



Ignorance is not a Good “Failure to Disclose” Defense

Recent revisions to the Inspection Contingency of the Agreement of Sale stating that “Buyer WILL present all Report(s) in their entirety to Seller” has raised questions such as: “What if my seller does not want a copy of the inspection reports?” and “Don’t I have an obligation to comply with my seller client’s wishes not to receive a copy of the report?”. Some agents have been heard to come right and say, “I don’t want the inspection report because I don’t want to (or want my seller to) have to disclose”.

Attorneys for the PAR Legal Hotline have advised that refusing to accept or review the inspection report will likely **not** protect agent or client from liability when a defect disclosed in that inspection report becomes the subject of a lawsuit. When the seller or agent testify that they didn’t know about the defect because they didn’t receive (or didn’t read) the report, the likely follow up question is “Why did you refuse to receive (or read) the inspection report?”. How does one answer that without (at best) raising suspicion?

As to the Agents complying with seller’s wishes not to receive the report? Anyone, client or agent, seeking absolution from disclosure should first seek the advice of legal counsel.