

# Is It a Defect?

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## What is a defect?

The question of what constitutes a defect is one that is pondered at the end of almost all home inspections.

Webster's Dictionary defines "defect" as an imperfection that impairs worth or utility, a lacking of something necessary for completeness, adequacy, or perfection. In real estate, this definition is elaborated and expanded to include a condition that may impair the health or safety of building occupants.

From a home inspector's viewpoint, a "defect" is defined in the standards of practice established by home inspection associations or, preeminently, by administrative rules relative to the regulation of home inspectors as set forth by state law where applicable.

## What is a "significant" defect?

Much confusion lies within the language used to describe a defect in the offer-to-purchase contract. The confusion typically hinges upon the use of the word "significant."

The word "significant" is an ambiguous term and can mean a lot of different things to sellers, buyers, agents, and inspectors depending on how one perceives a reported condition on a property.

## Examples:

What if an electrical outlet was missing a plastic plate cover? One could say it will only cost 15 cents and take 10 seconds to replace. On the other hand, a homebuyer's child could stick a finger in the junction box and be electrocuted to death. While the plate cover may seem insignificant on the surface, who wants to stand up and say it is not a significant defect?

How about a missing downspout extension? One could say it only costs \$5.00 to replace. On the other hand, water could get into the finished basement, grow mold, and the family could develop asthma problems. Who wants to be the one to imply to a homebuyer that the downspout extension is not a significant defect?

How about a chimney where a home inspector discovered some cracks in the mortar? One could say that a \$4.00 tube of caulk will easily solve the chimney problem and could be correct in saying so. However, after the buyer takes possession, a handyman might tell the buyer it will cost \$400.00 to tuck-point the joints, or a mason might tell the buyer it will cost \$4,000.00 to rebuild the chimney. Who wants to be the one to have told the homebuyer that the cracks were not a significant defect after the buyer received the \$4,000.00 estimate from a contractor?

These are just a few examples of conditions that are reported by home inspectors that could be deemed minor or significantly major depending upon one's outlook.

## Who decides what a defect is?

Now that we know what a defect supposedly is, the question remains as to who gets to decide what a defect is: the agent, the inspector, or the homebuyer?

## The real estate agent cannot decide.

Sometimes real estate agents attempt to categorize defects, explaining to buyers that one defect can be negotiated for, while the next one cannot.

Some buyers have even been told that, unless the home inspector has used the word "defect" in the report when describing conditions of a property, the buyer is not entitled to raise a condition as a concern and no action is warranted by the seller. Of course this is not true at all.

As an example, if a furnace did not function and the inspector clearly stated that condition in the written report, the buyer still has every right to ask for a furnace that is functional provided the malfunction was not previously disclosed to the buyer. This is true whether or not the word defect is used to describe the furnace malfunction.

In short, it is risky for real estate agents to pretend to know what constitutes a significant defect, and attempting to do this has the potential of bringing agents into litigation for providing consultation in areas in which they have no expertise.

### **The home inspector cannot decide.**

Commonly home inspectors are asked to qualify what constitutes a defect and what does not. While many home inspectors do their best to lend some logical perspective to homebuyers regarding property conditions, they are not obligated to separate discovered conditions into rated categories of significance.

Home inspectors are obligated only to report the condition of a property, not to determine for the buyer or for the agents involved what the buyer should or should not be concerned about. Logic would of course imply that all substandard conditions reported by the inspector should be of concern.

If home inspectors were required to have the absolute say as to what was or was not a defect, they would, by default, have to say that every sub-standard condition in their reports is a defect. If they did not, they could later be sued by homebuyers over every little condition that was not specifically called a "defect" in the written report. The only protective option for inspectors would be to write the word "DEFECT" at every substandard condition noted in an inspection report. One could only imagine what type of impression that report would convey to a prospective homebuyer.

Furthermore, home inspectors do not purport to be experts in all facets pertaining to a building. Many of the conditions discovered during a general home inspection may require further evaluation by an outside expert in order to determine the significance of a reported condition.

If then, home inspectors are required by law, as well as, hired by homebuyers, to report on the condition of a property, then any substandard condition in an inspector's report could constitute a potential defect for a buyer.

### **The homebuyer alone makes the decisions.**

Being that there is no emphatic language used to describe a defect, technically, if a homebuyer wanted to, they could contest everything in the inspector's report that is not considered 100% satisfactory to the buyer. Of course everyone hopes that all parties will be reasonable in their expectations, and most people are.

While there are extreme homebuyers who expect every discovered condition to be repaired, there are also extreme buyers who will accept a dilapidated house with no objection at all. On the norm, most homebuyers are reasonable and want only to raise for discussion those conditions that are significant to them personally.

### **Example:**

There are a few minor electrical concerns that need repair and the homebuyer is deathly afraid of electricity. The buyer then insists that the seller have a licensed professional correct those concerns, even though they may only cost less than \$100.00 to correct.

On the same house, the yard has inappropriate negative grading bringing water to the foundation. While the buyer is entitled to get an estimate for several thousand dollars to correct the problem and raise it as an issue with the seller, he happily accepts this more significant condition because he is willing to simply purchase some top soil and spread it around the foundation just for the exercise.

These are the types of decisions that must be made solely by the buyer. Home inspectors, sellers, and real estate agents do not have the right to determine which defects are substantial enough to concern the buyer.

### **Simple Conclusions**

First, let's understand that a home inspector's responsibility is to state conditions of a property, not to rate their significance or to pick and choose which substandard condition has earned the right to be called a defect. Secondly, let's remember that the homebuyer is the party spending all the money and commensurate with that is the right to choose which substandard conditions are acceptable, which are objectionable, and/or which will require an amendment for possible negotiation with a seller. Ultimately, it is the homebuyer that determines which conditions meet the definition of a "significant" defect.