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LEGAL HOTLINE Q & A OF THE WEEK

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QUESTION: If a buyer uses an inspector who is not licensed and thus violates the terms of Form 35, paragraph 1, would that constitute a waiver of buyer's inspection contingency?

ANSWER: Arguably, yes. Form 35 is explicitly clear that buyer must either inspect the property personally or use an inspector who is licensed in conformity with RCW 18.280. If buyer uses an inspector in violation of RCW 18.280, buyer would breach the inspection contingency. If buyer breaches the inspection contingency, it is likely that a court would conclude that buyer also loses the benefits of the inspection contingency. This consequence is not spelled out directly by the form language but it is reasonable to conclude that a court would not allow a buyer the benefits of a contingency if buyer violates the terms of the contingency.

If broker has a buyer or seller faced with this situation, broker should advise his client to seek legal counsel for assistance in determining how a court would rule under the specific facts of the client's situation.

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