



**2018 STATE BY STATE GUIDE:  
ENFORCEABILITY OF LIMITED LIABILITY CLAUSES IN  
HOME INSPECTOR PRE-INSPECTION CONTRACTS**

<b>STATE</b>	<b>LIMITATION CLAUSES</b>	<b>NOTES</b>
Alabama	<b>YES.</b> Alabama Supreme Court held that limitation of liability provisions are valid and enforceable even if an entire building destroyed and plaintiff only entitled to recovery of installation fee. <i>Saia Food Distributors &amp; Club, Inc. v. SecurityLink from Ameritech, Inc.</i> , 902 So. 2d 46 (Ala. 2004) <i>See also, Fox Alarm Company, Inc. v. Claude Wadsworth</i> , 913 So.2d 1070 (Ala., 2005); Three lower courts have upheld limitation of damage provisions for home inspectors. <i>See, Scott McGlon &amp; Shannon McGlon v. Hal F. Leary Home Inspections, LLC, et al.</i> , CV-2007-1557; <i>Fred and Tena Harris v. Homeinfo, LLC</i> , CV-2009-900183; & <i>Eric &amp; Jennifer Bell v. Guardian Pest Services, et al</i> CV-2007-900838.	
Alaska	<b>NO.</b> AK § 08.18.085(d) <i>Cannot limit liability as contrary to public policy.</i> <u>However:</u> 1year statute of limitations to bring claim against home inspector, AK § 08.18.085(a).	
Arizona	<b>YES.</b> <i>1800 Octotillo, LLC v. WLB Group Inc.</i> , 196 P.3d 222 (Ariz. 2008). [Clause in contract limiting liability to total fees paid is enforceable and does not violate public policy or state constitution.]	
Arkansas	<b>MOST LIKELY.</b> <i>Jordan v. Diamond Equipment &amp; Supply Co.</i> , 207 S.W.3d 525 (Ark., 2005). While limitation of liability clauses have not been applied to home inspectors, Arkansas Supreme Court have generally allowed limitation of liability clauses reviewing the totality of the circumstances surrounding the negotiation and execution of the contract and considering whether there is a gross inequality of bargaining power between the parties and whether the aggrieved party was made aware of and comprehended the provision.	
California	<b>NO.</b> <i>West's Ann. Cal. Bus. &amp; Prof. Code § 7198; Moreno v. Sanchez</i> , 131 Cal. Rptr. 2d 684 (Cal. Ct. App. 2003) [clause shortening the statute of limitations for making claim was considered unenforceable].	
Colorado	<b>PROBABLY YES.</b> <i>Constable v. Northglenn, LLC</i> , 248 P.3d 714 (Colo. 2011) (permitting limitation to the extent it is a clear and unequivocal expression of intent).	
Connecticut	<b>POSSIBLY.</b> <i>Mattegat v. Klopfenstein</i> , 717 A.2d 276, 280 (Conn. App. Ct. 1998) [limitation clause held unenforceable as a liquidated damages provision and as a limitation clause]. But note that this same court also stated that "such provisions are upheld under appropriate conditions, such as assent of both parties" – such as a carefully crafted agreement with a space for customer to initial next	

	to the limitation of damages clause.	
Delaware	<b>YES.</b> <i>J.A. Jones Construction Co. v. City of Dover</i> , 372 A.2d 540 (Del. Sup. Ct. 1977); 6 <i>Del. C. § 2704</i> [by implication]. <i>D'Aguiar v. Heisler</i> , 2011 WL 6951847 (Del. Com. Pl. Dec. 15, 2011) (unpublished) [limitation clause in home inspector contract analyzed as liquidated damages clause and considered enforceable because damages were uncertain and the amount agreed upon was reasonable]. However, note that a contract provision waiving prospective negligence "must be crystal clear and unequivocal" to insulate a party from liability for possible future negligence. <sup>25</sup> Similarly, "if one party is to be held to release a claim for fraud in the execution of the release itself, the release should include a specific statement of exculpatory language referencing the fraud." <i>Riverbend Cmty., LLC v. Green Stone Eng'g., LLC</i> , 55 A.3d 330, 2012 Del. LEXIS 547, 2012 WL 4950759	
Florida	<b>POSSIBLY</b> - <i>Orkin Exterminating Co., Inc. v. Petsch</i> , 872 So.2d 259 (Fla. Ct. App., 2004) (note case dealt with an arbitration provision not a limitation of liability clause). However, there is also <i>Witt v. La Gorce Country Club, Inc.</i> , 35 So. 3d 1033 (Fla. 3 <sup>rd</sup> Dist. Ct. App. 2010) which rendered it unenforceable. If the home inspector is a professional engineer, it is far more likely that the clause will be unenforceable. In <i>Moransais v. Heathman</i> , 744 So. 2d 973 (1999), the Florida Supreme Court held that an engineering company that performed a home inspection could be sued for professional malpractice notwithstanding a contract existed between the homeowner and the engineering company limiting the firm's liability to \$50,000.	
Georgia	<b>PROBABLY</b> - <i>Redding v. Tanner</i> , 231 Ga. App. 250, 251, 498 S.E.2d 156, 157 (1998). Or <i>Monitronics Int'l, Inc. v. Veasley</i> , 323 Ga. App. 126, 746 S.E.2d 793, (2013 Ga. App Ct.) (Limited liability are "not void as against public policy unless they relieve liability for acts of gross negligence or willful or wanton conduct." They must also "be explicit, prominent, clear and unambiguous.")	
Hawaii	<b>PROBABLY.</b> <i>Fujimoto v. Au</i> , 19 P.3d 699 (Hawaii, 1997) [limitation clauses are strictly construed, but upheld, unless (1) violates statute, (2) contrary to <i>substantial</i> public interest, or (3) unconscionable]. Must be freely bargained and not unconscionable.	
Idaho	<b>YES</b> – The Idaho appellate courts do not appear to have addressed the use of exculpatory clauses by home inspectors. However, the Idaho Supreme Court has held in various cases that "[a] contracting party may absolve himself from certain duties and liabilities under the contract, subject to certain limitations." <i>Jesse v. Lindsley</i> , 233 P.3d 1, 6 (Idaho 2008). See also <i>Lee v. Sun Valley Co.</i> , 695 P.2d 361, 363 (Idaho 1984) ("We have previously held that parties to a transaction may agree by contract to limit liability for negligence or contractually waive rights and remedies, subject to certain	

	<p>exceptions.”). The general rule sustaining exculpatory clauses is subject to two exceptions: “Agreements exempting a party from liability for negligence will be upheld unless the party owes to the other party a public duty created by statute or the other party is at an obvious disadvantage in bargaining power.” <i>Morrison v. Nw. Nazarene Univ.</i>, 273 P.3d 1253, 1254 (Idaho 2012). <i>See also Jesse</i>, 233 P.3d at 6 (quoting <i>Lee</i>, 695 P.2d at 363) (describing the exceptions to exculpatory clauses as “(1) one party is at an obvious disadvantage in bargaining power; or (2) a public duty is involved (public utility companies, common carriers)”); <i>Wattenbarger v. A.G. Edwards &amp; Sons, Inc.</i>, 246 P.3d 961, 974 (Idaho 2010) (“We found unconscionability sufficient to invalidate a contractual limitation of liability....”).</p>	
Illinois	<p><b>YES - LIMITED</b> <i>Chicago Steel Rule &amp; Die Fabricators Co. v. ADT Security Systems, Inc.</i>, 763 N.E.2d 389 (Ill. App. Ct., 2002); <i>Zerjal v. Daech &amp; Bauer Constr., Inc.</i>, 405 Ill. App. 3d 907 (Ill., 2010) [Illinois Home Inspector License Act does not change the enforceability of limitation clauses]. To avoid unconscionability argument, the provision should be ‘clear and explicit.’ <i>See Zerjal</i>, 405 Ill. App. 3d at 913-914. <b>BUT</b>, <i>Zerjal</i> was criticized by the Virginia Supreme Court, which indicated limitation provisions cannot be over expansive: The “Unconditional Release and Limitation of Liability” set forth in parties' home inspection agreement was invalid and unenforceable because it was contrary to public policy of the <i>State Finch v. Inspectech, LLC</i>, 229 W. Va. 147, 727 S.E.2d 823 (2012).</p>	
Indiana	<p><b>YES – LIMITED</b> Exculpatory clauses are presumed to be freely bargained for and are not prohibited by public policy. <i>Crowe v. Boofter</i>, 790 N.E.2d 608, 611 (Ind. Ct. App. 2003). However, there are exceptions for contracts which are unconscionable, which affect public interest, or where the parties have unequal bargaining power. <i>Id.</i> A standardized contract is not automatically unenforceable because of unequal bargaining power between the parties. “There must also be a showing that the contract is unconscionable, i.e., one which contains unreasonable or unknown terms and is the product of inequality of bargaining power.” <i>Rumple v. Bloomington Hosp.</i>, 42 N.E.2d 1309, 1313 (Ind. Ct. App. 1981). <i>See also Pinnacle Computer Servs. v. Ameritech Publishing</i>, 642 N.E.2d 1011, 1016 (Ind. Ct. App. 1994).</p>	
Iowa	<p><b>PROBABLY.</b> A pre-inspection limited liability clause has not been tested in Iowa courts. <i>Baker v. Stewarts</i>, 433 N.W.2d 706 (Iowa 1988). The Iowa Supreme Court, in <i>Baker</i>, stated its preference to not interfere with the right to contract “by enabling parties to escape their valid contractual obligation on the ground of</p>	

	public policy <b>unless</b> the preservation of the general public welfare imperatively so demands” (i.e. public interest). The Court pointed out a number of factors to determine whether a contract was one affected with a “public interest.” The Court noted that courts in other states have refused to extend a public policy exemption to transactions by “tradesmen in the marketplace” (the example in the Tennessee case cited was auto repairmen). The <i>Baker</i> court upheld the exculpatory clause in the case of a cosmetology school’s services. Thus, it is probable that a court would allow a limited liability clause, but not a given.	
Kansas	<b>YES.</b> <i>Santana v. Olguin</i> , 41 Kan. App. 2d 1086, 1089-91, 2098 P.3d 328 (2009) (limitation of liability clause in home inspection contract is valid and enforceable so long as it is not ambiguous or unconscionable); <i>Moler v. Melzer</i> , 24 Kan. App. 2d 76, 78-79, 942 P.2d 643 (1997) (enforcing limitation of liability clause in home inspection contract).	
Kentucky	<b>NO.</b> <i>Mullins v. Northern Kentucky Inspections, Inc.</i> , 2010 WL 3447630 (Ky. Ct. App. Sept. 3, 2010) (unpublished) [holding limitation clause void as against public policy]. <i>See also</i> , <i>Cumberland Valley Contractors, Inc. v. Bell County Coal Corp.</i> , 238 S.W.3d 644 (Ky. 2007 and <i>Speedway Superamerica, LLC v. Erin</i> , 250 S.W.3d 339 (Ky.App. 2008) (both cases focusing on the unequal bargaining power of the contracting parties).	
Louisiana	<b>MOST LIKELY - LIMITED.</b> <i>Cameron v. Bruce</i> , 981 So. 2d 204 (La. Ct. App. 2008) [Remanded case to trial court for failing to consider whether home inspector’s failure to report structural problems constituted gross negligence that would invalidate limitation of liability clause in home inspection contract pursuant to LSA-C.C. Art. 2004’s proscription against excluding limits of liability for “intentional or gross fault”]. Note, <i>Wilson v. Two SD, LLC</i> , 186 So. 3d 103 (La. Ct. App. 2015) where limitation of liability was found deficient because it was not in writing in a signed contract (instead language was at the bottom of page of design plans in small print) and buyers claim they never saw or consented to the provision.	
Maine	<b>YES – LIMITED.</b> Maine generally upholds liability waivers when they “expressly spell out with the greatest particularity the intention of the parties contractually to extinguish negligence liability” <i>Lloyd v. Sugarloaf Mt. Corp.</i> , 2003 ME 117, para 8, 833 A.2d 1, 4 (2003); <i>See also</i> , <i>Hardy v. St. Clair</i> , 1999 M 142, 739 A.2d 368, 370 (1999). The only case directly dealing with a home inspector contract is a Superior Court case, <i>Morgan v. Criterium – Mooney Engineers, et al.</i> , Maine Sup. Ct., Cumb. Cty, Docket No.: CV-07-381 (Dec 16, 2009) where court did not uphold a limitation for “liability for loss suffered by the client due to <b>any cause</b> ” and not limited to “ <b>negligence.</b> ” <i>See also</i> , <i>Emery Waterhouse Co. v. Lea</i> , 467 A.2d 986 (Me., 1983)(must expressly use the word	

	“negligence”).	
Maryland	<b>YES.</b> <i>Md. Code Ann., Bus. Occ. &amp; Prof. § 16-4A-01(c) (West 2008)</i> (requiring only that “[a]ny limitation of the liability... for any damages resulting from the report on the home inspection shall be agreed to in writing by the parties to the home inspection prior to the performance of the home inspection”); The Maryland Circuit Court also held that the limitation of liability clauses limiting recovery to the fee for the inspection was valid because the contract was not the product of unfair bargaining power. See <i>Baker vs. Roy Haas Assocs.</i> 97 MD.App. 371 Ct of Appeals 1993)	
Massachusetts	<b>NO.</b> <i>M.G.L. Title XVI, Chap. 112, §225</i> requires that a licensed home inspector must maintain an errors and omissions policy of at least \$250,000 in the aggregate. In addition, pursuant to <i>M.G.L. Title XVI, Chap. 112, §225 (6)(v)</i> , a home inspector may have his or her home inspector license denied, refused to renew, limited, suspended or revoked if the home inspector attempts to limit liability for negligent or wrongful errors or omissions by use of a clause within a performance contract that limits the costs of damages for negligent or wrongful errors or omissions. (Note, pursuant to <i>(6)(vi)</i> , performing an inspection without the requisite errors and omissions insurance, subjects the home inspector to same potential sanctions as <i>(6)(v)</i> ).	<i>Use of Limitation Clause opens up Home Inspector to potential discipline of license</i>
Michigan	<b>YES.</b> <i>Dean v. Haman</i> , No. 259120, 2006 WL 1330325 (Mich. Ct. App. May 16, 2006) [upholding contract for home inspection which limited statute of limitations to six months where statute provides six years]; <i>Michigan Nat’l Bank v. St. Paul Fire &amp; Marine Ins. Co.</i> , 566 N.W.2d 7 (Mich. Ct. App., 1997); <i>Shotak v. Vic Tanny Int’l, Inc.</i> , 513 N.W.2d 428 (Mich. Ct. App., 1994).	
Minnesota	<b>YES - LIMITED.</b> <i>Schlobohm v. Spa Petite, Inc.</i> , 326 N.W.2d 920 (Minn. Sup. Ct. 1982) [Exculpatory clauses are enforceable provided they do not violate public policy and include claims for willful conduct]. In addition, there cannot be coercive power imbalances like a “health adviser” directed a person to participate in a gym program. See, <i>Schlobohm</i> , 326 N.W.2s at 925 (followed by <i>State v. Wenthe</i> , 839 N.E.2d 83, 2013 Minn. LEXIS 657 (Minn. Sup. Ct. 2013)). Minnesota courts apply a two-part test to determine whether an exculpatory clause comports with public policy, (1) disparity of bargaining power between parties and (2) types of services whether public or essential service. <i>DeWitt v. London Rd. Rental Ctr., Inc.</i> , 899 N.E.2d 883, 2017 Minn. App. LEXIS 95 (Minn. Ct. App. 2017).	
Mississippi	<b>NO.</b> <i>Pitts v. Watkins</i> , 905 So. 2d 553 (Miss. 2005) (en banc) [limitation clause in home inspection contract is unenforceable as substantively unconscionable because it deprives home buyers of adequate remedy]. Note, that in <i>Pitts</i> , the liability was limited to \$200, required client to use arbitration, but allowed inspector to file	

	in court to collect unpaid fees. There have been other professions (termite inspectors) that have allowed various limitations of liability. Thus, limitations of liability are generally disfavored, but a well-drafted and negotiated contract containing a limitation clause may be enforceable.	
Missouri	<b>QUESTIONABLE.</b> <i>Purcell Tire &amp; Rubber Company, Inc.</i> , 59 S.W.3d 505 (Mo. banc. 2001) In <i>Purcell</i> , the Supreme Court of Missouri held a limitation provision/agreement enforceable, where the case involved an inspection agreement between purchaser of an aircraft and an inspection company hired to prepare a report. The court, in holding that the agreement was enforceable, noted 2 important things: 1) the sophistication of the parties involved in the deal (which creates grounds for argument when dealing with perhaps less sophisticated home buyers, e.g., first time home buyer as opposed to a real estate company or more sophisticated party); and 2) economic damages being at issue as opposed to personal injury or other damages.	
Montana	<b>PROBABLY NO.</b> Montana Supreme Court has repeatedly held that limited liability clauses are enforceable so long as they do not absolve a party of <b>all</b> liability. <i>Zirkelbach Constr., Inc. v. DOWL, LLC</i> , 2017 MT 238, para 16, 389 Mont. 8, 12, 402 P.3d 1244, 1247 (holding that a contract limiting damages to a set amount does not violate public policy); See M.C.A. §28-2-702 (2017)(Cannot exempt responsibility for fraud, willful injury or violation of the law); <i>Miller v. Fallon County</i> , 721 P.2d 342 (Mt., 1986). See also <i>Am. Music Co. v. Higbee</i> , 2004 MT 349, para 23, 324 Mont. 348, 354, 103 P.3d 518, 522 (Will not enforce provisions limiting liability if the agreement is a contract of adhesion, and the clause limiting liability is unreasonably favorable to the drafter).	
Nebraska	<b>PROBABLY.</b> <i>Ray Tucker &amp; Sons, Inc. v. GTE Directories Sales Corp.</i> , 571 N.W.2d 64 (Neb., 1997) [limitation clause is not enforced if unconscionable or in contravention of public policy]; <i>Hearst-Argyle Props. v. Entrex Commn. Servs.</i> , 778 N.W.2d 465 (Neb., 2010). **Depends on whether Nebraska courts would consider a limitation clause in the home inspection context against public policy.	
Nevada	<b>PROBABLY.</b> At least one Nevada case supports the conclusion that a limitation on liability or exculpatory clause will be enforced generally. In <i>Agric. Aviation Engr. Co. v. Bd. of Clark County Com'rs</i> , 794 P.2d 710, 712–13 (Nev. 1990), citing from <i>Richard's 5 &amp; 10 v. Brooks Harvey Realty INV</i> , 264 Pa.Super. 384, 399 A.2d 1103 (1979), the court held that even though an exculpatory clause may be generally valid, additional standards must be met. These standards are: (1) contracts must be construed strictly; (2) such contracts must spell out the intention of the party with the greatest particularity. (3) such contracts must be construed with every	

	intendment against the party who seeks immunity from liability... (4) the burden to establish immunity from liability is upon the party who asserts such immunity....	
New Hampshire	<b>PROBABLY.</b> <i>PK's Landscaping, Inc. v. New England Telephone &amp; Telegraph Co.</i> , 519 A.2d 285 (N.H., 1986) [enforcing limitation clause, but stating that such clauses cannot limit liability for gross negligence].	
New Jersey	<b>NO.</b> <i>Lucier v. Williams</i> , 366 N.J. Super. 485, 841 A.2d 907 (2004) (declaring limitation of liability provision (To \$500) in home inspection contract to be unconscionable and violative of public policy). But, arbitration clauses are enforceable. <i>Id.</i>	<i>Use of limitation clause opens home inspector to disciplinary matters</i>
New Mexico	<b>YES.</b> New Mexico Court of Appeals upheld a limitation of liability clause because clause did not seek to contract away all liability but to limit the amount of damages it had to pay for its own negligence. Note, that the limitation in Fort Knox was for \$50,000 (28 times fee received of \$1,750. <i>Fort Knox Self Storage Inc. v. Western Technologies, Inc.</i> , 142 P.3d 1 (N.M. Ct. App., 2006). See federal court <i>Valhal Corp. v. Sullivan Assocs., Inc.</i> , 44 F.3d 195, 204 (3d Cir. 1995)(holding that proper measure does not compare liability cap to final verdict but rather to party's expected compensation, and opining that cap of greater of \$5,000 or design professional's \$7,000 fee, while arguably "nominal when compared to the final verdict.")	
New York	<b>YES - LIMITED.</b> <i>Rector v. Calamus Group, Inc.</i> , 17 A.D.3d 960 (N.Y. App. Div., 2005) [enforcing clause limiting liability to the cost of inspection]; <i>Elena Schietinger, et al. v. Tauscher Cronacher Professional Engineers, P.C.</i> , 40 A.D.3d 954 (N.Y. App. Div., 2007); <i>Goldstein v. Carnell</i> , 74 A.D.3d 745 (N.Y. App. Div., 2010); <b>BUT</b> see <i>Smith-Hoy v. AMC Prop. Evaluations, Inc.</i> , 52 A.D.3d 809 (2008) [dicta stating home inspector cannot limit liability for gross negligence]. Note also that the limitation clause must state the limitation, meaning, if limited to the cost of the inspection, it must clearly say it. <i>O'csay v. Yolo Equities Corp.</i> , 2009 N.Y. Misc LEXIS 5748.	
North Carolina	<b>YES-</b> The following case stands for the proposition that limitations of liability can be enforceable if the contract is not unconscionable. This was a land surveyor contracting with a grading contractor. <i>Blaylock Grading Co., LLP v. Smith</i> (April 1, 2008 189 N.C.App. 508658 S.E.2d 680).	
North Dakota	<b>YES - LIMITED.</b> North Dakota will enforce limited liability clauses. <i>Scott Kondrad v. Bismarck Park District</i> , 655 N.W.2d 411 (N.D., 2003) Limited liability clauses must be clear, unambiguous and carefully drafted. <i>Hillerson v. Bismarck Pub. Schools</i> , 2013 ND 193, para 12, 840 N.W.2d 65, 69. See also <i>See N.D.C.A. §9-08-02 (2017)</i> (Cannot exempt responsibility for fraud, willful injury	

	or violation of the law).	
Ohio	<b>PROBABLY YES.</b> The 11th Appellate District of the Court of Appeals of Ohio held that a limitation of liability clause in a home inspection agreement was not an unconscionable act under the Consumer Safety Practices Act because it met specific guidelines including: 1. The limitation portion was set off in a separate paragraph and 2. Plaintiff admitted she read it before she signed it. <i>Barto v. Boardman Home Inspection, Inc.</i> , 2015-Ohio-5210. <i>See also, Green v. Full Service Property Inspections, LLC</i> , 2013-Ohio-4266, where the 9 <sup>th</sup> District held that a limitation of liability clause in a home inspection contract was not unconscionable.	
Oklahoma	<b>PROBABLY – LIMITED.</b> <i>Combs v. West Siloam Speedway Corp.</i> , 2017 OK CIV APP 64, 406 P.3d 1064 [factual determination of three factors necessary to prevail]; <i>Schmidt v. U.S.</i> , 1996 OK 29, 912 P.2d 871 [generally enforceable, but “distasteful to the law.” “clause will never avail to relieve a party from liability for intentional, willful or fraudulent acts or gross, wanton negligence.]; <i>Manning v. Brannon</i> , 1998 OK CIV APP 17, 956 P.2d 156 [disclaimer not allowed, but bargained for contractual provision may operate] <b>but</b> <i>see Burd v. KL Shangri-La Owners, L.P.</i> , 2002 OK CIV APP 31, 67 P.3d 927 [general, nonspecific waiver is unenforceable.]	
Oregon	<b>PROBABLE.</b> <i>Estey v. MacKenzie Engineering, Inc.</i> 927 P.2d 86 (Or. 1998) [Agreements to limit liability are “not favorites of the court, but neither are they automatically voided.” To contract away liability before harm, the intent to do so must be “clearly and unequivocally expressed.” When the contract language is ambiguous, it “will be construed against the party who drafted it” and held unenforceable.]; <i>Anderson v. Ashland Rental, Inc.</i> , 858 P.2d 470 (Or. Ct. App. 1993) [Agreement to limit liability must be bargained for, called to the other party’s attention, or conspicuous.]; <i>Hoskins v. Inspector LLC</i> , 961 P.2d 261 (Or. Ct. App. 1998) [example of court bending over backward to find ambiguity in home inspection contract in order to render limitation of liability provision unenforceable].	
Pennsylvania	<b>YES - LIMITED.</b> <i>68 Pa.C.S. § 7507(a)(1)</i> [a limitation on the liability of a home inspector for gross negligence or willful misconduct is void; however otherwise, a limitation of liability for simple negligence is allowed].	
Rhode Island	<b>PROBABLY NOT.</b> <i>Rhode Island Hosp. Trust Nat’l Bank v. Dudley Serv. Corp.</i> , 605 A.2d 1325 (R.I. 1992); <i>Crowther v. Mariner Square Condo. Ass’n</i> , 667 A.2d 789 (R.I. 1995). <b>BUT</b> <i>see R.I. Gen Laws §5-65.1-11(12)</i> [home inspector’s license may be suspended or revoked for including a limitation clause in agreement].	



<p>South Carolina</p>	<p><b>YES.</b> <i>Gladden v Boykn</i> – 2013 S.C. LEXIS 52 (Sup. Ct. South Carolina March 27, 2013)(Supreme Court upheld contractual limitation on home inspector’s liability as long as not so oppressive that no reasonable person would make it and no fair and honest person would accept it.)</p>	
<p>South Dakota</p>	<p><b>PROBABLY YES.</b> Section 53-9-5 of South Dakota Legislative Code voids clauses in certain types of contracts “except the parties may agree therein upon an amount presumed to be the damage for breach in cases when it would be impractical or extremely difficult to fix actual damages” SDCL Sec. 53-9-5. South Dakota laws expressly permit limitations on damages. <i>See, e.g.,</i> SDCL 57-A-2-719(3). <i>See also, Lee v. Beauchere</i>, 337 N.W. 2d 827, 828(S.D. 1983).</p>	
<p>Tennessee</p>	<p><b>NO.</b> <i>Carey v. Merritt</i>, 148 S.W.3d 912 (Tenn. Ct. App., 2004); <i>Russell v. Bray</i>, 116 S.W.3d 1 (Tenn. Ct. App., 2003). Home inspections have been deemed a “service of great importance to the public and thus an exculpation clause in a home inspector’s contract was void as contrary to public policy” <i>Carey</i>, 148 S.W.3d at 917-18.</p>	
<p>Texas</p>	<p><b>PROBABLY YES.</b> <i>Dionicia Mireles v. Tejas Appraisal and Inspection Co.</i>, 2007 WL 1826074 (Tex. Ct. App., 2007); <i>Head v. U.S. Inspect DFW f/k/a Affordable Inspections, Inc.</i>, 159 S.W.3d 731 (Tex. Ct. App., 2005). NOTE: Texas attorneys have reported that results can vary by county.</p>	
<p>Utah</p>	<p><b>YES.</b> Utah courts have held that a release of claims, similar to a limitation on liability or exculpatory provision, is enforceable and valid, subject to certain exceptions. In <i>Penunuri v. Sundance Partners, Ltd.</i>, 301 P.3d 984, 991 (Utah 2013) the court noted that “preinjury releases of claims for ordinary negligence can be valid and enforceable...but can be invalidated if they offend public policy...or are for activities that fit within the public interest exception... and (3) releases that are unclear or ambiguous.” Public interest grounds to invalidate an exculpatory clause were set forth in <i>Broderick v. Apt. Mgt. Consultants, L.L.C.</i>, 279 P.3d 391, 394–95 (Utah 2012), when the party seeking to enforce the clause (1) is involved in business of a type generally thought suitable for public regulation; (2) is engaged in performing a service of great importance to the public; (3) holds himself out as willing to perform this service for any member of the public who seeks it; (4) possesses a decisive advantage of bargaining strength against any member of the public who seeks his services; (5) confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser [or lessee] may pay additional reasonable fees and obtain protection against negligence; and (6) places the person or property of the purchaser [or lessee] ...</p>	

	under the control of the seller [or lessor], subject to the risk of carelessness by the seller [or lessor,] or his agents. <i>See also Blaisdell v. Dentrax Dental Sys., Inc.</i> , 284 P.3d 616, 622 (Utah 2012) (“The limitation of liabilities clause in the contract between Dr. Blaisdell and Dentrax is enforceable....”).	
Vermont	<b>NO.</b> <i>Dalury v. S-K-I, Ltd.</i> , 670 A.2d 795 (Vt., 1995) [exculpatory clauses are unenforceable when they contravene public policy]. <b>BUT</b> see <i>Provoncha v. Vermont Motorcross Assoc., Inc.</i> , 974 A.2d 1261 (Vt., 2009) [no public policy barriers to enforcing a clause limiting liability of an association offering motor cross events]. Depends on whether “home inspection” is a service for which public policy places the responsibility of maintenance on the inspector. <i>Glassford v. BrickKicker</i> , 2011 VT 118, 35 A.3d 1044 (Vt., 2011) [stating that “home inspection” <i>is</i> a service for which public policy requires invalidation of exculpatory clauses].	
Virginia	<b>PROBABLY.</b> <i>Ash v. All Star Lawn and Pest Control, Inc.</i> 256 Va. 520 (Va., 1998) [disclaimer does not automatically remove liability, but where inspector uses clear disclaimers and disclosure of his failure to inspect specific areas of the structure, the inspector will be insulated from liability. <i>Ash</i> at 525]; <i>Howie v. Atl. Home Inspection, Inc.</i> , 62 Va. Cir. 164 (Va. Cir. Ct., 2003) [applies <i>Ash</i> to hold that liability was effectively disclaimed]; <i>Williams v. Neff</i> , 43 Va. Cir. 464, 466 (Va. Cir. Ct. 1997) [limited liability clause considered liquidated damages clause and enforced]. <b>BUT</b> see <i>Baird v. Dodson Bros. Exterminating Co., Inc.</i> , 217 Va. 745 (Va., 1977) [broad, generalized disclaimer does not automatically insulate from liability]. <i>See also, Kocinec v. Public Storage, Inc.</i> , 489 F. Supp. 2d 555 (Norfolk 2007) where Eastern District Virginia federal court agreed with <i>Howie</i> reasoning, stating “contractual provision specifically limiting a party’s liability” embodies “one of the essential purposes of contract law--the freedom of parties to limit their risks in commercial transactions”.	
Washington	<b>PROBABLY.</b> <i>Scott v. Pacific West Mountain Resort</i> , 119 Wn.2d 484, 834 P.2d 6 (1992) where “exculpatory [limitation of liability] clauses are enforceable unless (1) they violate public policy, or (2) the negligence falls greatly below the standard established by law for protection of others or (3) they are inconspicuous.” <i>But see also, Mieske v. Bartell Drug Co.</i> , 92 Wn.2d 40, 593 P.2d 1308 (1979) where no one element is controlling, and the court will look at all of the circumstances surrounding the transaction.	
Washington, D.C.	<b>PROBABLY – LIMITED.</b> <i>Carleton v. Winter</i> , 901 A.2d 174 (D.C. Ct. App., 2006) [cannot limit liability for gross negligence, recklessness or intentional conduct. Strongly implies that where	



	there is no gross negligence, liability can be disclaimed]. <i>Moore v. Waller</i> , 930 A.2d 176 (2006) [General liability disclaimer (not related to home inspection) upheld. limitation clauses not enforced if doing so would be against public policy].	
West Virginia	<b>NO.</b> <i>Finch v. Inspectech, LLC</i> , 727 S.E.2d 823 (W. Va., 2012) [limitation clauses in home inspection contracts contravene the home inspector standard of conduct established by W. Va. C.S.R. § 87-5-1 et seq.].	
Wisconsin	<b>NO.</b> Wis. Stat Sec. 440.976 states that “No home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability, or limits the amount of damages for liability, of the home inspector for his or her failure to comply with the standards of practice prescribed in this subchapter or in rules promulgated under this subchapter . <i>See</i> Wis. Stat Sec. 440.975 describing the standards of practice for home inspectors.	
Wyoming	<b>POSSIBLY.</b> Limitation clauses are enforceable as long as they do not contravene public policy and no willful or wanton misconduct is shown. <i>Massengil v. S.M.A.R.T. Sports Medicine Clinic, P.C.</i> , 996 P.2d 1132 (Wyo., 2000)(citing <i>Shutkowski v. Carey</i> , 725 P.2d 1057 (Wyo., 1986)). A four-factor test is used to determine if a limited liability clause would be enforced. First factor is whether duty to public exists. Public duty exists if service offered is of a type typically subject to public regulation. The lack of regulations for home inspectors indicates that Wyoming would not impose a duty to the public. However, the second factor concerning the nature of the services leans towards home inspectors providing an essential service. Third and fourth factors would be fact specific on whether contract was fairly entered into or whether the intention of the parties was expressed in clear and unambiguous language. Not a settled area of law.	

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**2018 STATE BY STATE GUIDE:  
ENFORCEABILITY OF LIMITED LIABILITY CLAUSES IN  
HOME INSPECTOR PRE-INSPECTION CONTRACTS**

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