



MONTHLY

News and Views from the Connecticut Association of Home Inspectors

December 2004

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This Could Happen to You

By John Koch

When I was looking into this business as a career, I was told that you have to plan on being sued. My thinking on this was to get insurance and to provide the absolute best inspection that I could learn to provide in order to stay out of court. Well I was sued and the case ended this year. So, I thought it might help others if I tried to document what I learned during this process.

The inspection was done in February of 2002, in Ridgefield for a scumbag that I will kindly refer to as my client. The home is a small home built on the side of a steep hill, about 50 years old. There is a detached garage with an office above it, and the only accessible areas below the house were crawl spaces.

The inspection went fairly well and my report was delivered. Most of the recommendations in this report are common to many of the homes I inspect.

On June 5, 2002 I got a call from the client describing a few problems. I made an appointment to meet with her at the home the following day.

On June 6, 2002 I met with her at her home. The client described five problems to me.

1. During a very heavy rain, the septic system backed up into the house. Two plumbers and an engineer have been out to look at the problem and they were unable to determine why.
2. The siding at an interior corner has been opened up, exposing insect and rot damage. (The deck has been cut away and was in the process of being repaired.)
3. There was a soft spot on the living room ceiling.
4. The kitchen faucet handle came off.
5. During a heavy rain the skylight window leaked heavily on the second day in the home.

I explained to the client that most of these items were either addressed in my report or were inaccessible for inspection without destructive testing. I

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Meeting Dates

- Dec 11** CAHI Holiday Party
- Jan 15** CT Law, Rules & Regs Seminar with Attorney Kent Mawhinney
- Jan 26** TBA
- Feb 23** TBA

Holiday Inn
201 Washington Ave
North Haven
(203) 239-6700

President's Corner

Dwight Uffer

As we approach the Holiday Season, we all need to take time and give thanks to what we all seem to take for granted. We are all running around this time of the year to parties, shopping for gifts and not really reflecting on the season.

This is a time to give thanks for the health that you and your families have experienced over the past year, the security that our brave servicemen and women have provided to keep you and your families out of harm's way, the pleasures that you and your family have enjoyed from the successful business activities you have provided, etc.

We also must acknowledge at this time of the year that not all people in our communities are as comfortable or have the good health that we have enjoyed. These neighbors, friends or acquaintances may be dreading this time of the year as they cannot be happy as they once were, or that they can't foresee a better life down the road. I ask each and everyone of you to take the time over these next few weeks and give something back to the community that have enriched yourself and your families over the past year. This can be accomplished by donations, time or plain good will.

I also ask each and every CAHI member to remember our service people who are fighting for the freedoms we enjoy and for those of the peoples of the world. Send our guys and girls a package or donate to your local VFW or American Legion Post who will assure our service men and women are remembered at this time of the year.

I would like to take this opportunity to wish all of our members a very Happy and Healthy Holiday Season and look forward to seeing them all at our Holiday Party on December 11th, or at the January meeting.

REWARD

**\$25.00
FOR ANY ARTICLE
USED IN THE NEWSLETTER**

CAHI will pay members \$25.00 for any article that is submitted and used in the monthly newsletter.

The article must be e-mailed to Rich Kobylenski - rkoblenski023@earthlink.net
Articles should be a PDF or Word document.

Articles should pertain to our industry. We will review articles for content and reserve the right to edit, use and/or refuse them.

CAHI HOLIDAY PARTY

December 11th , 7:00 pm

Anyone who has not yet paid, please send your \$50 check to CAHI Treasurer Pete Petrino, 18 Garden Place, Derby, CT 06418 or call him with your credit card at (203) 734-6009 A.S.A.P.!!! Due to our obligations to the Yankee Silversmith, anyone who would like to attend must sign up and pay by Tuesday, December 7th.

Directions: Wilbur Cross Parkway, Exit 66. The Yankee Silversmith is just off the exit.

See you there.

Connecticut Association of Home Inspectors, Inc.
Presents

A Special Seminar for All CT Licensed Home Inspectors
"Connecticut Law, Rules & Regulations"



Date: Saturday, January 15, 2005
Time: 8:30 am to 11:30 am
Cost: *\$100.00 to all attendees
Place: **Holiday Inn**
201 Washington Ave.
North Haven, CT 06473

This is a required 3 hour course for license renewal every 2 years, and meets the minimum requirements as set forth by the Home Inspection Licensing Board.

*You must be on time and attend the full 3 hours. Doors close at 8:30 A.M.
Attendance certificates will be handed out at the conclusion of the seminar
Seating is limited and attendance is on a first come first serve basis.*

Directions:
From Route 91;
Exit # 12, Route 5

From the Parkway;
Exit # 63 to Route 22 East, at the junction of Route # 5 and # 22 take a left, the Holiday Inn is on the left, just past the entrance/exit of I-91 on Route #5

Send your registration and payment to:

Pete Petrino, CAHI Treasurer
18 Garden Place, Derby, CT 06418-1417

Name: _____
Company: _____
Address: _____
Town/City: _____ State: _____ Zip: _____
E-Mail Address: _____ Phone# _____
CT License # or Permit # _____
Payment (check one):
Check # _____ MC _____ Visa _____ Discover _____
Credit Card # _____ Expires _____

Continental breakfast will be provided

went on to explain that some of these items appear to be a disclosure concern from the previous owner. The client appeared to understand my explanation. Even stating that there was no way I could know the faucet handle would come off, and there was no way of knowing about the back-up of the septic system without lifting the carpet in the master bedroom closet. However, she indicated that she has been to an attorney and the attorney is looking into some options to help her recover the cost of the repairs she has had to make. She went on to say that the previous homeowner doesn't have any money, they put it into their new home, so she was probably going to have to sue me because I have insurance.

My First Lesson -

Whenever possible, bring someone along with you on call backs to witness statements such as these.

(Other home inspectors since then have advised me to bring a video camera and ask permission to record the damage... then just happen to leave the unit recording when having these discussions.)

My client drew first blood by having their attorney write a complaint to the State Department of Consumer Protection (DCP). The client's

attorney had hired an unlicensed home inspector to re-inspect the property. The DCP reviewed the complaint and asked me to respond. I did respond with a copy of my report and a short letter indicating that the inspection did report on the defects that were accessible, and a counter complaint citing the unlicensed inspector. The DCP did not produce any results for quite a while.

In September I was served with notice of a lawsuit (on Friday the 13th). I was being sued along with the listing agent and the previous owners. (Conspicuously missing was the septic contractor that actually did do an inspection of the septic system.) The lawsuit stated that I violated my "contract" and failed to adhere to the Connecticut Home Inspection Standards of Practice. It listed 13 instances of my non-compliance. Just for demonstration, I will list a few here along with what I reported in my original report.

1. Complaint - "Leak around the masonry chimney which showed in the attic. The leak caused cracking and chipped paint on the ceiling over the fireplace, water marks over the Master bathtub, and cracks and flaking paint in the adjacent closet. Pursuant to the

Connecticut Home Inspection Standards of Practice, Section 20-491-5 (a), the inspector was required to inspect the chimney area. If he had done so, the inspector would have reported that the chimney leaked and would have reported the damage visible due to the leak."

In the roof section of my report I reported "the roof flashings and the chimney flashings have been tarred which probably indicates past leakage." In the Attic section I reported "there was evidence of past leaking observed in the attic space. The stains were dry at the time of this inspection." In the Master Bathroom I reported "There were dry patches on the ceiling. Inquire with the owner as to the reason for these patches and what actions were taken to prevent the need for repatching."

2. Complaint - "The deck is not flashed properly where joined to the house. Also molding cleats against the house are attracting water and impeding proper circulation of air, which would help prevent rot. Pursuant to the Connecticut Home Inspection Standards of Practice, Section 20-491-4 (a), the inspector was required to inspect any deck to the premises. If the inspector had done so, the inspector would have reported that the deck attached to the premises was not flashed properly where joined at the house. Additionally, the inspector would have noticed that the

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molding cleats against the house were attracting water and impeding proper circulation of air, which would prevent further rot."

I reported: "We were unable to gain access to the underside of the deck. We were therefore, unable to totally evaluate the condition of its structural components. Where visible, the deck appears to have been home-built. It did not appear to have an adequate system of support including masonry footings. Masonry footings should extend below the frost line and project above the soil line. We recommend having a qualified contractor reinforce the deck as required."

3. Complaint - "The septic system is installed in such a way that when a substantial amount of water runs into the system, the water backs up into the sinks and bathtubs. Pursuant to the Connecticut Home Inspection Standards of Practice, Section 20-491-6 (a), the inspector was required to inspect the drain, waste and vent systems. If the inspector had done so, the inspector would have reported that it was improperly installed and could not sustain normal usage."

I reported: "this house is serviced by a private septic system. This septic system was not inspected by Total Home Inspection. A septic contractor did evaluate this system during your home inspection. We

recommend that you acquire from that septic contractor some type of assessment of the system, which includes the tank, free flow of lines, and general condition of the system."

Note: It was later indicated that the in-ground pipes for the rain leaders were connected to the septic system below the slab of part of the building. This was the most significant item that they were suing for. I think the other items were "thrown in" for effect.

I could bore you with all of the details of the complaint but I hope these examples give you an idea of the type of complaint this is. I reviewed each item in detail, extreme detail. I had addressed all of their complaints with the exception of one. I missed some rot over the front entrance door. I did report on rotted wood at five other locations. Although a miss, it was not a catastrophic miss.

Once the lawsuit was received, I immediately turned the entire package of paperwork over to my insurance carrier. From this point on I was mostly an observer. Once my insurance company was "activated", they called the shots. They provided a lawyer to interview me and provide a response to the lawsuit. This letter writing process happened over the course of 2003, the whole year!

In August of 2003, the

"Administrative Hearings Attorney" from the DCP sent me a copy of a letter that was sent to my client in response to her complaint. I want to frame this letter in my office, but I still have not. Although this is not the complete letter, I will provide my favorite part: "A review of the file reveals no clear inaccuracies, misrepresentations, or misconduct by the inspector regarding the content of the inspection. The inspection report makes specific note of several of the flaws you mention in your complaint, and throughout the report are indications of water damage, moisture, potential leaking, and other problems noted since the inspection. Although a small number of the flaws in your response were not specifically noted by the inspector, these flaws are not indicative of a negligent inspection. All observations of the inspector are well documented and explained, and the limitations of the report, along with other warnings concerning the report's substance are made clear. Therefore, it appears that Mr. Koch and Total Home Inspection provided a clear and complete inspection report in compliance with all statutes and regulations."

Much to my amazement, this did not stop the lawsuit. I was deposed in December, so were the listing agent and the previous homeowners. The

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client was going to be deposed in 2004. My attorney (provided by the insurance company) had promised to bring this to court and prove that I did nothing wrong. Well, in March of 2004, the insurance company reassigned the case to an in-house staff attorney and a new claims agent. This changed everything! Although they did not come out and say it, it was clear to me that their intent was to settle the case in order to prevent paying further attorney's fees.

In the pre-trial hearings, the client was *willing* to settle for \$75,000. The next day they were willing to settle for \$50,000. On April 1, 2004, more than two years after the inspection, my insurance company and the others made arrangements to settle the suit for a total of \$5,000. My portion would be \$1,500. But before agreeing to settle for \$5,000, I suggested that if they are willing to accept \$5,000, we should just go to court. The insurance company's attorney said that that was an option. However, because the insurance company had negotiated a settlement of \$5000, **any judgment above that amount would have to be paid by ME!** So, I agreed to the settlement.

So that's a quick summary of my first lawsuit, a lawsuit where I did the job correctly. My client knew I did my job, but sued me anyway. I did learn a few lessons. For example:

(1) My first reaction to this lawsuit

was to counter sue for a frivolous lawsuit. While this is possible, it is not practical and would be very expensive. I was not using an inspection contract at the time. A properly worded inspection contract should allow you to recover your costs from this type of lawsuit.

(2) There are things that I have learned to write into my reports that I did not write before. I hate filling the report with stupid disclaimers, but it's just as important to describe what you did not inspect, or could not inspect, as what you did inspect. For example, I used to write that the gutters needed to be cleaned and the consequences of not cleaning them (rot, ants, etc.). Now, I write that the gutters were full of leaves and could not be completely evaluated. They should be cleaned and inspected and then the consequences of not cleaning them. While this is fairly obvious to us, it is not obvious to the client.

(3) Having insurance is a good thing in our business, in fact I think it is necessary. But the insurance company is looking out for itself and the least expensive way to make the problem go away. They are not there to boost your business' standing in the market, your ego or your pride.

Recently an inspector that I have great respect for advised me to start taking pictures of defects,

inaccessible areas, inspection conditions, etc. He says his pictures have ended a few lawsuits very quickly. I think this is good advice and I plan to begin doing so.

Articles published in the CAHI Reporter are the sole opinion of the author. CAHI does not endorse or state a position for or against the content of said articles.

Tapes

Classic Hydronics Part 1, 2, 3 & 4
 Kids & Hazards
 Moisture Meters
 The Inspector "Heat Exchange Camera"
 Home Inspection
 Inspecting a House Before You Buy
 Avoiding Roofing Disasters
 Code Check
 Home Inspection Industry Problems
 The Home Inspection Story
 Little Giant Ladder System
 Air Screen
 The Inspector Infrared Camera
 Electrical Transformer Harmonic Currents
 Hot Water Heater Scalding Video
 Steam Heat & Hot Water Boilers
 Masonite Hardboard Siding Application
 Masonite Hardboard Siding Maintenance
 Tips
 GEO Exchange Systems
 Nu-Wal Systems
 Report Writing Seminar
 Heating Seminar
 Plumbing Seminar
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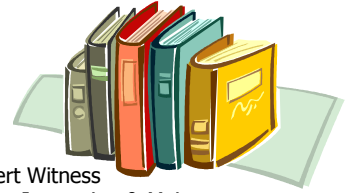


CAHI Library

**Any members who have books or tapes to donate
 contact Bob Dattilo at ctinspect@yahoo.com**

Books

Timber Frames Post & Beam Construction
 100 Ways to Offer Your Service
 Computer Users Dictionary
 Is Self Employment for You?
 The Business of Home Inspection
 Inspectors Resource Guide ITA
 EPA - Healthy Buildings, Healthy People
 HUD - Lead Paint Safety
 Mold, Moisture and Your Home
 IAQ Tools for Schools
 Home Come—Hydronic Heating
 Questions
 Means of Egress
 Mold Remediation Commercial Buildings
 EPA - Asbestos & Vermiculite
 Mold In the Home Fact Sheet
 EAA Guide to Indoor Air Quality
 The Termite Report
 CT Contractors' Reference Manual
 Legal Issues for Home Inspectors



Expert Witness
 Home Inspection & Maintenance
 Articles
 Keep It's Worth, Common Building
 Problems
 What It's Worth, Home Inspections
 Home Inspection Bible
 How to Successfully Operate a Home
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 Structural Exterior Wood Walls
 Structural Masonry Arches
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 Structural Exterior Framing
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 Chimneys
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 Electrical Hand Book

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The Licensing Board meetings are held at 9:30 am,
 Department of Consumer Protection, Room 117, 165
 Capitol Avenue, Hartford.

The public is always welcome.

E-mail Bernie Caliendo for the latest meeting schedule at
bsurehomeinspect@juno.com

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