

## *The Inspection Contingency in a Purchase & Sale Contract: Is It a ‘Get Out of Jail Free’ Card? BERXI*

*By Jeanne Grove, partner and co-chair of the KD Real Estate practice group  
Published April 26, 2020*

*We asked a California-based real estate attorney to help clear up some misconceptions around the use of the inspection contingency to break P&S contracts.*

*The following is based on a real case in California. Certain details have been changed for privacy.*

*Have you ever had to use the inspection contingency to get out of a contract? Or have you had one used against you? Whether (and how) a buyer can use the inspection contingency in a purchase and sale contract remains one of the most commonly misunderstood principles in real estate transactions.*

*Unfortunately, if agents don’t understand this principle, it can have serious consequences for both buyers and sellers (i.e., lost deposits, legal fees, and potentially bad branding). I say this as a lawyer who specializes in real estate litigation. I frequently receive questions about inspection contingency disputes from agents, and I believe that litigation in this area is trending upward as the market cools down.*

*Generally, when a buyer and seller enter into a contract to purchase or sell property, they negotiate contingencies in the contract (or agree that there shall be no contingencies in the contract). As a refresher, a contingency is a precondition that, if not satisfied, allows one party to cancel the deal. If the precondition isn’t met, or the party benefiting from the precondition doesn’t waive it, then it provides a reason for the transaction not to go forward.*

*There are different kinds of contingencies that the buyer and seller may negotiate, such as an appraisal contingency, a loan contingency, a contingency that buyers must sell their home first before they can complete the purchase, or an inspection contingency. With respect to an inspection contingency, the buyer has the right to investigate the condition of the property to identify any defects or conditions that were not disclosed prior to the ratification of the contract. Note that I said, “that were not disclosed,” as you’ll see in the example below.*