

Article 12-B Real Property Law

Home Inspection Professional Licensing

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Section

- 444-a. Short title.
- 444-b. Definitions.
- 444-c. State home inspection council.
- 444-d. License requirements for home inspectors.
- 444-e. Qualifications for licensure.
- 444-f. License periods, renewals and fees.
- 444-g. Duty of care of home inspectors.
- 444-h. Suspension and revocation of licenses.
- 444-i. Denial of license; complaints; notice of hearing.
- 444-j. Practice of architecture and professional engineering.
- 444-k. Liability coverage.
- 444-l. Duties of the secretary.
- 444-m. Construction with other laws.
- 444-n. Unlicensed activities.
- 444-o. Violations and penalties for unlicensed activities.
- 444-p. Judicial review.
- 444-q. Severability.

§ 444-a. Short title.

This article shall be known and may be cited as the "home inspection professional licensing act".

§ 444-b. Definitions.

As used in this article, the following terms shall have the following meanings:

1. "Council" means the state home inspection council established pursuant to the provisions of section four hundred forty-four-c of this article.
2. "Client" means any person who engages or seeks to engage the services of a home inspector for the purpose of obtaining inspection of and written report about the condition of a residential building.
3. "Department" means the department of state.
4. "Home inspector" means a person licensed as a home inspector pursuant to the provisions of this article.
5. "Home inspection" means the process by which a home inspector observes and provides a written report of the systems and components of a residential building including but not limited to heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components or any other related residential building component as recommended by the home inspection council and implemented by the department through regulation to provide a client with objective information about the condition of the residential building. The home inspector shall clearly identify in the written report which systems and components of the residential building were observed. A home inspection shall not include an inspection for radon or pests.
6. "Person" means an individual, firm, company, partnership, limited liability company or corporation.
7. "Residential building" means a structure consisting of one to four dwelling units and their garages and carport but shall not include any such structure newly constructed or not previously

occupied as a dwelling unit.

8. "Secretary" means the secretary of the department of state.

§ 444-c. State home inspection council.

1. There is hereby established a state home inspection council within the department. The council shall consist of the secretary or the secretary's designee and six additional members who are residents of the state, of whom three shall be persons licensed and actively engaged in the business of home inspection in the state of New York for at least five years immediately preceding their appointment and three of whom shall be consumers who are the owners and principal residents of a residential building in the state of New York. Appointments shall reflect the geographical diversity of the state.

2. For a period of one year after the effective date of this section, and notwithstanding any other provisions of this section to the contrary, the first three home inspectors appointed as members of the committee shall not be required, at the time of their first appointment, to be licensed to practice home inspection, provided that such members be licensed pursuant to this article within one year of appointment.

3. The governor shall appoint each member of the council for a term of three years except that of the members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and two shall serve for a term of one year. The governor shall appoint one home inspector and one consumer solely in his or her discretion, one home inspector and one consumer upon the recommendation of the temporary president of the senate, and one home inspector and one consumer upon the recommendation of the speaker of the assembly. Each member shall hold office until his or her successor has been qualified. Any vacancy in the membership of the council shall be filled for the unexpired term in the manner provided for the original appointment. No member of the council may serve more than two successive terms in addition to any unexpired term to which he or she has been appointed.

4. Members of the council shall receive no compensation but shall be reimbursed for their actual and necessary expenses and provided with office and meeting facilities and personnel required for the proper conduct of the council's business.

5. The council shall annually elect from among its members a chair and vice-chair and may appoint a secretary, who need not be a member of the council. The council shall meet at least twice a year and may hold additional meetings as necessary to discharge its duties.

6. The role of the council shall be advisory. The council shall advise the secretary in the administration and enforcement of the provisions of this article and recommend to the secretary regulations to implement the provisions of this article including but not limited to:

(a) standards for training including approval of the course of study and examination required for licensure of home inspectors;

(b) requirements and standards for continuing education of home inspectors;

(c) a code of ethics and standards of practice for licensed home inspectors consistent with the provisions of this article and sound ethical practices which code and standards shall be subject to public notice and comment prior to a council recommendation to the secretary. The standards of practice shall not require a reporting format or limit information which licensees are authorized to provide a client pursuant to this article; and

(d) development of information and educational materials about home inspection for distribution to clients.

Nothing in this section shall be deemed to supersede any established authority, duty and power established by local law, state law or regulation or otherwise granted to any agency, body or entity.

§ 444-d. License requirements for home inspectors.

No person shall conduct or represent that he or she has the ability to conduct a home inspection for compensation unless such person is:

1. licensed as home inspector pursuant to this article; or

2. a person regulated by the state or a political subdivision thereof as an architect who is acting within the scope of his or her profession; or

3. a person regulated by the state or a political subdivision thereof as an engineer who is acting within the scope of his or her profession; or
4. a person who is employed as a code enforcement official by the state or a political subdivision thereof when acting within the scope of that government employment; or
5. a person making home inspections for the purpose of meeting the requirements of section four hundred forty-four-e of this article to qualify for licensure as a home inspector.

§ 444-e. Qualifications for licensure.

1. An applicant for a license as a home inspector shall:
 - (a) have successfully completed high school or its equivalent; and
 - (b) (i) have successfully completed a course of study of not less than one hundred forty hours approved by the secretary, in consultation with the council, of which at least forty hours shall have been in the form of unpaid field based inspections in the presence of and under the direct supervision of a home inspector licensed by the state of New York or a professional engineer or architect regulated by the state of New York who oversees and takes full responsibility for the inspection and any report provided to a client; or
(ii) have performed not less than one hundred home inspections in the presence of and under the direct supervision of a home inspector licensed by the state of New York or a professional engineer or architect regulated by the state of New York who oversees and takes full responsibility for the inspection and any report provided to a client; and
 - (c) have passed a written or electronic examination approved by the secretary, in consultation with the council, and designed to test competence in home inspection practice as determined by a recognized role definition methodology and developed and administered to the extent practicable in a manner consistent with the American Educational Research Association's "Standards for Educational and Psychological Testing." An applicant who has passed an existing nationally recognized examination, as approved by the secretary, prior to the effective date of this article shall be in compliance with this paragraph; and
 - (d) pay the applicable fees.
2. The provisions of this section shall not apply to a person performing a home inspection pursuant to subparagraph (ii) of paragraph (b) of subdivision one of this section for the purpose of meeting requirements for a home inspector license.
3. Upon submission of an application and payment of the application and licensure fee to the secretary, the secretary shall issue a home inspector's license to a person who holds a valid license as a home inspector issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this state as determined by the secretary, in consultation with the council.
4. On or before the effective date of this article, the secretary shall, upon application, issue a home inspector license to a person who:
 - (a) meets the requirements of paragraphs (a) and (c) of subdivision one of this section and has performed one hundred or more home inspections for compensation within two years prior to the effective date of this section; or
 - (b) meets the requirements of paragraph (a) of subdivision one of this section and has been engaged in the practice of home inspection for compensation for not less than three years prior to the effective date of this section during which such person has performed two hundred fifty home inspections for compensation within three years prior to the effective date of this section; or
 - (c) has education and experience which the secretary, in consultation with the council, considers equivalent to that required pursuant to paragraphs (a) and (b) of this subdivision.

§ 444-f. License periods, renewals and fees.

1. Home inspector licenses and renewals thereof shall be issued for a period of two years, except that the secretary may, in order to stagger the expiration date thereof, provide that those licenses first issued or renewed after the effective date of this section shall expire or become void on a date fixed by the secretary, not sooner than six months nor later than twenty-nine months after the date of issue. No renewal of a license shall be issued unless the applicant has successfully completed a course of continuing education approved by the secretary, in consultation with the council.

2. The secretary shall collect a fee of two hundred fifty dollars for the first application for a license and the license as a home inspector. The secretary shall collect a fee of one hundred dollars to renew a home inspector license. The secretary shall collect an examination fee of fifty dollars. All fees and any fines imposed by the secretary pursuant to this article shall be deposited in the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

§ 444-g. Duty of care of home inspectors.

1. Every home inspector shall comply with the provisions of this article, and the rules, regulations and standards adopted pursuant thereto. The duty of every home inspector shall be to the client.

2. Every home inspector shall display his or her license number and status as a licensed home inspector on every home inspection report and in all advertising. Upon request of any client or interested party to a real estate transaction, every home inspector shall provide such proof of licensure pursuant to this article as shall be issued by the secretary for such purpose.

3. No later than five business days after the completion of a home inspection on behalf of a client, each home inspector shall provide such client with a written report of the findings of such inspection. The home inspection shall clearly identify in the written report which systems and components of the residential building were observed. Every such written report and the information contained therein shall be deemed confidential and shall not be disclosed without the express consent of the client; provided, however, that department representatives, conducting an investigation or other official business for the purpose of enforcing this article, shall have access to such reports and the information contained therein.

4. No home inspector shall:

(a) perform or offer to perform, for any additional fee, any repair, improvement or replacement of any component or system in a residential building for which such inspector, or partner thereof shall have prepared a home inspection report prior to the close of escrow. This paragraph shall not include repairs to components and systems not included in the standards of practice adopted pursuant to this article;

(b) inspect any residential building in which such inspector, partner or relative thereof has a financial interest or any interest in the transfer thereof, including the receipt of any commission as an agent;

(c) offer to provide or provide any commission, referral fee or kickback to the seller of any inspected residential building, or to the agent of either or both the seller and buyer of such building, for the referral of any business to such inspector or partner thereof; or

(d) agree to perform any home inspection or prepare any home inspection report for which compensation or employment is contingent upon the conclusions of the home inspection report, pre-established or prescribed findings, or the closing of a real estate transaction.

Nothing in this article authorizes a home inspector to practice engineering or architecture.

§ 444-h. Suspension and revocation of licenses.

1. The secretary may refuse to grant or may suspend or revoke a home inspector license, and may impose a civil penalty not to exceed one thousand dollars per violation, upon proof to the satisfaction of the secretary that the holder thereof has:

(a) Violated the provisions of subdivision four of section four hundred forty-four-g of this article;

(b) Disclosed any information concerning the results of the home inspection without the approval of the client or the client's representatives;

(c) Accepted compensation from more than one interested party for the same service without the consent of all interested parties;

(d) Accepted commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible;

(e) Failed to disclose promptly to a client information about any business interest of the licensee which may reasonably affect the client in connection with the home inspection;

(f) Been convicted of a felony involving fraud, theft, perjury or bribery;

(g) Failed to pay a fine or restitution ordered by the secretary within a reasonable time; or

(h) Made a willfully false statement in the context of home inspection activities or an application

for licensure pursuant to this article.

2. Whenever a license is revoked pursuant to this section, such license shall not be reinstated or reissued until after the expiration of a period of five years from the date of such revocation.

3. A violation of this article by a professional engineer or architect regulated by the state of New York shall be enforced by their respective state licensing boards.

§ 444-i. Denial of license; complaints; notice of hearing.

The department shall, before making a final determination to deny an application for a license, revoke a license, suspend a license, issue a reprimand, or impose a civil penalty for violation of this article, notify the applicant or licensee in writing of the reasons for such proposed denial, revocation, suspension, reprimand, or imposition of a civil penalty and afford the applicant or licensee an opportunity to be heard in person or by counsel. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe and shall be conducted in accordance with the provisions of the state administrative procedure act. If the applicant or licensee fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification shall become the final determination of the department. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state and administer an oath to and take testimony of any person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the license is denied, revoked, or suspended, a reprimand is issued, or a civil penalty is imposed, written notice of such determination shall be served upon the applicant or licensee personally or by certified mail or in any manner authorized by the civil practice law and rules for the service of a summons.

§ 444-j. Practice of architecture and professional engineering.

A person regulated by the state of New York to engage in the practice of architecture when acting within the scope of that practice, a person licensed in the state of New York to practice professional engineering when acting within the scope of that practice or a person who is employed as a code enforcement official by the state or a political subdivision thereof when acting within the scope of that government employment may perform home inspections without need of licensure pursuant to this article.

§ 444-k. Liability coverage.

1. Every licensed home inspector who is engaged in home inspection shall secure, maintain, and file with the secretary proof of a certificate of liability coverage, which terms and conditions shall be determined by the secretary in consultation with the council.

2. Every proof of liability coverage required to be filed with the secretary shall provide that cancellation or nonrenewal of the policy shall not be effective unless and until at least ten days' notice of intention to cancel or nonrenew has been received in writing by the secretary.

§ 444-l. Duties of the secretary.

The secretary shall, in consultation with the council, establish such rules and regulations as shall be necessary to implement the provisions of this article.

§ 444-m. Construction with other laws.

Nothing in this article shall prevent any licensed engineer, registered architect or any other licensed or regulated profession or governmental employee from acting within the scope of his or her profession or employment.

§ 444-n. Unlicensed activities.

The secretary may issue an order requiring restitution and/or directing the cessation of any

activity for which a license is required by this article upon a determination that a person has engaged in or followed the business or occupation of, or held himself, herself, or itself out as or acted as, temporarily or otherwise, a home inspector within this state without a valid license. The department shall, before making such determination and order, give such person notice as provided in section four hundred forty-four-i of this article and afford such person an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to this article.

§ 444-o. Violations and penalties for unlicensed activities.

Any person subject to an administrative order issued by the secretary directing the cessation of any activity for which a license is required and/or suspending or revoking a license previously issued who directly or indirectly engages in the business of home inspection, holds himself, herself, or itself out to the public as being able to engage in the business of home inspection without a license therefor, engages in the business of home inspection after having his or her license revoked or suspended, or without a license to engage in the business of home inspection, directly or indirectly employs, permits or authorizes an unlicensed person to engage in the business of home inspection shall be guilty of a misdemeanor and upon the first conviction thereof shall be sentenced to a fine of not more than one thousand dollars; upon a second or subsequent conviction thereof shall be sentenced to a fine of not less than one thousand dollars nor more than five thousand dollars. Each violation of this article shall be deemed a separate offense.

§ 444-p. Judicial review.

The action of the secretary in suspending, revoking, or refusing to issue or renew a license, or imposing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be reviewed by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules.

§ 444-q. Severability.

In the event it is determined by a court of competent jurisdiction that any phrase, clause, part, subdivision, paragraph or section, or any of the provisions of this article, is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article.