

What to Expect (Legally) from your Home Inspector



BY

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Builders League of South Jersey



*BLSJ
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Notice



- This course does not constitute legal advice or the formation of an attorney client relationship.
- We can still be friends.
- Course Identification/Reference Number is: **C20160393**

The Statute



- In late 1997, our Legislature enacted the Home Inspection Professional Licensing Act, N.J.S.A. 45:8-61 to -77, (“the Act”).
- The legislation was signed into law on January 8, 1998, effective 180 days thereafter.

The Statute



- The Home Inspection Professional Licensing Act requires that a person must be licensed to perform home inspection services. N.J.S.A. 45:8-67.
- In order to be licensed, the person must meet certain qualifications, such as possessing a minimum amount of experience and passing a home inspector's examination.

The Statute



- The legislation also provides for regulatory oversight of the home inspection industry by the Home Inspection Advisory Committee within the Division of Consumer Affairs, under the State Board of Professional Engineers and Land Surveyors. N.J.S.A. 45:8-63.
- The new law assigned the Home Inspection Advisory Committee the responsibility of establishing home inspection licensing standards – now found in the Administrative Code regulations.

After the Statute, the Regulations



In order to implement the provisions of the Home Inspection Professional Licensing Act, the Home Inspection Advisory Committee proposed and the Division of Consumer Affairs enacted a new subchapter codified in 23 sections of the Administrative Code (N.J.A.C. 13:40-15.1 through 15.23).

The new rules for the licensing and regulation of home inspectors in the State of New Jersey became effective June 3, 2002.

The new rules were significantly amended effective February 21, 2006.

Government Authority

- Home Inspection Advisory Committee
 - State Board of Professional Engineers and Land Surveyors
 - Division of Consumer Affairs
 - Department of Law & Public Safety (Attorney General)
- The office of the Home Inspection Advisory Committee is maintained with the State Board of Professional Engineers and Land Surveyors at 124 Halsey Street, Newark, New Jersey. The mailing address of the Committee is PO Box 45043, Newark, New Jersey 07101.

Government Authority



- Home Inspection Advisory Committee
 - The Home Inspection Advisory Committee, which is under the State Board of Professional Engineers and Land Surveyors, licenses home inspectors and regulates the home inspection profession.
- State Board of Professional Engineers and Land Surveyors
 - The board also licenses engineers in training, land surveyors in training and companies offering professional engineering and land surveying services. The Joint Committee of Architects and Engineers reviews complaints specific to the Building Design Services Act.
- Division of Consumer Affairs
 - The New Jersey Division of Consumer Affairs protects the public from fraud, deceit and misrepresentation in the sale of goods and services.
- Department of Law & Public Safety
 - The mission of the Department of Law and Public Safety is to protect the safety, security, and quality of life of the people of New Jersey through an integrated and coordinated structure of law enforcement and regulatory agencies. The Department represents the public's rights and interests in all legal matters. With ten divisions, as well as independent commissions and boards, the department has wide-ranging responsibilities critical to the people of New Jersey. The Attorney General, as head of the department, serves as the state's chief law enforcement officer and legal advisor, and is responsible for the management and administration of the department.

Home Inspection Advisory Committee

The Home Inspection Advisory Committee, which is under the State Board of Professional Engineers and Land Surveyors, licenses home inspectors and regulates the home inspection profession. Inquiries or complaints about a home inspector should be sent to Home Inspection Advisory Committee, P.O. Box 45043, Newark, N.J. 07101.

<http://www.njconsumeraffairs.gov/hiac/>

THE STATE OF NEW JERSEY
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Home Inspection Advisory Committee

Welcome to the Web site of the Home Inspection Advisory Committee

The Home Inspection Advisory Committee, which is under the State Board of Professional Engineers and Land Surveyors, licenses home inspectors and regulates the home inspection profession. Inquiries or complaints about a home inspector should be sent to Home Inspection Advisory Committee, P.O. Box 45043, Newark, N.J. 07101.

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Contrast – REC under DOBI



- **Real Estate Commission**
 - Established in 1921, the New Jersey Real Estate Commission (REC), a division of the New Jersey Department of Banking and Insurance, was created to administer and enforce New Jersey's real estate licensing law, N.J.S.A. 45:15-1 et seq.
 - The REC issues licenses to real estate brokers and salespersons, real estate schools, and course instructors, as well as establishes standards of practice for the real estate brokerage profession. It also regulates and registers out-of-state sales through New Jersey brokers.
- **Department of Banking and Insurance**
 - The mission of the Department of Banking and Insurance is to regulate the banking, insurance and real estate industries in a professional and timely manner that protects and educates consumers and promotes the growth, financial stability and efficiency of those industries.

Purpose; Scope; Applicability



- The purpose of the new regulations is to implement the Home Inspection Professional Licensing Act.
- The rules apply to all persons licensed as home inspectors and all applicants for licensure as home inspectors. (Note – there used to be a third category – “associate home inspectors” – but this is no longer in the law since 2/21/06).
- No person shall perform or hold himself out as permitted to perform a home inspection nor represent or call himself a home inspector unless licensed.

Applicability



- "Home inspection" means an **inspection and written evaluation** of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components or any other related residential housing component as determined by the board by regulation.
 - From N.J.S.A. 45:8-62

N.J.A.C. 13:40-15.2 - Selected Definitions



- **"Home inspection"** means a visual, functional, noninvasive inspection conducted for a fee or any other consideration and performed without moving personal property, furniture, equipment, plants, soil, snow, ice, or debris, using the mandatory equipment and including the preparation of a home inspection report of the readily-accessible elements of the following components of a residential building: structural components, exterior components, roofing system, plumbing system, electrical system, heating system, cooling system, interior components, insulation components and ventilation system, fireplaces and solid fuel burning appliances, or any other related residential housing component as determined by the Board, in consultation with the Committee, by rule, but excluding recreational facilities and outbuildings other than garages or carports.

N.J.A.C. 13:40-15.2 - Selected Definitions



- "**Accessible**" means available for visual inspection without requiring the moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.
- "**Client**" means any current or prospective **homeowner** who engages, or seeks to engage, the services of a home inspector for the purpose of obtaining an inspection of and written report regarding the condition of a residential building.
- "**Client's representative**" means an **attorney at law** of the State of New Jersey who has been retained by the client and identified to the home inspector **in writing**. *For the purposes of this subchapter, a real estate broker or agent is not the client's representative.*

N.J.A.C. 13:40-15.2 - Selected Definitions



- **"Home inspection report"** means a **written** report prepared **for a fee or any other consideration** by a home inspector which:
 - 1. Discloses those systems and components which are designated for inspection pursuant to this subchapter and are present at the time of the inspection, as well as those which are present at the time of the home inspection but are not inspected and the reason(s) they are not inspected;
 - 2. Describes systems and components as specified in this subchapter;
 - 3. States what material defects are found in systems or components;
 - 4. States the significance of findings; and
 - 5. Provides recommendations regarding the need to repair, replace or monitor a system or component, or to obtain examination and analysis by a qualified professional, tradesman or service technician.

N.J.A.C. 13:40-15.2 - Selected Definitions



"**Additional inspection services**" does not encompass repairs or improvements, and means:

1. Tests performed by a home inspector which are not part of a home inspection but which, in the opinion of the home inspector, are warranted or which the client requests. **Such tests include, but are not limited to, radon, asbestos, lead paint, carbon monoxide or urea-formaldehyde testing.** Such testing may be performed providing the home inspector has the relevant experience, education, training *and/or* licensing *and/or* certification to perform such additional tests as set forth in N.J.A.C. 13:40-15.22;
2. Inspecting systems and components which the home inspector is not required to. but is not prohibited from inspecting pursuant to the standards of practice, N.J.A.C. 13:40-15.16.
3. Inspecting systems and components which are not part of the home inspection but which the home inspector may inspect if experienced, educated, trained, certified, registered or licensed as set forth in N.J.A.C. 13:40-15.22; and
4. Engineering and architectural services which are necessitated as a result of a home inspection.

N.J.A.C. 13:40-15.2 - Selected Definitions



- **"Residential building"** means a structure consisting of from **one to four family dwelling units and their garages or carports**, unless such garage or carport contains a separate dwelling unit but excluding the common elements and areas in multiple unit housing such as condominiums and cooperative housing; that has been occupied as such prior to the time when a home inspection is requested or contracted for in accordance with the Act and this subchapter, but does not include any such structure newly constructed and not previously occupied.
- **"Significance of findings"** means an **explanation of the reason** the home inspector or associate home inspector reported that a system or component designated for inspection pursuant to this subchapter contained a **material defect**, for the purpose of advising the client of the need for appropriate action.
- **"Structural component"** means an integral part of a residential building, including the masonry structure and foundation, that supports non-variable forces or weights, that is, dead loads, and variable forces or weights, that is, live loads.

N.J.A.C. 13:40-15.2 - Selected Definitions



"**Unsafe**" means a condition of a readily accessible, installed component or system caused by obsolescence, damage, deterioration, improper installation or inherent defects which presents a **significant risk of injury or property damage under normal, day-to-day operation.**

"**Material defect**" means a condition, or functional aspect, of a structural component or system that is **readily ascertainable** during a home inspection that **substantially affects the value, habitability or safety** of the dwelling, but **does not include decorative, stylistic, cosmetic, or aesthetic aspects** of the system, structure or component.

N.J.A.C. 13:40-15.2 - Selected Definitions



- "**Decorative**" means ornamental, and not required for the operation of the systems and components of a residential building.
- "**Describe**" means to report in writing a system or component by its type or other observed significant characteristics to distinguish it from other systems or components.
- "**Person**" means any natural person, limited or general partnership, association, corporation, or other legal entity, or any combination thereof.
- "**Exterior surfaces**" means exterior cladding or siding, flashing, trim, eaves, soffits and/or fascia.
- "**Functional drainage**" means the drainage of a plumbing fixture sufficient to prevent fixture overflow during normal usage.
- "**Functional water flow**" means the delivery of a quantity of water at flow and pressure sufficient to use a fixture for its intended purpose.
- "**Other related residential housing component**" means an attached or detached **garage or carport** unless that garage or carport contains a residence separate from the primary residential building.

The Cutoff



- The new regulations apply to licensed home inspectors and applicants for licensure, performing home inspections of **residential buildings with four or fewer dwelling units** and other related residential housing components. N.J.A.C. 13:40-15.1; NJSA 45:8-62

The Cutoff



- **"Residential building"** means a structure consisting of from **one to four family dwelling units** that has been occupied as such prior to the time when a home inspection is requested or contracted for in accordance with this act, but shall not include any such structure newly constructed and not previously occupied.
 - From N.J.S.A. 45:8-62

The Cutoff



- **“Residential building”** means a structure consisting of from **one to four family dwelling units and their garages or carports**, unless such garage or carport contains a separate dwelling unit but excluding the common elements and areas in multiple unit housing such as condominiums and cooperative housing; that has been occupied as such prior to the time when a home inspection is requested or contracted for in accordance with the Act and this subchapter, but does not include any such structure newly constructed and not previously occupied.
 - N.J.A.C. 13:40-15.2

Recap: Industry Standards



- Home Inspection Professional Licensing Act.
 - ✦ NJSA 45:8-61, et seq.
- Home Inspection Advisory Committee Regulations
 - ✦ NJAC 13:40-15.1, et seq.
- Competing Trade Associations

Competing Trade Associations



- Three major national competing trade associations
 - American Society of Home Inspectors, Inc. (ASHI)
 - International Association of Certified Home Inspectors (InterNACHI)
 - National Association of Home Inspectors, Inc. (NAHI)

Competing Trade Associations



ASHI

- American Society of Home Inspectors, Inc.



InterNACHI

- International Association of Certified Home Inspectors



NAHI

- National Association of Home Inspectors, Inc.

Court Recognition



- “Plaintiffs were required to provide expert opinion as to whether Pease was obligated to inspect the foundation wall, lying beneath the wooden deck, or to test the UST tank and its surrounding soil. Plaintiffs failed to provide this guidance. Although plaintiff produced the April 29, 2005, report of George M. Klepp, a hydrologist, the report does not contain any opinion as to whether Pease deviated from the standard of care required of home inspectors. In fact, the report contains no comments regarding Pease's home inspection or Pease's report. To the contrary, **Pease testified that he performed the inspection and prepared his report in accordance with the American Society of Home Inspectors (ASHI) standards**, which provide that home inspectors are not required to: 1) determine "the condition of systems or components which are not readily accessible;" 2) determine "the presence of any environmental hazards, including, but not limited to . . . contaminants in soil, water, and air;" and 3) inspect "underground items including, but not limited to, underground storage tanks or other underground indications of their presence, whether abandoned or active." Plaintiffs offered no evidence that Pease failed to perform his inspection in accordance with the ASHI standards, or any other appropriate standard.” **Grzymala v. McKeon**, 2007 WL 2188633 *4 (N.J. App. Div. July 31, 2007)

Exemptions from Licensure



- The provisions of Home Inspection Professional Licensing Act do not apply to:
 - a. Code enforcement official when acting within the scope of government employment;
 - b. Architect, professional engineer, electrical contractor or master plumber, who is acting within the scope of practice of his profession or occupation;
 - c. **Real estate broker, broker-salesperson, or salesperson who is licensed by the State when acting within the scope of his profession;**
 - d. Any State licensed real estate appraiser or certified general or residential real estate appraiser, who is acting within the scope of his profession;

Exemptions from Licensure



- e. Insurance adjuster, acting within the scope of his profession;
- f. Pesticide applicator, acting within the scope of the practice for which he is certified or registered; or
- g. Any person performing home inspections in the presence of and under the direct supervision of a licensed home inspector for the purpose of meeting the training requirements of the regulations.

The Role of Other Inspectors



- Chimney Sweeps
 - ✦ New Jersey Chimney Sweep Guild w/ code of ethics
- Roofers, Roof Consultants
- Infrared Thermographers
- Environmental Services
 - ✦ Asbestos, Mold, Lead, Air Quality Remediation, Testing, Sampling
- Construction Code Officials
- Insurance Inspectors
- Lenders' inspectors

Licensure Requirements - N.J.A.C. 13:40-15.4(a)



Pursuant to N.J.S.A. 45:8-72, by December 30, 2005, persons may apply for licensure as a home inspector by completing and submitting to the Committee an application which will require information that the applicant:

- 1. Is of good moral character;
- 2. Has successfully completed high school or its equivalent;
- 3. Has, as of December 31, 1999, passed the examination offered by the American Society of Home Inspectors (ASHI) or has, since January 1, 2000, passed the National Home Inspection Examination administered by the Examination Board of Professional Home Inspectors (EBPHI);
- 4. Has performed home inspections as defined in N.J.A.C. 13:40-15.2 on or before December 30, 2005, in either of the following numbers:
 - i. 400; or
 - ii. 300 for at least three years preceding December 30, 2005.
- 5. Maintains an **errors and omissions insurance policy** in the minimum amount of \$500,000 per occurrence.

Licensure Requirements –
N.J.A.C. 13:40-15.4(b), (c) & (d)



- (b) An applicant for licensure under this section shall:
 - 1. Pay an application fee as set forth in N.J.A.C. 13:40-15.23;
 - 2. Submit copies of income tax returns, business incorporation papers or similar documentation to verify that the applicant was in the business of performing home inspections for at least three years prior to December 30, 2005: and
 - 3. Submit a list of the home inspections completed for compensation as required pursuant to (a)5 above by December 30, 2005.
- (c) The Committee shall randomly audit applications to verify that applicants for licensure as a home inspector under this section performed the home inspections as required by (a)5 above. Applicants that are audited shall submit copies of home inspection reports as requested by the Committee.
- (d) Pursuant to N.J.S.A. 45: 1-21 and N.J.A.C. 13:40-15.20. the Committee may deny, refuse to renew, temporarily suspend or revoke a license, or impose a civil penalty, upon proof that an applicant has obtained a license under this section through fraud, deception or misrepresentation.

Licensure Requirements – N.J.A.C. 13:40-15.6

- Requirements for **initial licensure as a home inspector** include proof that a candidate is of **good moral character**, has **completed high school or its equivalent**, has successfully completed **at least one year as a licensed associate home inspector** as set forth in N.J.A.C. 13:40-15.5, has performed at **least 250 home inspections** as defined in N.J.A.C. 13:40-15.2 and will maintain an **errors and omissions policy** in the minimum amount of \$500,000 per occurrence.
- An applicant for licensure under this section shall **pay an application fee** and **submit a list of 250 home inspections completed for compensation** while employed by and subject to the regular and effective, direct supervision of a licensed home inspector.
- **The Committee audits applications** to verify that applicants for licensure as a home inspector under this section performed at least 250 home inspections as required by the rules, **and may deny, refuse to renew, temporarily suspend or revoke a license, or issue a civil penalty, upon proof that an applicant has obtained a license through fraud, deception or misrepresentation.**

Requirements for Licensure

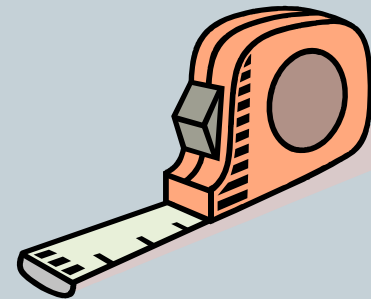


- To be eligible for licensure as a home inspector, an applicant shall fulfill the following requirements:
 - a. Be of **good moral character**; and
 - b. Have successfully **completed high school or its equivalent**; and
 - c. (1) Have successfully **completed an approved course of study** of 180 hours, as prescribed by the board, after consultation with the State Department of Education, which shall include not less than 40 hours of unpaid field-based inspections in the presence of and under the direct supervision of a licensed home inspector, which inspections shall be provided by the school providing the approved course of study; or(2) Have performed not less than 250 fee-paid home inspections in the presence of and under the direct supervision of a licensed home inspector who oversees and takes full responsibility for the inspection and any report produced; and
 - d. Have **passed an examination** administered or approved by the committee. The examination may have been passed before the effective date of this act.
 - **NJSA 45:8-68L.1997,c.323,s.8; amended 2005, c.201, s.3.**

Requirements for Licensure



- **N.J.A.C. 13:40-15.6 Requirements for initial licensure as home inspector**
- (a) An applicant for licensure as a home inspector shall complete and submit to the Committee an application that will require information that the applicant:
 - 1. Is of good moral character;
 - 2. Has successfully completed high school or its equivalent;
 - 3. Has successfully completed an approved course of study of 180 hours, as prescribed by the Board, after consultation with the New Jersey Department of Education, which shall include not less than 40 hours of unpaid field-based inspections in the presence of and under the direct supervision of a licensed home inspector. The inspections shall be provided by the school administering the approved course of study; or



Requirements for Licensure



- **Requirements for initial licensure as home inspector (cont'd)**
- 4. Has **performed at least 250 home inspections** as defined in N.J.A.C. 13:40-15.2 for which the client was charged a fee. The inspections shall be performed in the presence of and under the direct supervision of a New Jersey licensed home inspector who possesses a current and active license, has performed at least 500 home inspections and has at least three years of experience. The inspector must oversee and take full responsibility for the inspection and any report produced by monitoring the progress of the trainee and ensuring compliance with the home inspection training reports requirements;
- 5. Has submitted a list of the 250 inspections performed under (a)4 above, if an applicant is seeking licensure under that paragraph;
- 6. Shall secure and maintain **an errors and omissions insurance policy in the minimum amount of \$ 500,000 per occurrence**;
- 7. Has passed the Home Inspector Examination, administered by the Examination Board of Professional Home Inspectors (EBPHI); and
- 8. Pay an application fee as set forth in N.J.A.C. 13:40-15.23.

Requirements for Licensure



- **Requirements for initial licensure as home inspector (cont'd)**
- (b) The Committee shall **randomly audit applications** to verify that applicants for licensure as a home inspector under this section performed at least 250 home inspections as required by (a)4 above. Applicants that are audited shall submit copies of home inspection reports as requested by the Committee.
- (c) Pursuant to N.J.S.A. 45:1-21 and N.J.A.C. 13:40-15.20, the Committee may deny, refuse to renew, temporarily suspend or revoke a license, or issue a civil penalty, upon proof that an applicant has obtained a license through fraud, deception or misrepresentation.
- **N.J.A.C. 13:40-15.6**

Continuing Education



- **45:8-78 Continuing education requirement.**
6.The State Board of Professional Engineers and Land Surveyors shall require each home inspector, as a condition for **biennial license renewal** pursuant to section 13 of P.L.1997, c.323 (C.45:8-73), to complete **40 credit hours of continuing education** requirements imposed by the Home Inspection Advisory Committee pursuant to sections 7 through 9 of P.L.2005, c.201 (C.45:8-79 through C.45:8-81).
L.2005,c.201,s.6.
- **45:8-79 Standards for continuing education.**
7. a. The committee shall:
(1)Establish standards for continuing home inspection education, including the subject matter and content of courses of study and the selection of instructors;
(2)Approve educational programs offering continuing education credits; and
(3)Approve other equivalent educational programs and establish procedures for the issuance of credit upon satisfactory proof of the completion of these programs.
b. In the case of education courses and programs, each hour of instruction shall be equivalent to one credit.
L.2005,c.201,s.7.
- N.J.A.C. 13:40-15.14

Advertising



- N.J.A.C. 13:40-15.18
- Advertising; identification of licensee: This section sets forth the requirements and the manner in which licensees must identify themselves while advertising their professional services. The rule specifies the information that must be contained in all advertising, including the markings on commercial vehicles.

Advertising



- All radio and television advertising by a home inspector Must include the name and license number of the home inspector.
- All advertising by a home inspector, other than radio and television advertising, must include:
 - The name of the home inspector;
 - The words "Home Inspector License Number" or "Home Inspector Lic. #," followed by the license number of the home inspector; and
 - The business address of the home inspector, including the street name and number. Post office box numbers shall not be used as a form of business address.

Advertising



- All advertising records must be retained for a period of five years from the date of the advertisement.
- A home inspector whose name, business address, or license number appears or is mentioned in any advertisement shall be presumed to have caused, permitted or approved the advertising and shall be personally responsible for its content.
- All home inspectors who utilize a non-commercial vehicle during the performance of a home inspection shall display on the dashboard of the vehicle a placard issued by the Division which contains the name of the inspector, the inspector's license number and the name of the home inspection business.

Advertising

- All commercial vehicles used by a home inspector or an associate home inspector shall be marked on both sides with the following information:

- The name of the home inspector in lettering at least one inch in height;
- The words "Home Inspector License Number" or "Home Inspector Lic. #," followed by the license number of the home inspector in lettering at least one inch in height; and
- The name of the owner or the lessee of the vehicle and the municipality from which the licensee practices or where the licensee has a principal office in lettering at least three inches in height (or as close to three inches high as is possible within the limited space, provided the information required is clearly visible and readily identifiable.)



Advertising



- All business correspondence and stationery, such as letterhead, business cards, pre-inspection agreements, and home inspection reports, of a home inspector shall display:
 - The name of the home inspector;
 - The words "Home Inspector License Number" or "Home Inspector Lic. #," followed by the license number of the home inspector; and
 - The business address of the home inspector, including the street name and number, of the home inspector. Post office box numbers shall not be used as a form of business address.

Break - Ten Minutes



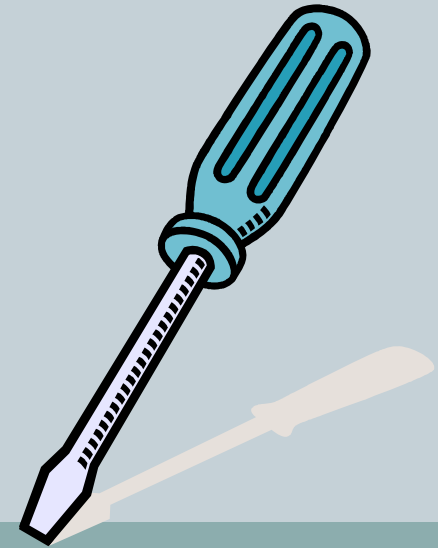
LEGAL ISSUES MARATHON



Prohibited Practices



- Compensation and inducements to the client and related parties
- Contingent employment
- Unauthorized disclosures
 - exceptions



Prohibited Practices



- Double dipping
- Consideration from third parties to the client
- Selling information to other trades
- Failure to promptly disclose relevant business interests

Contrast – NJREC



- Prohibition against Kickbacks for Related Business Referrals – N.J.A.C. 11:5-7.2
- (a) Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-7.1(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be in compliance with this subsection.

Contrast - Fed



- Prohibition against Kickbacks for Related Business Referrals – 12 U.S.C. § 2607
- (a) Business referrals
- No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.
- (b) ...

Prohibited Practices



- Allowing personal interests to affect quality
- Using home inspection to obtain work in unrelated field
 - Exceptions
- Double dipping

Prohibited Practices



- Consideration from third parties to the client
- Selling information to other trades
- Failure to promptly disclose relevant business interests
- Allowing personal interests to affect quality

Prohibited Practices



- Using home inspection to obtain work which is not an additional inspection service as defined by N.J.A.C. 13:40-15.2;



Prohibited Practices



- Advertising - N.J.A.C. 13:40-15.18
 - Misleading advertising
 - Advertising unauthorized services
- Performing services beyond the licensee's ability or authority to perform

Prohibited Practices



- Unqualified engineering or architectural services
- Failure to inspect as required by the administrative standards of practice
 - N.J.A.C. 13:40-15.16
 - exception: written consent of the client

Prohibited Practices



- Employment of unlicensed home inspector
- Unlicensed practice
- Dishonesty and fraud, or misrepresentation
 - with the intent to benefit a licensee or other person or with the intent to substantially injure another person
 - in the performance of a home inspection or preparation of a home inspection report

Prohibited Practices



- Payment of finder's fees and referral fees
- Lack of diligence
 - in preparing a home inspection report
 - delivering a report to the client
 - responding to an inquiry from the client

Prohibited Practices



- **N.J.S.A. 45:8-75. Limitations upon licensees 15.** No person licensed as a home inspector pursuant to this act shall engage in the practice of architecture or the practice of professional engineering unless licensed therefor.

L.1997,c.323,s.15; amended 2001, c.158, s.2.

Discipline



- The Committee may suspend, revoke or refuse to renew a license, or issue a civil penalty, upon proof that an applicant or licensee:
 - Has obtained a license or license renewal through fraud, deception, or misrepresentation;
 - Has engaged in dishonesty, fraud, deception, misrepresentation, false promise, or false pretense;
 - Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
 - Has engaged in repeated acts of negligence, malpractice or incompetence;
 - Has engaged in professional or occupational misconduct as outlined in N.J.A.C. 13:40-15.18 and 15.19;

Discipline



- The Committee may suspend, revoke or refuse to renew a license, or issue a civil penalty, upon proof that an applicant or licensee:
 - Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the home inspection Committee. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
 - Has had the authority to engage in home inspections revoked or suspended by any other state, agency or authority for reasons consistent with this section;
 - Has violated or failed to comply with the provisions of any law or regulation administered by the Committee;

Discipline



- The Committee may suspend, revoke or refuse to renew a license, or issue a civil penalty, upon proof that an applicant or licensee:
 - Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;
 - Has failed to report any violations of the Act and this subchapter by other licensees to the Committee;
 - Is incapable, for medical or other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

Discipline



- The Committee may suspend, revoke or refuse to renew a license, or issue a civil penalty, upon proof that an applicant or licensee:
 - Has violated any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of the law as set forth in this section, or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;
 - Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days; or
 - Advertised fraudulently in any manner.

Pre-inspection Agreements



- Required Disclosures and Recommendations; Timing
- Specimen Examples Discussed
- Retention of Copies



Pre-inspection Agreements



- A home inspector or associate home inspector must send a pre-inspection agreement to a client or **client's representative**, by mail, facsimile, email or other means of delivery, **no later than one business day after the appointment for the home inspection is made.**
- The pre-inspection agreement must be **executed prior to the start of the home inspection.**

Pre-inspection Agreements



- Pre-inspection agreements must also contain, at the minimum, the following information:
 - the full name and address of the client,
 - the address of the home to be inspected,
 - the date and time of the home inspection, and
 - a statement that home inspectors are governed by the rules in the New Jersey Administrative Code at N.J.A.C. 13:40-15.15, that the licensee shall comply with these regulations, and that failure to comply with the regulations may subject the licensee to discipline.

Pre-inspection Agreements



- Pre-inspection agreements must indicate whether any systems or components (as defined) are excluded from the home inspection at the request of the client.
- Pre-inspection agreements must indicate:
 - whether the home inspector or associate home inspector will return at a later date to inspect any systems or components which are not inspected because of unforeseen circumstances at the initial home inspection and
 - whether any additional fee will be charged for such subsequent inspection and the amount of such fee, if any.

Pre-inspection Agreements



- Pre-inspection agreements must include a description of any additional inspection service(s), as defined in N.J.A.C. 13:40-15.2, for which the client is charged an additional fee(s) which are not part of the home inspection but may be performed pursuant to this subchapter.
- Pre-inspection agreements must be retained for a period of **five years** following the completion of the pre-inspection agreement.

Conducting Home Inspections



- Standards of Practice
- Carve-outs
- Mandatory Tools and Equipment -
N.J.A.C. 13:40-15.17



Standards of Practice



- Home inspectors shall:
 - inspect specifically delineated systems and components in residential buildings and other related residential housing components,
 - prepare a home inspection report, and
 - retain copies of all home inspection reports for a period of five years.

Standards of Practice



- Home inspectors shall **not** have to:
 - enter any area or perform any procedure which is, in the opinion of the home inspector, unsafe;
 - enter any area or perform any procedure which will, in the opinion of the home inspector, likely damage the property or its systems or components;
 - enter any area which does not have at least 24 inches of unobstructed vertical clearance and at least 30 inches of unobstructed horizontal clearance;

Standards of Practice



- Home inspectors shall **not** have to:
 - identify concealed conditions and latent defects;
 - determine life expectancy of any system or component;
 - determine the cause of any condition or deficiency;
 - determine future conditions that may occur such as the failure of systems and components including consequential damage;

Standards of Practice



- Home inspectors shall **not** have to:
 - determine the operating costs of systems or components;
 - determine the suitability of the property for any specialized use;
 - determine compliance with codes, regulations and/or ordinances;
 - determine market value of the property or its marketability;
 - determine advisability of purchase of the property;

Standards of Practice



- Home inspectors shall **not** have to:
 - determine the presence of any potentially hazardous plants, animals or diseases or the presence of any suspected hazardous substances or adverse conditions in soil, water and air;
 - determine the effectiveness of any system installed or method utilized to control or remove suspected hazardous substances;
 - operate any system or component which is shut down or otherwise inoperable;

Standards of Practice



- Home inspectors shall **not** have to:
 - operate any system or component which does not respond to normal operating controls;
 - operate shut-off valves;
 - determine whether water supply and waste disposal systems are public or private;
 - insert any tool, probe or testing device inside electrical panels;
 - dismantle any electrical device or control other than to remove the covers of main and sub panels;

Standards of Practice



- Home inspectors shall **not** have to:
 - walk on unfloored sections of attics; or
 - light pilot flames or ignite or extinguish fires.



Tools & Equipment



- **Mandatory tools and equipment:** All home inspectors shall, during the performance of a home inspection, be equipped with the following minimum tools and equipment:
 - A ladder, minimum 11 feet in length;
 - A flashlight, or another equivalent light source, with a minimum 15,000 candlepower illumination;
 - A flame inspection mirror;
 - An electrical outlet tester with Ground Fault Circuit Interrupter (GFCI) test ability;
 - Tools necessary to remove common fasteners on covers or panels which are required to be removed pursuant to this subchapter;**AND**

Tools & Equipment



- **Mandatory tools and equipment:** All home inspectors shall, during the performance of a home inspection, be equipped also with the following minimum tools and equipment:
 - A measuring tape;
 - A probe;
 - Thermometers for testing air conditioning;
 - Binoculars with a magnification between 8X42 and 10X50;
 - A moisture meter;
 - Combustible gas leak detection equipment; and
 - A voltage detector.

Conducting Home Inspections



- Requirements
 - Structural components
 - Exterior components
 - Roofing system components
 - Plumbing system components
 - Electrical system components

Conducting Home Inspections



- Requirements (cont'd)
 - Heating system components
 - Cooling system components
 - Interior components
 - Insulation components and ventilation system
 - Fireplaces and solid fuel burning appliances

Home Inspection Reports



- Required Disclosures and Recommendations
- Retention of Copies – 5 years
- Ownership of the Report and Formalities for Further Use

Home Inspection Reports



- In addition to inspection, home inspectors shall prepare a home inspection report which will:
 - describe the systems and components specified, and
 - state material defects found in systems or components, and
 - provide recommendations where material defects were found
 - ✦ to repair, replace or monitor a system or component or
 - ✦ to obtain examination and analysis by a qualified professional or trades person.

R.E. Agent's Duty to Verify



- **Contrast:** the Real Estate Agent's Duty to Verify (NJAC 11:5-6.4)
- Every licensee shall make reasonable effort to ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker, and concerning the financial qualifications of every person for whom he or she submits an offer to his or her client or principal. Information about social conditions and psychological impairments as defined in (d) below is not considered to be information which concerns the physical condition of a property.
- 1. A reasonable effort to ascertain material information shall include at least:
 - i. Inquiries to the seller or seller's agent about any physical conditions that may affect the property; and
 - ii. A visual inspection of the property to determine if there are any readily observable physical conditions affecting the property.

R.E. Agent's Duty to Disclose



- **Contrast:**

- Licensees shall disclose all information material to the physical condition of any property which they know or which a reasonable effort to ascertain such information would have revealed to their client or principal and when appropriate to any other party to a transaction. Licensees shall also disclose any actual or potential conflicts of interest which the licensee may reasonably anticipate. NJAC 11:5-6.4

Additional Training Required



- **N.J.A.C. 13:40-15.22 Inspection services requiring additional experience, education, training, or license or certification:** This section sets forth additional inspection services which may be provided by a home inspector as long as the inspector has the requisite experience, education, training or license or certification, such as inspections of wells, well pumps, private waste disposal systems and inspections for the presence of asbestos, lead paint and radon.

New Technologies



- Trends and Opportunities
- New Technologies
 - Infrared Thermography
 - ✦ Moisture Penetration
 - ✦ Pest control
 - ✦ Insulation and Energy Conservation
 - Moisture Meters
 - On the Horizon for Nondestructive Testing

New Technologies



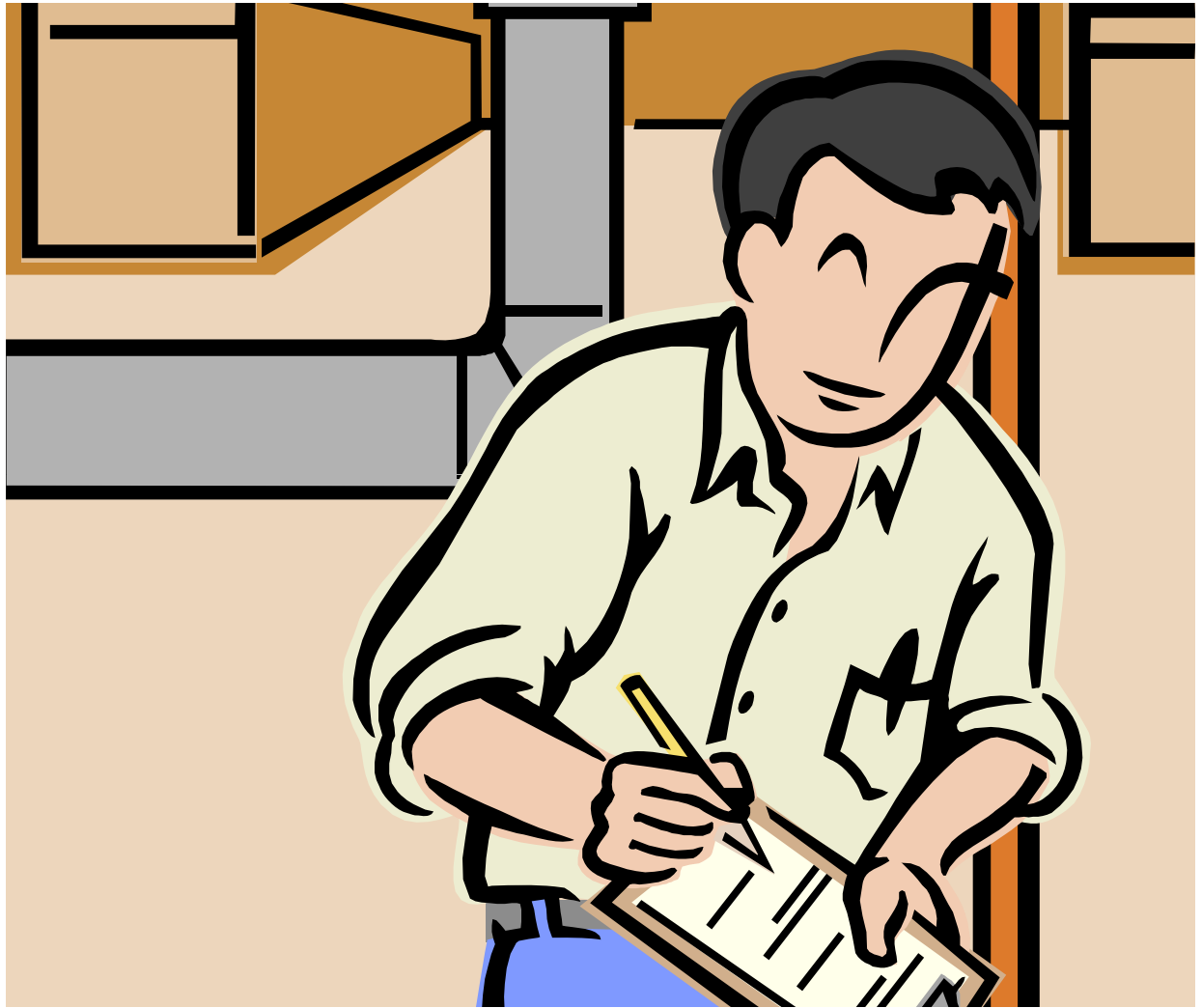
- Inspector Qualification
 - Tie-In with Prohibited Practices
 - Consumer Fraud
- Documentation of Additional Services
 - The Agreement of Sale
 - The Agreement for Services
 - The Report

New Technologies



- New legal risk associated with new technologies
 - By Contract
 - Standards Creep
 - ✦ Conceptual Threat to the System - What Do We Do When Limiting Obligation to Visual Inspection becomes a Poor Joke
 - ✦ Consumer Fraud by Knowing Omission
 - Right Data, Wrong Diagnosis, and Failure to follow the Protocols Through to Verification

Conclusion



If Murphy's Law Was a Job...

Identification Cards



- Licensees are required to obtain an identification card issued by the Committee, which is non-transferable and contains the licensee's name, photo, signature and license number. Additionally, N.J.A.C. 13:40-15.9 provides for the issuance of a duplicate card upon notification to the Home Inspection Advisory Committee and payment of a fee.
- Licensees have to **carry the card during the performance of a home inspection**

License Renewal



- All licenses are issued for a **two year period**.
- Renewal applications must provide the applicant with the option of either active or inactive status.
- If the licensee does not renew the license prior to its expiration date, the licensee may renew it within 30 days of its expiration.
- Failure to renew the license within the 30 day period will result in the license expiration.
- An individual who continues to practice with an expired license shall be deemed to have engaged in the unlicensed practice of home inspection.

✦ N.J.A.C. 13:40-15.10

Insurance



- All licensed home inspectors engaged in the profession of home inspection shall maintain an errors and omissions insurance policy in the minimum amount of \$500,000 per occurrence and file proof of the policy with the Home Inspection Advisory Committee.
- Licensees must file proof of the policy with the Committee.
- The State Board of Professional Engineers and Land Surveyors must receive proof that the policy provides that cancellation or nonrenewal of the policy is not effective unless and until 10 days after written notification of intent to cancel or nonrenew
- Both the home inspector and the insurance company must provide at least 10 days prior written notification to the Committee of the anticipated discontinuation of the policy.
- [N.J.A.C. 13:40-15.8](#)



Making
the claim

Agent

Claimant

Policy

Carrier

Insured

Errors and Omissions

Four Year Statute of Limitation



- **45:8-76.1 Action, commencement within four years.**

10. An action for an error or omission in the performance of a home inspection contract with respect to a home inspector licensed pursuant to P.L.1997, c.323 (C.45:8-61 et seq.), shall be commenced within four years of the date of the home inspection.

L.2005,c.201,s.10.

Conclusion



- Contractual Limitations of Liability, Abbreviated Claims Periods, Exculpatory Clauses, etc. in the Home Inspection Agreement - Are they Bankable?

Shortening the Statute



- At least one New Jersey trial court has held that a home inspection contract can shorten the four year statute of limitations period, provided the modifying contract clause meets consumer contract standards and that the home inspector follows all of the rules on pre-inspection agreements.
 - Vaz v. Sweet Ventures, Inc., UNN-L-004619-10 (N.J. Super. Ct. Law Div.)

Consumer Fraud



- Licensed home inspectors in New Jersey are not subject to the New Jersey Consumer Fraud Act under the “learned profession” exception to Consumer Fraud Act liability. Cheret v. Sure Home Inspections, Inc., HNT-L-685-07 (N.J. Super. Law Div. 2009) (Unpublished)
- Accord: Vaz v. Sweet Ventures, Inc., UNN-L-004619-10 (N.J. Super. Ct. Law Div.)

Consumer Fraud



- Learned profession exception – the extensive education, license supervision and training requirements of certain professions – including home inspection - provide an alternative to liability under Consumer Fraud Act to protect the public.

Consumer Fraud



- **Contrast** - The law in New Jersey does not support dismissing a CFA claim against a real estate brokerage firm or a real estate salesperson for misconduct in their professional capacity under the learned profession exception to Consumer Fraud. De Pompe v. Weichert Realtors, A-4912-09T2 (App.Div. 2011)
- The case that held to the contrary, Neveroski v. Blair, 141 N.J.Super. 365 (App.Div.1976), was superseded by statutory amendment in 1976, N.J.S.A. 58:8-2, providing that the sale of real estate and thus real estate salespersons were subject to the CFA.
 - The Neveroski case was written before the words “real estate” were added to the definition of “merchandise” in the Consumer Fraud Act

Limitation of Liability



- In Lucier v. Williams, 366 N.J.Super. 485 (App. Div 2004), the New Jersey Appellate Division held that a limitation of liability provision (an exculpatory clause) contained in a home inspection contract is both unconscionable and unenforceable.

Conclusion



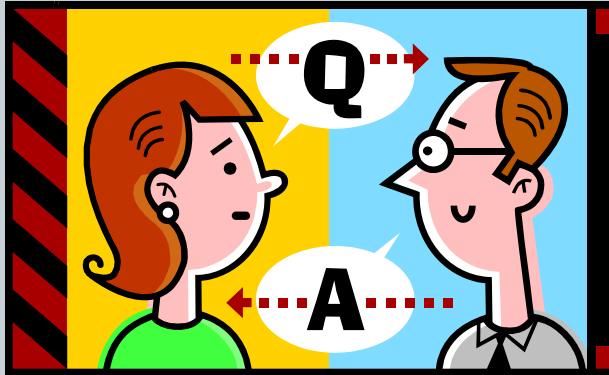
- Special Considerations for the Real Estate Licensee
 - Should You Be There for the Inspection?
 - Disclosure and Consumer Fraud Safe Harbors That May Not Be So Safe
 - ✦ A discussion of N.J.S.A. 56:8-19.1 and home inspection
 - ✦ A discussion of further (and downstream) disclosure of defects revealed
 - ✦ Contested report conclusions

Conclusion



- Special Considerations for the Real Estate Licensee (cont'd)
 - Negligent Referral
 - Duty to verify currency of licenses, insurances, and what else?
 - Malpractice in the broker-prepared agreement of sale
- Conclusion: Up Your Game!

Open Q&A



Don't Forget to Sign Out.



What to Expect (Legally) from your Home Inspector



BY

ROBERT J. INCOLLINGO, ESQ.



Builders League of South Jersey



*BLSJ
Fall 2012*

Extra / Unused



- What follows are extra slides not presently part of the seminar

Change of License Status: N.J.A.C. 13:40-15.11

- Regulations allow a change of license status from inactive to active upon payment of the renewal fee and submission of evidence of completion of certain criteria:
 - Forty units of Committee-approved continuing education within the two year period preceding the application for reinstatement if the license has been inactive for a period of two years or less;
 - Sixty units of Committee-approved continuing education within the three year period immediately preceding the application for reinstatement or the course of study as required by N.J.A.C. 13:40-15.5(a)3 within one year immediately preceding the application for reinstatement if the license has been inactive for a period of more than two and less than five years; **or**
 - The course of study as required by N.J.A.C. 13:40-15.5(a)3 within one year immediately preceding the application for reinstatement if the license has been inactive for a period of five or more years.

Reinstatement - N.J.A.C. 13:40-15.12



- Regulations allow for the reinstatement of a suspended license for an individual whose license has been suspended for nonpayment of the biennial renewal fee. The section sets forth certain requirements for reinstatement depending upon the length of time a license is suspended.

Change of Address & Service of Process - N.J.A.C. 13:40-15.13



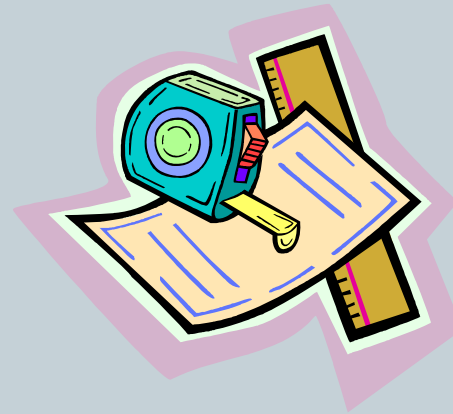
- A licensed home inspector must notify the Home Inspection Advisory Committee in writing of any change of address within 30 days.
- The address on record with the Home Inspection Advisory Committee will be deemed adequate for notice of any legal process.

Comity - N.J.A.C. 13:40-15.21

- A person who possess a home inspector's license from another state may on application and payment of the fee, be issued a license as a home inspector, provided that:
 - 1. The education, training, and examination requirements in such other jurisdiction are substantially equivalent to those required by the Committee at the time of application
 - 2. The prior State licenses relied upon must be current, active, and in good standing; and
 - 3. The person secures and maintains an errors and omissions insurance policy in the minimum amount of \$500,000 per occurrence.

Fee Schedule - N.J.A.C. 13:40-15.23

- This section sets forth sets forth the Committee's fee schedule for the cost of application processing, licenses, renewals and reinstatement.



License at Risk



- The division is authorized, for purposes of facilitating determinations concerning licensure eligibility, to require the fingerprinting of each applicant in accordance with applicable State and federal laws, rules and regulations. Each applicant shall submit the applicant's name, address, and written consent to the director for a criminal history record background check to be performed. The division is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation. Upon receipt of such notification, the division shall forward the information to the appropriate board which shall make a determination regarding the issuance of licensure. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check, unless otherwise provided for by an individual enabling act. The Division of State Police shall promptly notify the division in the event an applicant or licensee, who was the subject of a criminal history record background check pursuant to this section, is convicted of a crime or offense in this State after the date the background check was performed.

For purposes of this act:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of permit for which application is made.

- "Permit" has the same meaning as defined in section 1 of P.L.1991, c.421 (C.13:1D-101).

License at Risk



- **N.J.S.A. 45:8-74 Refusal to grant, suspension, revocation of license.**

14. In addition to the provisions of section 8 of P.L.1978, c.73 (C.45:1-21), the committee may refuse to grant or may suspend or revoke a home inspector license upon proof to the satisfaction of the committee that the holder thereof has:

- a. Disclosed any information concerning the results of the home inspection without the approval of a client or the client's representatives;
- b. Accepted compensation from more than one interested party for the same service without the consent of all interested parties;
- c. Accepted commissions or allowances, directly or indirectly, from other parties dealing with their client in connection with work for which the licensee is responsible;
or
- d. Failed to disclose promptly to a client information about any business interest of the licensee which may affect the client in connection with the home inspection.

L.1997,c.323,s.14; amended 2005, c.201, s.4.

License at Risk



- Title 45 NJSA Professions and Occupations
- **45:1-21 Refusal to license or renew, grounds.**

8.A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. **Has engaged in professional or occupational misconduct as may be determined by the board;**

License at Risk



- f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
- g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;
- i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;
- j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;

License at Risk



- k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.) or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;
- l. Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days;
- m. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution;
- n. Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;
- o. Advertised fraudulently in any manner.