

[First Reprint]
ASSEMBLY, No. 2303

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1996

By Assemblymen IMPREVEDUTO, MORAN and
Assemblywoman Quigley

1 AN ACT providing for the licensing and regulation of home inspectors,
2 supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Home
8 Inspection Professional Licensing Law."

9

10 2. As used in this act, except as expressly or by clear implication
11 otherwise intended:

12 a. "Board" means the Board of Home Inspectors established by
13 section 3 of this act.

14 b. "Certificate of condition" means a written report of the
15 evaluation made by a qualified and licensed home inspector of the
16 elements and systems inspected by him pursuant to a contract for such
17 inspection as provided under this act.

18 c. "Client" means any person who engages, or seeks to engage, the
19 services of a home inspector for the purpose of obtaining inspection
20 of and written report upon the condition of a residential building.

21 d. "Director" means the Director of the Division of Consumer
22 Affairs in the Department of Law and Public Safety.

23 e. "Home inspector" means any person licensed as a home
24 inspector by the Board pursuant to the provisions of this act.

25 f. " Home inspection business" means the inspection of the
26 condition of the structural and mechanical elements of residential
27 buildings, the preparation of reports thereon for clients of the home
28 inspector, and the providing of warranties thereon as authorized by
29 provision of this act. A home inspection within the meaning of this act
30 shall consist of visual inspection in situ of the structural elements of,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ACP committee amendments adopted September 16, 1996.

1 and mechanical and electrical systems included in, a residential
2 building, which are normally accessible to such inspection, for the
3 purpose of identifying any defect affecting the structural soundness
4 and functional efficiency of any such elements or systems, or
5 determining the absence of such defects to the extent such
6 determination is feasible; and any such inspection shall, where
7 practicable, include test operation of any systems in the manner and
8 under conditions in which they would be operated in ordinary daily use
9 by residents of the structure.

10 g. "Real estate broker" means a person licensed by the State to
11 engage in the business of a real estate broker.

12 h. "Real estate salesman" means a person licensed by the State to
13 engage in the business of a real estate salesman.

14 i. "Residential building" means a structure consisting of from one
15 to four family dwelling units that has been occupied as such prior to
16 the time when a home inspection is requested or contracted for in
17 accordance with this act, but shall not include any such structure
18 newly constructed and not previously occupied.

19 j. "Structural elements and mechanical systems" includes:

20 (1) Foundations, basements and first-floor structures, including
21 structural members and assemblies, foundation components, grading
22 and drainage.

23 (2) Walls, exterior and interior, ceilings; window and door
24 assemblies; stairways, exterior and interior; and porches, decks,
25 balconies and railings.

26 (3) Roofing, including ventilation systems.

27 (4) Electrical systems, including type of service supplied to the
28 structure, including amperage, wiring materials and workmanship, and
29 type and sufficiency of overload protection and safety provision.

30 (5) Interior plumbing system, including source of water supply
31 (quality thereof not being within the purview of system inspection),
32 method of waste disposal (adequacy or efficiency thereof not being
33 within the purview of system inspection); material, workmanship and
34 functionality of supply and waste lines, and operation of water shutoff
35 valves and drainage cleanout access points; arrangements for
36 hot-water heating (including, where applicable, connection with
37 heating system).

38 (6) Heating and air conditioning, including energy source or
39 sources, type and location of equipment, including automatic or
40 manual controls, and heating or cooling outlets in each habitable room;
41 flue pipes, chimneys and fireplaces.

42 k. "Warranty" means a written guarantee provided by a home
43 inspector as authorized by section 6 of this act.

44
45 3. There is hereby established in the Division of Consumer Affairs
46 of the Department of Law and Public Safety the Board of Home

1 Inspectors. The board will consist of five members, of whom one shall
2 be the Director of the Division of Consumer Affairs for the time being,
3 and the other four shall be appointed by the Governor with the advice
4 and consent of the Senate. Two of the appointed members shall be
5 home inspectors within the meaning of this act, and the other two shall
6 be chosen on the basis of their knowledge and experience in the field
7 of home construction but shall not be home inspectors within the
8 meaning of this act. Appointed members shall serve for terms for four
9 years, except that of the first two home inspector members appointed
10 one shall serve for a term of two years, and of the first two members
11 not home inspectors appointed one shall serve for a term of one year
12 and the other for a term of three years. Vacancies among appointed
13 members shall be filled in the same manner as the original appointment
14 was made, but for the unexpired term only. Appointed members shall
15 serve without compensation, but shall be entitled to reimbursement for
16 actual expenses necessarily incurred in the performance of their duties
17 as members. The Director of the Division of Consumer Protection
18 may exercise his functions as member of the board by delegation to
19 any subordinate officer in the division, which delegation shall be in
20 writing and filed with the secretary of the board. The director shall
21 also appoint the secretary of the board from among the permanent
22 staff of the division. Neither the director, nor his delegate exercising
23 his functions as member of the board, nor the secretary of the board,
24 shall receive any additional compensation from the State by reason of
25 their services on or to the board.

26 For the purposes of the first appointments under this section, the
27 determination of whether a person is a home inspector shall be in the
28 discretion of the appointing authority, who may deem any person to be
29 a home inspector if he has reason to believe that that person is
30 qualified for a license as such and would have received such a license
31 if the board and the licensing procedure established by this act had
32 been in effect prior to the making of those appointments.

33
34 4. No person not licensed as a home inspector pursuant to this act
35 shall give, purport to give, or hold himself out as qualified to give a
36 certificate of condition, as defined in this act, or any certificate or
37 assurance represented to be equivalent thereto.

38
39 15. a. Nothing in this act shall be construed to prevent the practice
40 of architecture or professional engineering by the holder of a license
41 issued by this State to practice architecture or professional
42 engineering, as the case may be, when that licensee is acting within the
43 scope of the licensee's profession.

44 b. No person licensed as a home inspector pursuant to this act shall
45 engage in the practice of architecture or the practice of professional
46 engineering.¹

1 ¹[5.] 6.¹ No contract of sale of a residential building shall by its
2 terms or their practical implications forbid, prevent or preclude the
3 obtaining of an inspection and certificate of condition, as defined in
4 this act, prior to the execution of the deed or other conveyance
5 pursuant to that contract. Any contract of sale violating the terms of
6 this section shall be unenforceable as against the prospective buyer.

7
8 ¹[6] 7.¹ Any home inspector issuing a certificate of condition
9 under authorization of this act may in writing warrant its accuracy and
10 integrity to the client to whom it is issued, which warranty shall extend
11 for 18 months from the date on which the inspection on which it is
12 based was made, or for 12 months after the sale of the property on
13 which it was issued, whichever comes first. For the security of such
14 warranties and providing against other liabilities, the board shall from
15 time to time establish and enforce a minimum of insurance coverage
16 that every licensed home inspector shall be required to purchase
17 against liability for any negligence or inaccuracy in his inspection or
18 certificate, or any other breach of a warranty under this section, or a
19 contract required pursuant to section 7 of this act.

20
21 ¹[7.] 8.¹ No home inspection shall be commenced unless all
22 elements and conditions of the inspection are contained in a written
23 contract signed in triplicate by the home inspector and client. One
24 copy shall be retained by the home inspector, one by the client, and
25 one shall be mailed to the board. The cost to the client for the
26 inspection and report shall be indicated in the contract, and the cost
27 and coverage of a warranty, if any, shall also be indicated in the
28 contract. In order for a valid certificate of condition to issue, the
29 contract shall provide for a home inspection covering the structural
30 elements and mechanical systems of the building to be inspected,
31 within the meaning of those terms pursuant to section 2 of this act.

32
33 ¹[8.] 9.¹ a. If a home inspector contracts with more than one client
34 for a home inspection report on the same residential building, the
35 reports shall not differ in their content with respect to any element
36 reported on unless such difference is justified by a material change in
37 the condition of that element in the interim between different
38 inspections.

39 b. No home inspector shall purport to offer or sell insurance on the
40 elements inspected by him under a home inspection contract.

41 c. No home inspector or anyone acting on his behalf shall give or
42 offer to give any commission or inducement whatsoever for the
43 referral of a client by a real estate broker or salesman, nor shall any
44 such broker or salesman request or accept any such commission or
45 inducement.

1 ¹[9.] 10.¹ a. The board shall periodically make available to real
2 estate brokers and salesmen a listing of all licensed home inspectors in
3 the State. The list shall be on a county-by-county basis and shall list
4 the names and business addresses of each home inspector. The board
5 may charge a fee for this service commensurate with the cost of
6 maintaining, updating, and disseminating the list.

7 b. Real estate brokers and salesmen shall inform prospective buyers
8 that home inspection services are available, and may make available to
9 them the list provided under subsection a. of this section. At the
10 request of a buyer, real estate brokers and salesmen may recommend
11 a home inspector or home inspectors, but no such recommendations
12 shall establish or tend to establish any liability on the part of such a
13 broker or salesman.

14

15 ¹[10.] 11.¹ Application for a license shall be made in writing under
16 oath, on a form provided by the board, and shall include the following
17 information:

18 a. If an individual:

19 (1) Full name;

20 (2) Residence and business address;

21 (3) Name and duration of all businesses engaged in during the
22 previous five years; and

23 (4) Experience in the home inspection business.

24 b. If a partnership:

25 (1) Name and address of the partnership;

26 (2) Name, residence, and business address of each partner; and

27 (3) Business experience of each partner during the previous five
28 years.

29 c. If an association:

30 (1) Name and address of the association;

31 (2) Name, residence, and business address of each of the officers,
32 directors, and managers;

33 (3) Business experience during the previous five years of each
34 officer, director, and manager; and

35 (4) Name, residence, and business addresses of all members who
36 have 10% or more control of the association.

37 d. If a corporation:

38 (1) Name of the corporation, date and place of incorporation;

39 (2) Name, residence, and business address of each director and
40 officer of the corporation;

41 (3) Business experience during the previous five years of each
42 director and officer;

43 (4) Name, residence, and shareholding of all shareholders owning
44 10% or more of the outstanding shares; and

45 (5) Number of shares of each class of stock issued and outstanding.

1 ¹[11.] 12.¹ In all cases, the application shall also include:

2 a. The full name, residence, and age of each agent of the home
3 inspection business, exclusive of ministerial office employees.

4 b. Whether any person making application has been convicted in
5 any State or Federal court of a crime, the record of which has not been
6 expunged, annulled, and sealed, or forgery, fraud, obtaining money
7 under false pretenses, embezzlement, extortion, larceny, burglary,
8 breaking and entering, robbery, bribery, criminal conspiracy to defraud
9 or other like offense or offenses including violations of this act or has
10 entered the plea of nolo contendere or non vult to any indictment,
11 allegation or complaint alleging the commission of such offenses.

12 The record of conviction or the entry of the plea in any court of this
13 State or of any other state or of the United States shall be sufficient
14 warrant for the refusal, suspension or revocation of a license except as
15 provided in P.L. 1968, c. 282 (C. 2A:168A-1 et seq.).

16

17 ¹[12.] 13.¹ No home inspector shall be licensed unless the board is
18 satisfied that the home inspector or one or more of his agents,
19 collectively, are qualified pursuant to the provisions of this act and any
20 other rules and regulations promulgated thereunder by the board.

21 The board may require any applicant for a license to complete
22 satisfactorily an examination devised or approved by it as an adequate
23 indicator of the qualifications required of a home inspector. For this
24 purpose, the board may by rule approve examinations administered by
25 recognized professional societies, such as the American Society of
26 Home Inspectors.

27

28 ¹[13.] 14.¹ Every person making application for a license shall pay
29 to the board at the time of making application and every other year
30 thereafter upon license renewal a fee of \$200.00 for its principal place
31 of business and \$100.00 for each additional place of business.

32

33 ¹[14.] 15.¹ No abatement in the amount of the license fee shall be
34 made if the license is surrendered, canceled or revoked prior to the
35 expiration of the period for which such license was issued. Every
36 license shall expire on the last day of the twenty-fourth calendar month
37 following the calendar month in which the license was issued;
38 provided, however, the board may, in order to stagger the expiration
39 dates of licenses, issue or renew licenses which shall expire on a date
40 fixed by the board, not sooner than six months nor later than 29
41 months after the date of issue, and the fee for these licenses shall be in
42 amounts proportionately less or greater than the fee fixed in section 13
43 hereof.

44

45 ¹[15.] 16.¹ The license shall not be transferable or assignable, by
46 operation of law or otherwise. Each license shall specify the location

1 of the office or branch and shall be conspicuously displayed therein.
2 If the location is changed, a new license shall issue without charge.
3 No home inspector shall transact the business provided for by this act
4 under any other name or at any location other than that designated in
5 the license, or under any business name which includes the term "home
6 inspection business" unless it is in fact a bona fide home inspection
7 business.

8
9 ¹[16.] 17.¹ Prior to actually employing any individual who shall
10 come into personal contact with the public during a home inspection,
11 a home inspector shall file with the board a supplemental application
12 supplying additional information in every respect necessary to satisfy
13 the requirements of this act. There shall be paid a filing fee of \$5.00
14 to the board for the filing of each application in addition to an annual
15 license fee of \$10.00 for each inspector or agent. Each individual
16 home inspector shall be provided with an official identification card by
17 the board which must be carried by the inspector and presented upon
18 request.

19
20 ¹[17.] 18.¹ A home inspector's license may be suspended or
21 revoked by the board, after due notice and opportunity to be heard
22 given to the licensee, for any willful or persistent violation of a
23 licensee's duties and obligations under this act. A licensee may
24 surrender his license at any time by delivering the license to the board
25 with written notice that he thereby surrenders the license, but the
26 surrender shall not affect the licensee's civil or criminal liability for acts
27 committed prior to the surrender.

28
29 ¹[18.] 19.¹ The board shall, after consultation with recognized
30 professional associations of the home inspection business, and with
31 recognized leaders of that profession, devise, adopt and promulgate,
32 and may from time to time revise, a code of ethical standards and
33 practices to govern the conduct of licensed home inspectors in the
34 performance of their work, and shall adopt a schedule of penalties for
35 the neglect or violation of those standards and practices; but no
36 licensee shall be punished, whether by fine or by revocation or
37 suspension of license without due notice and opportunity to be heard
38 on any such alleged violation.

39
40 ¹[19.] 20.¹ a. Any dispute between a home inspector and his client
41 or any other person arising out of the terms of this act or of any
42 contract, certification, warranty or other instrument or agreement
43 made or entered into pursuant to the requirements or authorizations
44 of this act, and any complaint touching upon the competence or
45 integrity of any person licensed as a home inspector by the board in
46 connection with the performance of his duties and responsibilities as

1 a home inspector shall in the first instance be referred to the board for
2 resolution or appropriate disciplinary action. No legal proceedings
3 shall be had on any such matter before the board has rendered its
4 decision, or until 90 days have elapsed from the time when the
5 complainant or party to the dispute has notified the board in writing of
6 the existence of the dispute or complaint.

7 b. The board shall make all necessary and proper rules and
8 regulations to govern the form and manner of submission of such
9 matters to its decision, in accordance with the rules laid down for the
10 hearing of contested cases under the "Administrative Procedure Act,"
11 P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

12 c. In deciding upon any such dispute or complaint, the Board may,
13 in accordance with general rules which it shall adopt:

14 (1) Order any licensed inspector to perform or omit any act or
15 proposed act the performance or omission of which forms the basis for
16 dispute or complaint.

17 (2) Order any licensed inspector to compensate a client for any
18 monetary loss or damage arising out of the inspector's neglect or
19 failure to comply with the terms of an inspection contract, or for loss
20 or damage arising under the terms of a warranty given by the
21 inspector.

22 (3) Penalize a licensed inspector by monetary fine, in accordance
23 with schedules established by rule, for violation of any of the
24 provisions of this act, or of the code of ethical conduct and practices
25 promulgated pursuant to section 18 of this act.

26 (4) Suspend or revoke the license of an inspector for any flagrant,
27 willful or persistent violation of the terms of this act, or of the code of
28 ethical conduct and practices.

29
30 ¹[20.] 21.¹ The board is hereby authorized to adopt and
31 promulgate, in accordance with the provisions of the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), all rules and
33 regulations necessary or expedient to the timely and effective
34 implementation of the provisions and purposes of this act.

35
36 ¹[21.] 22.¹ This act shall take effect on the first day of the sixth
37 month next following the month in which this act becomes law, except
38 that sections 3 and 20 shall take effect immediately.

39
40
41 _____
42
43 Provides for licensing and regulation of home inspectors.