Will the New "Right to Inspection" Laws Lead to Meaningful Change?

by Isaac Peck, Publisher

It's been a long time coming, but real estate in the United States may finally be headed for a day of reckoning on the question of inspection waivers.

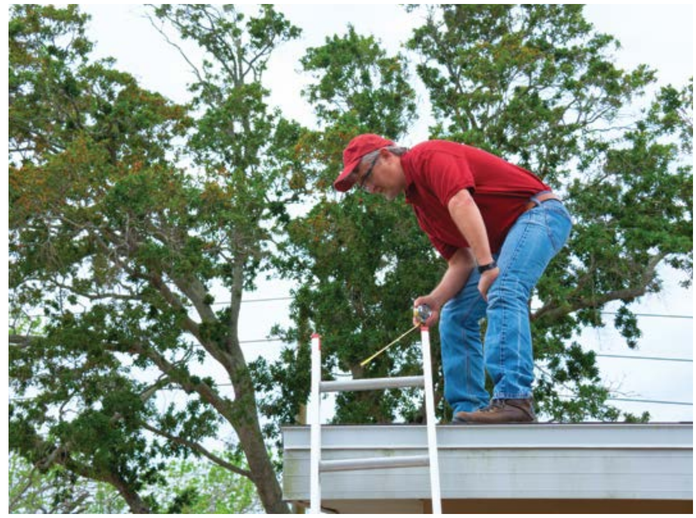
As we at *Working RE Home Inspector* reported last year, the National Association of Home Builders (NAHB) says that between 19 percent and 30 percent of buyers waived their home inspection contingencies, which translated to approximately $700 million in lost home inspection revenue nationally, an annual revenue loss of $30,000 per inspection firm, with smaller operators potentially losing a third or more of their (potential) income.

Nearly 25 percent of buyers waived inspection in 2024. And as you talk to home inspectors, you learn that this isn't just about lost business, it's about an underlying concern for the safety and financial security of homebuyers.

In response to this phenomenon, which continues to be "debated" on Realtor blogs and consumer news pages (many Realtors know waivers are a bad idea but can't seem to resist them), several states are now considering—and one state has passed—laws designed to prohibit the pressure Realtors are placing on homebuyers to waive inspections. The intent of these laws is to take inspection waivers off the table as a bargaining chip, returning the home buying process to what had been standard practice for so long—when the inspection was an normal part of the transaction.

These laws would guarantee that homebuyers have the right to inspections and enough time to get one and evaluate it prior to closing. Such laws will be good for the inspection business too, but will they be good for the real estate market in general? For consumers?

While real estate agents were among the original advocates for home inspector licensing (and insurance requirements!), one interesting question is whether Realtors truly want to get on board with accessible home inspections. An astute reader can observe this question arise across real estate agent blog posts or consumer advice columns which frequently ask: "should you waive your home inspection," and inevitably answer (often several paragraphs in) "well…it's probably not a good idea." Realtors get paid as a percentage of the sale price which many recognize as a built-in conflict of interest rubbing against Realtor fiduciary duty to their clients. Some Realtors are inspection advocates because they are truly concerned for their client's welfare and they recognize the liability cover it gives them and the seller. But it's hard for many to support



inspections when they can result in buyers backing out of a sale or in negotiations that reduce sale price and/or delay closing (payday). You can feel the tension in Realtors' attitudes about inspections, and we're likely to see which side they ultimately land on in the coming years.

Massachusetts: New Law Passed; Implementation Delayed

After Governor Maura Healey signed the *Massachusetts Act Protecting Consumer Rights in Purchasing Safe and Habitable Homes* last year, Gloucester, Massachusetts, home inspector Jameson Malgeri was surprised when he received calls from Massachusetts Realtors asking if they needed to follow the law. Why, he thought, wouldn't they want to follow it?

Sponsored by the Joint Committee on Consumer Protection and Professional Licensure, the bill was filed in October 2023. Governor Healey signed the bill into law on August 6, 2024, and regulations were supposed to be finalized by December, but the deadline was delayed to July 15, 2025, to allow time for the agency to write the regulations, gather public and industry feedback, and prepare for the changes.

Malgeri, owner of Another Level Home Inspection, explained that the 2024 legislative session passed over 40 new housing regulations, contributing to the confusion and delay in implementing the Right to Inspection bill. Some home inspectors, including Malgeri, support the law. It turns out that the Realtors who called Malgeri were initially confused about the law's requirements. "Some people were confused and thought home inspections would be mandated. Many real estate agents just didn't understand what was changing," Malgeri said.

Adding to that confusion has been pushback by some Realtor organizations (we'll talk about that a lot more when we discuss New York). Malgeri noted that the Massachusetts Association of Realtors (MAR) encouraged members to call for a veto before the bill passed. However, Malgeri believes on-the-ground opposition from Realtors is minimal. "I spoke to a lot of Realtors locally," he said. "The bulk of them have been in support of the law."

page 22 ⏩

◀◀ page 20

Another factor to consider is the impact of "abbreviated inspections" or "pre-offer inspections." "I've noticed some home inspectors are no longer offering pre-offer inspections, which is a really good thing. There were two different types happening: a walk-and-talk inspection and/or an abbreviated inspection. I wasn't doing either of those, but some inspectors were," Malgeri explains.

As a result of these pre-offer inspections, inspectors are sometimes asked to complete "finish in an hour" inspections, which Malgeri adamantly refuses—and advises others to do the same. "You could argue that those are already, in some ways, in violation of the law," he said. "I need to be at a single-family home for three hours to really do a good inspection and comply with my state standards," he emphasizes.

There are also instances where "three to four home inspectors are doing pre-offer inspections on the same house." Malgeri believes this is likely to change and that the new law will stop favoring inspectors willing to conduct rapid walk-and-talk inspections—a practice he views as detrimental to the profession.

The real estate and home inspection markets have faced tough times lately in Massachusetts. "In my area, I see very little inventory," Malgeri notes. "I've kept fairly busy with inspections, but I hear from other inspectors that they are pretty slow. I also hear from Realtors that they are very slow. I got a call the other day, and they said, 'You haven't heard from me for a while, but this is my first transaction in the last three to four months because things have been so slow.'"

Perhaps that's why some Realtors have integrated pre-sale inspections into their practices. The new law is likely to disrupt that practice, as Realtors and inspectors adjust to the new reality if Right To Home Inspection (RTHI) regulations are implemented and more buyers demand full inspections. "There are still plenty of people waiving inspections," Malgeri reports, "...But at least under the new law, those waivers have a greater chance of being informed and thought through."

"Waiving inspections is clearly not good for anyone," Malgeri argues. "I'm hoping that the law's passage and the increased awareness and critical thinking about this issue will positively impact consumers. At least everyone is aware of it, everyone is interested in it, and we'll see what happens moving forward."

The law's statutory language has two main components. First, sellers and their agents cannot condition the acceptance of an offer on the buyer waiving their right to inspect. This means sellers cannot demand or pressure buyers to give up their ability to inspect the home to get their offer accepted. Second, sellers and their agents cannot, with certain exceptions, accept an offer where the buyer indicates they intend to waive their right to inspection. Some auction properties and inter-family sales are excluded from the law.

As the *La Macchia Realty Blog* explains: "Taken together, these two components are clearly intended to give more negotiating power to buyers … Sellers will not be able to coerce buyers into waiving a home inspection and will not be able to accept offers where the buyer preemptively waives their ability to inspect. Nothing in the statute would create a mandate for buyers to conduct an inspection and nothing addresses how a buyer and seller can negotiate a contingency for the buyer if they are unsatisfied with the results of an inspection. Yet, at this point, there are many unanswered questions about how the law will work in practice and those questions will not be answered fully until the regulations are issued."

> *"Lack of a right to home inspection is most damaging to the buyers with limited resources who can least afford to inherit the problems. They are also at an extreme and unfair disadvantage in getting a house in competition with wealthy buyers who can afford the risk of no inspection."*

California, New York, and Illinois have also introduced legislation dealing with a buyer's right to a home inspection in the home buying process. These laws aim to ensure buyers are fully aware of the property's condition, helping them avoid safety and health issues and costly repairs after closing. The trend towards stronger homebuyer protections is growing as more states recognize the importance of safeguarding consumers in the real estate market. Since the practice of encouraging buyers to waive inspections continues to prevail, the movement towards RTHI regulations seems to be on an inevitable collision course with that practice.

New York: An Effort to Build Momentum

In the state of New York, a RTHI bill was introduced again this year. *Working RE Home Inspector* talked to Henrey Jetty, President of the New York State Association of Home Inspectors, and Larry Ames, Education Director at the same organization, about the bill's prospects in New York. NYSAHI President Jetty recently told the media: "The point is to make sure the client, the buyer knows exactly what they're buying."

Jetty is upfront about the source of the problem: Realtors who are "telling all their clients, if you ask for a home inspection, the seller will not accept your offer." It's getting to the point where it's normal business to waive the home inspection. There have been apparent misrepresentations. Ames points to social media posts where buyers insisted on home inspection and managed to get one and get a house even when they were told there was no chance of that.

While cynics might point out that reducing the overall number of waivers is good for the inspector industry's bottom line, that argument ignores larger questions about equity (the moral kind, not the financial kind) and inspectors' genuine concern for the safety and welfare of their homebuyer clients. Yes, widespread waiving of inspections in New York has hammered the inspection profession; Jetty reported that in 2024 there were 264 fewer licensed home inspectors in the state than two years earlier, nearly a 10 percent decrease. “Business is dropping off because of waivers,” he said.

Realtors encouraging buyer clients to waive inspections seem to know they are on shaky ground. In fact, a National Association of Realtors (NAR) article, “Waiving the Home Inspection: Don’t Blame Me!”, published on August 25, 2022 advises “You don’t want your clients to come back later and blame you for not warning them if they’re suddenly confronting unexpected and expensive home repairs.” It encourages Realtors to get their clients to sign releases so that they are not held responsible for buyer’s waivers. Encouraging buyers to waive inspections in any manner is pushing ethical boundaries. In some cases, Realtors may go over the line.

Ames says inspectors all know of situations where buyers were convinced they had no choice and have been left holding the bag and substantially damaged by waiving home inspection. But, it is very hard to get them to serve as the examples needed to press legislation. “People are physically, mentally, financially and emotionally exhausted by the process of home buying, so it’s hard to stand up in public and say ‘I was taken in’ by an unwise inspection waiver. Professionals describe inspecting houses after closing and seeing serious needs for upgrades, repair and wiring and plumbing issues that hurt low-income homeowners the most. “Not having a home inspection is not as big a risk for a huge corporation with deep pockets,” Ames suggests. “Lack of a right to home inspection is most damaging to the buyers with limited resources who can least afford to inherit the problems. They are also at an extreme and unfair disadvantage in getting a house in competition with wealthy buyers who can afford the risk of no inspection.”

But if home inspectors in New York want to go the way of Massachusetts, they’re going to need to do more work and build more momentum. The first version of the law had only a single sponsor. And there’s been a lot of pushback from the New York State Association of Realtors (NYSAR). In a March 2024 memorandum, NYSAR outlined several key arguments against the bill:

1. That the decision to obtain a home inspection should be a flexible option between the buyer and seller;
2. That lending institutions already have their own requirements for home inspections making additional government regulation unnecessary;
3. That the law could delay financial transactions; and
4. That the proposed legislation would massively increase demand for, and thus the cost of, inspections.

Proponents of the legislation, led by Ames and Jetty, emphasize the importance of home inspections. NYSAHI published a point-by-point rebuttal challenging each of NYSAR’s arguments, arguing that buyer agents acting as impromptu home inspectors during showings, or even the simple act of pressuring buyers, are conflicts of interest, obstruct buyer due diligence, and hurt low-and-middle income buyers the most. Most prominently, they pointed out: “NYSAR is affiliated with the National Association of Realtors (NAR). NYSAR’s public position is reflected by NAR’s online statement: ‘Home inspections are a critical part of the home buying and selling process. Failure to obtain a home inspection could potentially cost you a great deal of money and hassles in the long run’. … A New York Right To Home Inspection bill is intended to ensure that every homebuyer has the opportunity and time to get a New York State regulated Home Inspection so that they can undertake the essential due diligence that the Realtor associations have repeatedly identified as a ‘critical’ step in the home buying process. We find NYSAR’s opposition to a RTHI bill duplicitous.”

Ames and Jetty say it’s been especially painful to see lower- and middle-income families struggle with the weight of serious defects in a home when they were pressured into waiving the inspection. “This problem is becoming very common, and I’ve seen firsthand how it can be a real nightmare for first-time homebuyers. For instance, a young couple that is just starting a family, might’ve offered 20 or 30 percent over asking price, and really stretched themselves financially to finally buy a home, only to discover significant defects after they move in. It can be very hard,” Ames says.

Further, it is becoming quite common for the home insurance company to get involved after closing. “We’ve seen cases where the new homebuyers move in and their insurance company sends an inspector out to get a look at the house, and they almost immediately send the new owners a letter saying ‘You need a new roof, a new electrical service, and a door on the side of your house, you have 60 days to complete this or we’ll have to withdraw your insurance.’ These folks may not have any money to repair or make changes to the house. When that happens you can’t get insurance anywhere else. Without insurance, the mortgage company can call their loan. They are then at risk of losing their house, losing their investment, destroying their credit and becoming homeless,” reports Ames. “This condition creates huge distress that can affect health, destroy marriages, place demand on social services and result in ‘zombie homes’ that are a burden on their communities.”

Movement Growing Across the Country

The debate over prohibiting the waiver of home inspections in real estate transactions encapsulates the tension between consumer protection and market flexibility. On one hand, opponents like NYSAR argue that such legislation would introduce unnecessary regulation, potentially harming middle-class homebuyers and increasing costs. They emphasize the importance of maintaining flexibility and autonomy in the real estate market.

On the other hand, proponents like NYSAHI advocate for RTHI to ensure the opportunity for professional inspection support so that buyers can meet their obligation for due diligence that is expected in a “buyer beware” business environment.

page 24 ⏩

page 23

Home inspection is a profession requiring very broad knowledge. Very few buyers have the training and experience to reasonably evaluate a home. NYSAHI highlights the conflict of interest and ethical concerns associated with related growing trends, such as buyer agents acting as home inspectors and the practice of encouraging buyers to depend on inspections hired by the seller. They stress the need to level the playing field between seller and buyer in a competitive market by resetting purchase offer contingencies back to what had been normal and accepted.

The statistics provided by *Working RE Home Inspector* underscore the financial impact of waived inspections on home inspectors and the broader implications for the profession. As the debate continues, it is essential to balance the need for consumer protection with the dynamics of the real estate market, ensuring that homebuyers have the information and opportunities necessary to make informed decisions without being unduly burdened by regulatory constraints.

NYSAR may be doubling down against the "Right to Home Inspection" legislation in New York, but enthusiasm for such laws appears to be growing all over the country. "One of the things we're working on is trying to develop more of a regional or even national movement for Right to Home Inspection," Ames said, adding "we've invited the state associations in Connecticut to meet with us via Zoom to share information.

"We're asking for every homebuyer to have the unassailable right and opportunity to get professional support for due diligence from a home inspector and the time to do that, so they know what they're buying," Ames concludes.

They're starting to introduce things to their legislature. We've also talked to home inspectors in Illinois, Wisconsin, and New Jersey. We think that this is a very common-sense consumer issue that can overcome wealthy Realtor association pressure, simply because it is clearly the right thing to do."

Maybe the reason many Realtors are on board with inspectors on a *right* to inspection, and on protection from coercion into accepting waivers, is that it's a fair middle ground.

"We are not trying to make a home inspection mandatory. That's not what we're asking for. That's not something we want. We're asking for every homebuyer to have the unassailable right and opportunity to get professional support for due diligence from a home inspector and the time to do that, so they know what they're buying," Ames concludes. **WRE**