feel like we can do a thorough job in that situation,” Abdella said. “It’s disreputable and unprofessional to slink around an open house pretending to be someone you’re not. We don’t feel it would be doing a service to the buyer. Pre-offer inspections have the potential to give buyers a false sense of confidence. It’s not the same as a home inspection.”

### **The Lawyers Weigh In**

“I wouldn’t do them if I were an inspector,” said attorney Jonathan Braverman of Baker, Braverman & Barbadoro PC, who has represented dozens of home inspectors in lawsuits. “There is a risk to any inspector who does them that it will be considered a real so-called inspection and the liability could be there. There’s also the possibility the seller could bring action against the inspector asserting the inspector was off-base and wrongfully interfered with the contractual relationship between seller and buyer.”

Particularly problematic are the lack of a written contract describing the precise nature of the inspection and no report detailing the findings, he said.

“A verbal report is worth the paper it’s written on: nothing,” Braverman said. “Doing a verbal report is a bad idea. Buyer, seller and inspector will all

say they remember different things. That's how it works when things aren't in writing. I could easily write a contract that would cover these inspections."

The current market, which pressures buyers to overpay for houses and waive their contingencies, is unhealthy, according to attorney Jack Gould of Gould and Gould LLC. He hasn't had a client who hired an inspector for a pre-offer inspection yet, but he also thinks it's a bad practice.

"Either hire an inspector and let them do a proper analysis of the property or waive it," Gould said. "I wouldn't practice law that way and the inspectors we work with wouldn't do it. They want to do a good job for their clients. I wouldn't encourage that type of inspection. It isn't worth it."

About a quarter of buyers' agent Gary Dwyer's clients waived their inspection contingency. Of those, Dwyer estimates 75 percent of them eventually got a full inspection on the house anyway.

"I generally advise clients not to waive the home inspection," he said. "If they do, I always suggest they have one after the signing of the P&S for informational purposes only. At least then they'll know what they're buying."