

Home Inspection Professional Licensing

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Andrew M. Cuomo
Governor

Rossana Rosado
Secretary of State

Home Inspection Professional Licensing

Article 12-B, Real Property Law

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Home Inspection Professional Licensing

§ 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. “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.
2. “Department” means the department of state.
3. “Home inspector” means a person licensed as a home inspector pursuant to the provisions of this article.
4. “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 or required 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.
5. “Person” means an individual, firm, company, partnership, limited liability company or corporation.
6. “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.
7. “Secretary” means the secretary of the department of state.

§ 444-c. Code of Ethics and Standards of Practice.

1. The secretary shall promulgate 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 adoption of the regulations. 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.
2. 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, 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 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.
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 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.

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 kick-back 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.

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 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.

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Subpart 197-1 Business Practices and Standards

§ 197-1.1 Liability Coverage.

(a) Every applicant and every licensed home inspector shall secure, maintain, and file with the Department of State proof of general liability insurance of at least \$150,000 per occurrence and \$500,000 in the aggregate.

(b) Every proof of liability coverage 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 of State.

(c) In addition, every proof of liability coverage shall include the following information:

- (1) the name and business address of the insured;

(2) the name, business address and telephone number of insurance company;

(3) the policy number;

(4) the term of the policy; provided, however, that the proof of liability coverage shall provide that the coverage shall not expire until a notice of intention to cancel or non-renewal has been received in writing by the Secretary of State at least ten days prior to the date of cancellation or non-renewal;

(5) a statement indicating that the policy provides general liability coverage of at least \$150,000 per occurrence and \$500,000 in the aggregate.

Subpart 197-2

Home Inspection Qualifying Courses

§ 197-2.1 Approved entities.

Home Inspection courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education; public and private schools; and home inspection related professional societies and organizations.

§ 197-2.2 Request for approval of courses of study.

Applications for approval to conduct courses of study to satisfy the requirements for licensed home inspector shall be made at least 60 days before the proposed course is to be conducted. The application shall be prescribed by the Department to include the following:

(a) name and business address of the proposed school which will present the course;

(b) if applicant is a partnership, the names and home addresses of all the partners of the entity;

(c) if applicant is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;

(d) the name, home and business address and telephone number of the education coordinator that will be responsible for administering the regulations contained in this part;

(e) locations where classes will be conducted;

(f) title of each course to be conducted;

(g) detailed outline of each module, together with the time sequence of each segment;

(h) final examination to be presented for each course, including the answer key;

(i) all times included on each test form must be consistent with content specifications indicated for each course. Weighing of significant content areas should fall within the weight ranges indicated. All reference sources used to support each correct answer must be included. Linkage to each answer must be indicated with a footnote showing page number, subject matter, etc.;

(j) description of materials that will be distributed;

(k) the books that will be used for the outline and the final exams; and

(l) a detailed description of the means of providing the 40 hour field based training.

§ 197-2.3 Subjects for study - home inspection.

The following are the required subjects to be included in the course of study in home inspection for licensure as a home inspector, and the NYS Department of State Division of Licensing Services

quired number of hours to be devoted to each such subject. All approved schools must follow this course syllabus in conducting their program.

Home Inspection Course Modules - 140 hours

Module 1

Structural

Exterior

Roof

25 hours

Final Exam

Module 2

Interior

Insulation and Ventilation

Electrical

25 hours

Final Exam

Module 3

Heating

Cooling

Plumbing

25 hours

Final Exam

Module 4

Overview of Profession

NYS License Law

Report Writing

25 hours

Final Exam

Module 5 40 hours

(1) 40 hours of unpaid field-based training in the presence of and under the direct supervision of a home inspector licensed by New York State, or a professional engineer or architect regulated by New York State who oversees and takes full responsibility for the inspection and any report produced.

(2) Students have the option of not completing the field-based training by an approved school; however, all entities requesting approval for the Home Inspection qualifying curriculum must be approved for and make available to their students the 40 hours of unpaid field-based training and provide the Department of State with a detailed description of the means for providing the training.

(3) Schools must maintain a log of all inspections completed for purposes of providing proof of each student's field based training. The log must contain the following information:

(a) the student's name;

(b) the date of the home inspection;

(c) the address of the property inspected;

(d) the name of the client;

(e) the amount of time that was spent on the inspection; and

(f) the name, unique identification number and signature of the licensed home inspector, professional engineer or architect.

(4) Approved entities must verify hours of training and provide the student with a certificate of completion.

(5) If Field-based training is not completed by an Approved Home Inspection School, the student must maintain a log of all inspections completed for purposes of providing proof of their field based training. The log must contain the following information:

(a) the date of the inspection;

(b) the address of the property inspected;

(c) the name of the client;

(d) the amount of time that was spent on the inspection; and

(e) the name, unique identification number and signature of the licensed home inspector, professional engineer or architect.

(6) Completed home inspections must be maintained by the licensed home inspector, professional engineer or architect, and are subject to review by the Department of State.

§ 197-2.4 Equivalency pre-licensing education courses completed prior to January 1, 2006.

(a) The criteria for approval of courses completed prior to the January 1, 2006, shall be that the course or courses have substantially covered the same subject matter, classroom hours of attendance and completed standards as prescribed by this Subpart as a prerequisite of licensing.

(b) Application for course evaluation must be accompanied by an official transcript or other documentation showing the subjects taken, the hours of instruction devoted to each subject and the hours attended by said applicant together with the date completed. In addition, a course description or outline must be provided by the school along with an applicant's equivalency request.

(c) The Department may request additional supportive documentation to determine course equivalency.

§ 197-2.5 Computation of instruction time.

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 50 minutes. For every 50 minutes of instruction there shall be an additional 10 minute break. The time of the breaks shall be left to the discretion of the individual education coordinator. Breaks shall not be considered optional, nor are they to be used to release the class earlier than scheduled.

§ 197-2.6 Attendance and examinations.

(a) No person shall receive credit for any course module presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course module pursuant to section 197-2.3 of this Subpart, and no person shall be absent from the class room except for a reasonable and unavoidable cause.

(b) Students who fail to attend the required scheduled class hours may, at the discretion of the approved entity, make up the missed subject matter during subsequent classes presented by the approved entity.

(c) Final examinations may not be taken by any student who has not satisfied the attendance requirement.

(d) A make up examination may be presented to students at the discretion of the approved entity. Make up examinations must be submitted for approval to the Department in accordance with guidelines noted in section 197-2.2 of this Subpart.

(e) All examinations required for course work shall be written and given within a reasonable time after the course work has been conducted. The failure of the final exam shall constitute failure of the course module.

§ 197-2.7 Facilities.

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course.

§ 197-2.8 Record retention.

All organizations conducting approved courses of study shall retain the attendance records, the final examinations and a list of students who successfully complete each course module for a period of three years after

completion of each course module. All documents shall at all times during such period be available for inspection by duly authorized representatives of the Department of State.

§ 197-2.9 Faculty.

(a) Each instructor for an approved home inspection course of study must be approved by the Department of State. To be approved, an instructor must submit an application along with a resume reflecting three years of experience as a home inspector during which time the applicant has completed at least 250 home inspections.

(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.

§ 197-2.10 Policies concerning course cancellation and tuition refund.

Any educational institution or other organization requesting from the Department of State approval for home inspection courses must have a policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

§ 197-2.11 Revocation, suspension and denial of course approval.

The Department of State may deny, suspend, or revoke the approval or renewal of a home inspection course or a home inspection instructor, if it is determined that they are not in compliance with applicable law and rules, or if the offering does not adequately reflect and present current home inspection knowledge as a basis for a level of home inspection practice, or if the course provider or instructor has obtained, used or attempted to obtain or use the Department of State's home inspection examination questions. Prior to the denial of an application, suspension or revocation, the course provider or instructor shall have the opportunity to be heard by the Secretary of State or his designee.

§ 197-2.12 Advertisements.

Any education institution or other organization offering approved courses may not make or publish any false or misleading statement regarding employment opportunities which may be available as a result of the successful completions of a course or as a result of acquisition of a home inspector license.

§ 197-2.13 Auditing.

A duly authorized representative of the Department of State may audit any course offered, and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

§ 197-2.14 Open to public.

All courses approved pursuant to this Subpart shall be open to all members of the public regardless of the membership of the prospective student in any home inspection related professional society or organization.

§ 197-2.15 Certificates of completion and student lists.

(a) Evidence of successful completion of a course module must be furnished to students in certificate form. The certificate must indicate the following: name of the student; name of the course provider; title of the home inspection module; number of hours; code number of the module; a statement that the student, who shall be named, has satisfactorily completed a course of study in home inspection subjects or unpaid field-based training approved by the Secretary of State in accordance with the provisions of section 197-2.3 of this Subpart, and that his or her attendance record was satisfactory and in conformity with the law, and that such module was completed on a stated date. The certificate must be signed and dated with an original signature by the owner or course coordinator.

(b) A list of the names and addresses of students who successfully complete each course module must be submitted to the Department of State within 15 days of completion of a course module.

Subpart 197-3 Home Inspection Continuing Education Courses

§197-3.1 General requirements.

(a) Renewals. For all home inspection licenses that expire prior to December 31, 2008, no renewal license shall be issued unless said licensee has completed 6 hours of approved continuing education within the two-year period immediately preceding such renewal. For all home inspection licenses that expire on or after December 31, 2008, no renewal license shall be issued unless said licensee has completed 24 hours of approved continuing education within the two-year period immediately preceding such renewal.

(b) Course approval. No offering of a course of study in the home inspection field for the purpose of compliance with the continuing education requirements of subdivision (a) of this section shall be acceptable for credit unless such course of study has been approved by the Department of State under the provisions of this Part.

§197-3.2 Approved entities.

Continuing education home inspection courses (herein referred to as "sponsors") may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by the Commissioner of Education; public or private schools; and home inspection related professional societies and organizations. Types of instruction which shall not be acceptable as meeting continuing education requirements include such courses as:

(a) offerings in basic computer skills training, instructional navigation of the internet, instructional use of generic computer software or industry specific report writing software, instruction in personal motivation, business marketing, salesmanship, radon and pests, and any other instruction that is unrelated to home inspection.

§197-3.3 Request for approval of course of study.

The following applies to courses to be presented in a classroom setting where the instructor is present with the class. Requests for approval of courses of study in the home inspection field to be given to satisfy the requirements for continuing education under the provisions of this Part shall be made 60 days before the proposed course is to be given. The request shall include the following:

(a) name, address and telephone number of the applicant;
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(b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;

(c) title of each course to be offered;

(d) location of each course offered;

(e) duration and time of each course offered;

(f) procedure for taking attendance;

(g) a detailed outline of the subject matter of each course or seminar. The outline shall contain the amount of time each segment of the course or seminar lasts, as well as the teaching techniques used in each segment. Each course or seminar will contain at least one hour of instruction, and at most 24 hours of instruction; and

(h) description of materials to be distributed to the participants.

§197-3.4 Program approval.

Sponsors of courses of study may file applications for approval within 30 days of the completion of that course. The sponsor conducting the program may not guarantee to licensees that approval will be granted. Advertisements of such courses of study must indicate that such approval is not guaranteed.

§197-3.5 Successful completion of course.

(a) Any course for continuing education shall be accepted for credit on the basis of attendance only. For those courses that have received pre-instruction approval from the Department of State, the course administrator must submit to the Department of State within 15 days of completion of the class, the names of all individuals who successfully complete the approved course together with the unique identification number assigned by the Department of State to all such individuals. For those courses that have received post-instruction approval from the Department of State pursuant to section 197-3.4 of this Subpart, the course administrator must submit this information to the Department of State within 15 days of having been granted post-instruction approval by the Department of State.

(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificates must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the person authorized to sign certificates. For those courses that have received post-instruction approval from the Department of State pursuant to section 197-3.4 of this Subpart, the course administrator shall provide this course certificate to qualified course attendees within 30 days of having received Department of State course approval.

§197-3.6 Equivalency credit.

(a) A licensee who teaches an approved home inspection course pursuant to Subpart 197-2 of this Part or an approved course offered for continuing education shall be credited with two hours for each hour of actual teaching performed. Records of such teaching shall be maintained by the person or organization presenting the course and certified on forms prescribed by the Department of State. The records of such teaching shall be deemed records of attendance for all purposes of these rules. Credit shall not be awarded for teaching the same course more than once in a license cycle. Instructors must submit evidence of such teaching experience with an equivalency application as prescribed by the Department of State.

(b) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the Department of State, may file a request to the department to have such course

count as credit toward their New York continuing education requirement. All applications for such consideration must be submitted with official documentation of satisfactory completion and the official descriptions of the course of study as prescribed by the Department of State. Upon receipt of such a request, the Department of State will review and evaluate the out-of-state course to determine if all or a portion of the course may be credited toward the applicant's New York continuing education requirement. Within 30 days of receipt of a request, the Department of State will approve or deny the request for New York continuing education credit.

(c) All applications for and evidence of equivalency credit must be submitted to the Department of State for consideration at least 30 days prior to the expiration of the license.

§197-3.7 Extension of time to complete courses.

The Department of State may grant an extension to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such an extension shall submit a written request, together with the evidence demonstrating such hardship. Within 30 days of receipt of a request, the Department of State will notify the licensee whether their request for an extension has been granted or denied.

§197-3.8 Computation of instruction time.

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 60 minutes.

§197-3.9 Attendance and record retention.

(a) No licensed person shall receive credit for any course presented in a classroom setting if he or she is absent from the classroom, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course pursuant to section 197-3.3(g) of this Subpart, and no licensed person shall be absent from the classroom except for a reasonable and unavoidable cause.

(b) The person or organization conducting the course shall certify to the Department of State the name of each licensed person who successfully completed the course of study and his or her unique identification number as assigned by the Department of State, and shall maintain its attendance records and a copy of such report for three years and, in addition, shall maintain the following records concerning the course:

- (1) the approval number issued by the Department of State for the course;
- (2) title and description of the course;
- (3) the dates and hours the course was given; and
- (4) the names and unique identification numbers of the persons who took the course and whether they completed it successfully.

§197-3.10 Policies concerning course cancellation and tuition refund.

Any educational institution or other organization requesting from the Department of State approval for home inspection courses must have a policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

§197-3.11 Auditing.

A duly authorized designee of the Department of State may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

§197-3.12 Change in approved course of study.

There shall be no change or alteration in any approved course of study without prior written notice to, and approval by, the Department of State.

§197-3.13 Suspensions and denials of school approval.

The Department of State may deny, suspend or revoke the approval of a home inspection school, if it is determined that they are not in compliance with the law and rules. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his or her designee pursuant to Real Property Law section 444-i.

§197-3.14 Open to public.

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any home inspection professional society or organization.

§197-3.15 Facilities.

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course.

§197-3.16 Faculty.

(a) Each instructor for an approved home inspection course of study must be approved by the Department of State. To be approved, an instructor must submit an application along with a resume reflecting three years of experience as a home inspector during which time the applicant has completed at least 250 home inspections.

(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.

§197-3.17 Continuing education credit.

No continuing education course will be considered for continuing education credit more than once within the two-year cycle of renewal.

§197-3.18 Registration period.

Each registration or renewal period for approved programs or courses shall be for 12 months or a part thereof, said period to commence on January 1st or date thereafter and to continue until December 31st.

SUBPART 197-4

CODE OF ETHICS AND REGULATIONS FOR HOME INSPECTORS

§197-4.1 Fundamental Rules.

(a) Home inspectors shall exhibit honesty and integrity in furtherance of the honor of the home inspection profession. A home inspection has a direct and vital impact on the quality of life for all home buyers. In per-

forming home inspection services, home inspectors shall adhere to the highest principles of ethical conduct.

(b) This Code of Ethics and Regulations reflects the current ethical standards for home inspectors. It is the department's intention that this document be a living document and that changes and updates to this Code of Ethics and Regulations be made as deemed necessary by the department in consultation with the Home Inspection Council.

(c) Home inspectors shall fully adhere to and comply with the provisions of Article 12-B of the Real Property Law and all regulations promulgated thereunder including, but not limited to, this Code of Ethics and Regulations and the Standards of Practice.

(d) Home Inspectors shall be required to cooperate with investigations by the Department of State. Each applicant or licensee shall be obligated, on request of the Secretary of State, to supply such information as may be required concerning his, her or its business, business practices or business methods, or proposed business practices or methods.

§197-4.2 Written Contracts.

(a) Prior to performing a home inspection, home inspectors shall provide a client with a written pre-inspection agreement that clearly and fully describes the scope of service to be provided and the cost associated with that service. All said contracts shall contain the following clauses which shall be printed in type size of not less than six point:

“Home inspectors are licensed by the NYS Department of State. Home Inspectors may only report on readily accessible and observed conditions as outlined in this pre-inspection agreement, Article 12 B of the Real Property Law and the regulations promulgated thereunder including, but not limited to, the Code of Ethics and Regulations and the Standards of Practice as provided in Title 19 NYCRR Subparts 197-4 and 197-5 et seq. Home inspectors are not permitted to provide engineering or architectural services.”; and

“If immediate threats to health or safety are observed during the course of the inspection, the client hereby consents to allow the home inspector to disclose such immediate threats to health or safety to the property owner and/or occupants of the property.”

(b) Home inspectors shall discuss the scope of the inspection with the client and only perform services which have been duly authorized by the client.

§197-4.3 Non-Disclosure.

Home inspectors shall not disclose to a third party the contents of a home inspection report or any observations, deductions, opinions that pertain to a home inspection report without the prior consent of the client or the client's representative.

§197-4.4 Unlicensed and Unlawful Activity.

(a) Home inspectors shall not engage in, knowingly permit or aid and abet, unlicensed or activity that is prohibited by Article 12-B of the Real Property Law or the regulations promulgated thereunder.

(b) In the event that a client insists upon a home inspector engaging in unlawful and/or unethical conduct, the home inspector shall, after notice to the client that such conduct is unlawful or unethical, be permitted to immediately withdraw from the assignment or contract.

(c) Home inspectors shall not determine property boundary lines or encroachments, easements or any limitations of use of the property.

(d) Home inspectors shall not determine compliance with regulations, codes, laws or ordinances.

(e) Home inspectors shall not determine the market value of the property or its marketability.

§197-4.5 Competence.

(a) Except as provided in section 197-4.6 and 197-5.2(c), home inspectors shall conduct home inspections in compliance with the Standards of Practice.

(b) Home inspectors shall not accept or perform services in which the home inspector knows or has reason to know that he or she is not competent to perform.

(c) Home inspectors shall not delegate responsibility to another when the home inspector delegating such responsibility knows or has reason to know that such person is not a duly licensed home inspector and/or qualified by training and experience to perform said task.

§197-4.6 Written Reports.

(a) Home inspectors shall provide a written report containing the results of a home inspection.

(b) Home inspectors shall not willfully make a false report or false or misleading statements in the context of home inspection activities and/or a home inspection report.

(c) The home inspection report shall clearly identify the systems and components of the residential building that were observed. If a home inspector is providing a home inspection that does not meet the minimum requirements as set forth in the Standards of Practice, the home inspection report must describe the scope of work, the services provided, and the systems and components that were included in and excluded from the inspection.

§197-4.7 Conflicts of Interest.

(a) The duty of every home inspector shall be to the client. Home inspectors shall avoid conflicts of interest or activities that compromise their professional objectivity, or have the potential of creating an appearance that their professional objectivity has been compromised.

(b) Prior to accepting any home inspection assignment, home inspectors shall disclose to the potential client all known or potential conflicts of interest that could influence or appear to influence the home inspector's judgment or the quality of the home inspector's services.

(c) Home inspectors shall not solicit or accept compensation, financial or otherwise, from more than one interested party for a home inspection unless the circumstances are fully disclosed to the client and agreed upon by all interested parties.

(d) Home inspectors shall not solicit or accept an assignment or contract from a governmental body on which a principal or officer of the home inspector's office or organization serves as a member.

(e) Home inspectors shall not directly or indirectly compensate, in any way, real estate brokers, real estate salespersons, real estate brokerage companies, lending institutions or any other party or parties that expect to have a financial interest in closing the transaction, for future referrals of inspections or for inclusion on a list of recommended inspectors or preferred providers or any similar arrangement.

(f) Home inspectors shall not accept financial or other consideration, such as material or equipment, from suppliers for suggesting the use of, or promoting a specific product in the course of performing a home inspection.

(g) In connection with performing home inspections, home inspectors shall not accept commissions, fees or other consideration directly or indirectly from contractors or other persons or entities dealing with clients or

employers of the home inspector in connection with work for which the inspector is responsible for, or has reported upon.

(h) Home inspectors shall not inspect any residential building in which said home inspector or relative thereof has a financial interest or any interest in the transfer thereof, including the receipt of any commission as an agent.

(i) Home inspectors shall not inspect a home if the home inspector's compensation is contingent upon the sale of the home or if compensation is contingent upon the results of the home inspection.

§197-4.8 Fraud, Misrepresentation and Dishonesty.

Home inspectors shall not engage in fraud, fraudulent activity, misrepresentation or dishonesty.

§197-4.9 Promotion and Advertising.

(a) Home inspectors shall not advertise in a false, misleading or deceptive manner.

(b) Home inspectors shall not falsify or misrepresent their experience, education or qualifications or permit any such misrepresentation by their employees or associates.

(c) Home inspectors shall not advertise home inspection services as an engineer or architect or under the heading of engineers, engineering, architects or architecture in any form of print or electronic media unless the individual and/or firm is licensed to provide engineering or architectural services by the New York State Education Department.

(d) Home inspectors shall refrain from making any claim relating to the quality and effectiveness of services which cannot be substantiated by the home inspector.

(e) Home inspectors placing or authorizing advertisements shall maintain or cause to be maintained an exact copy of each advertisement for a period of one year following the advertisement's last publication. This copy shall be made available for inspection, upon request, by the Department or an authorized representative of the Department.

(f) Nothing herein shall prohibit a home inspector from advertising his or her services or advertising for the purpose of recruiting employees provided that no such advertisements shall be misleading or deceptive.

SUBPART 197-5 STANDARDS OF PRACTICE FOR HOME INSPECTORS

§197-5.1 Definitions.

(a) Alarm Systems: means installed or freestanding warning devices including, but not limited to, smoke detectors, carbon monoxide detectors, flue gas and other spillage detectors and security equipment.

(b) Central Air Conditioning: means a system that uses either ducts to distribute cooled and/or dehumidified air to more than one room of a residential building or pipes to distribute chilled water to heat exchangers in more than one room in a residential building, and which is not plugged into an electrical convenience outlet.

(c) Component: means a readily accessible and observable aspect of a system such as a floor or a wall, but not individual pieces such as boards or nails where many similar pieces make up the component.

(d) Dangerous or Adverse Situations: means situations that pose a threat of injury to the home inspector including, but not limited to, those

situations in which the home inspector is required to use special protective clothing or other safety equipment.

(e) Decorative: means a component or part thereof that is ornamental and not required for the proper operation of the essential systems and components of a home.

(f) Dismantle: means to take apart or remove any component, device, or piece of equipment that is bolted, screwed, or fastened and that a homeowner in the course of normal household maintenance would not dismantle.

(g) Engineering, Practice of: means as that term is defined in Education Law, title VIII, Article 145, Section 7201.

(h) Engineering Study: means a study requiring engineering services.

(i) Functional Drainage: means the operation of a drain whereby a drain empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.

(j) Functional Flow: means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(k) Further Evaluation: means the examination and analysis by a qualified professional, tradesman, or service technician beyond that provided by the home inspection.

(l) Household Appliances: means kitchen and laundry appliances, room air conditioners, and similar appliances.

(m) Inspect: means to visually examine any system or component of a building in accordance with these Standards of Practice, using normal operating controls and opening readily operable access panels.

(n) Installed: means attached or connected such that the installed item requires tools for removal.

(o) Normal Operating Controls: means homeowner operated devices such as a thermostat, wall switch, or safety switch.

(p) Observable: means able to be observed at the time of the inspection without the removal of covering, fixed, finished and or stored materials.

(q) Observe: means the act of making a visual examination.

(r) On-site Water Supply Quantity: means the volume of water that is available for domestic use.

(s) Operate: means to cause systems or equipment to function.

(t) Primary Windows and Doors: means windows and exterior doors that are designed to remain in their respective openings year-round.

(u) Readily Accessible: means available for visual inspection without requiring the home inspector to remove or dismantle any personal property, use destructive measures, or take any action which will likely involve risk to persons or property.

(v) Readily Operable Access Panel: means a panel provided for homeowner inspection and maintenance, which has removable or operable fasteners or latch devices in order to be lifted, swung open, or otherwise removed by one person, and its edges and fasteners are not painted in place. The panel must be within normal reach and not blocked by stored items, furniture or building components.

(w) Recreational Facilities: means spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other entertainment or athletic facilities.

(x) Report: means a written document setting forth findings of home inspection unless otherwise specified in these regulations.

(y) Representative Number: means for multiple identical components such as windows and electrical outlets, one such component per room. For multiple identical exterior components this term shall mean one such component on each side of the building.

(z) **Roof Drainage Systems:** means gutters, down spouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(aa) **Safe Access:** means access free of any encumbrances, hazardous materials, health and safety hazards such as climbing and/or standing on other than the ground and/or floor which may jeopardize the inspector.

(bb) **Safety Glazing:** means tempered glass, laminated glass or rigid plastic.

(cc) **Shut Down:** means a piece of equipment or a system is shut down when the device or control cannot be operated in a manner that a homeowner would normally use to operate it. If the safety switch or circuit breaker is in the "off" position, or the fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

(dd) **Solid Fuel Heating Device:** means any wood, coal, or other similar organic fuel burning device including, but not limited to, fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and any combination of these devices.

(ee) **Structural Component:** means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

(ff) **System:** means a combination of interacting or interdependent components, assembled to carry out one or more functions.

(gg) **Technically Exhaustive:** means an inspection is technically exhaustive when it involves the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

(hh) **Under Floor Crawl Space:** means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

(ii) **Unsafe:** means a condition in a readily accessible, installed system or component, which is judged by the Home Inspector to be of significant risk of personal injury during normal, day to day use. The risk may be due to damage, deterioration, improper installation or a change in the accepted residential construction standard.

(jj) **Water Supply Quality:** means the quality of a residential building's water supply based on the bacterial, chemical, mineral, and solids content of the water.

§197-5.2 Purpose and Scope.

(a) These Standards of Practice establish a minimum and uniform standard for home inspectors. Home inspections shall be performed in compliance with these Standards of Practice and shall provide the client with objective information regarding the condition of the systems and components of the residential building as observed at the time of the home inspection.

(b) These Standards of Practice are not intended to limit home inspectors from including other inspection services or from observing and reporting upon systems and components not required by these Standards of Practice.

(c) The home inspection report shall clearly identify the systems and components of the residential building that were observed. If a home inspector is providing a home inspection that does not meet the minimum requirements as set forth in this Standards of Practice, the home inspection report must describe the scope of work, the services provided and the systems and components that are included and excluded in the inspection.

§197-5.3 Minimum Requirements.

(a) Home inspectors shall observe and report on readily accessible, visually observable installed systems and components as set forth in these Standards of Practice.

(b) Home inspectors shall report on those systems and components observed that, in the professional opinion of the home inspector, are deficient, not functioning properly and/or unsafe.

(c) If a home inspector has not observed a particular system or major component, he or she shall list said item in the inspection report as an item that was not observed and shall set forth the reasons why said item was not observed.

§197-5.4 Site Conditions.

(a) Home inspectors shall observe and report the following site conditions:

1. The building perimeter for land grade and water drainage directly adjacent to the foundation;
2. Trees and vegetation that adversely affect the residential building;
3. Walkways, steps, driveways, patios and retaining walls.

(b) Home inspectors are not required to observe and report on the following site conditions:

1. Fences and privacy walls;
2. The health and condition of trees, shrubs and other vegetation.

§197-5.5 Structural Systems.

(a) Home inspectors shall observe and report on the following:

1. Any deteriorated and/or damaged structural component including the building foundation and framing;
2. The floor structure;
3. The wall structure;
4. The ceiling structure;
5. The roof structure.

§197-5.6 Exterior.

(a) Home inspectors shall observe and report on:

1. All exterior walls and coverings, flashing and trim;
2. All exterior doors including garage doors and operators;
3. All attached or adjacent decks, balconies, stoops, steps, porches and railings;
4. All eaves, soffits and fascias where accessible from the ground level;
5. All adjacent walkways, patios and driveways on the subject property;
6. The condition of a representative number of windows.

(b) Home inspectors are not required to observe and report on the following:

1. Screening, shutters, awnings and other seasonal accessories;
2. Fences;
3. Geological and/or soil conditions;
4. Recreational facilities;
5. Out-buildings other than garages and carports;

6. Tennis courts, jetted tubs, hot tubs, swimming pools, saunas and similar structures that would require specialized knowledge or test equipment;

7. Erosion control and earth stabilization measures;

8. The operation of security locks, devices or systems;

9. The presence of safety-type glass or the integrity of thermal window seals or damaged glass.

§197-5.7 Roof Systems.

(a) Home inspectors shall observe and report on readily accessible:

1. Roofing materials and condition;

2. Roof drainage systems;

3. Flashing;

4. Skylights, chimneys and roof penetrations.

(b) The home inspector shall report on the methods used to observe the roof and other components set forth in this section.

(c) All home inspection reports shall describe the observed condition and type of roofing materials and shall describe the methods used to observe the roofing.

(d) Home inspectors are not required to observe and report on:

1. Antennas, lightening arresters or similar attachments;

2. Any flue or chimney interior that is not readily accessible;

3. Other installed accessories.

(e) Home inspectors are not required to operate powered roof ventilators.

(f) Home inspectors are not required to determine the remaining life expectancy of roof coverings, manufacturers' defects, installation methods or recalls or to determine the number of roof layers present.

(g) Home inspectors are not required to walk on or access a roof where to do so could result in damage to the roof or roofing material or endanger the health and safety of the home inspector.

§197-5.8 Plumbing System.

(a) Home inspectors shall observe and report on the following visibly and readily accessible components, systems and conditions:

1. Interior water supply and distribution systems including fixtures and faucets;

2. Drain, waste and vent systems;

3. Water heating equipment and vents and pipes;

4. Fuel storage and fuel distribution systems and components;

5. Drainage sumps, sump pumps, ejector pumps and related piping;

6. Active leaks.

(b) In inspecting plumbing systems and components, home inspectors shall operate all readily accessible:

1. Fixtures and faucets;

2. Domestic hot water systems;

3. Drain pumps and waste ejectors pumps;

4. The water supply at random locations for functional flow;

5. Waste lines from random sinks, tubs and showers for functional drainage;

(c) Home inspectors are not required to:

1. Operate any main, branch or fixture valve, except faucets, or to determine water temperature;

2. Observe and report on any system that is shut down or secured;

3. Observe and report on any plumbing component that is not readily accessible;

4. Observe and report on any exterior plumbing component or system or any underground drainage system;

5. Observe and report on fire sprinkler systems;

6. Evaluate the potability of any water supply;

7. Observe and report on water conditioning equipment including softener and filter systems;

8. Operate freestanding or built in appliances;

9. Observe and report on private water supply systems;

10. Test shower pans, tub and shower surrounds or enclosures for leakage;

11. Observe and report on gas supply system for materials, installation or leakage;

12. Evaluate the condition and operation of water wells and related pressure tanks and pumps; the quality or quantity of water from on-site water supplies or the condition and operation of on-site sewage disposal systems such as cesspools, septic tanks, drain fields, related underground piping, conduit, cisterns and equipment;

13. Observe, operate and report on fixtures and faucets if the flow end of the faucet is connected to an appliance;

14. Record the location of any visible fuel tank on the inspected property that is not within or directly adjacent to the structure;

15. Observe and report on any spas, saunas, hot-tubs or jetted tubs;

16. Observe and report on any solar water heating systems.

(d) Home inspections shall describe the water supply, drain, waste and vent piping materials; the water heating equipment including capacity, and the energy source and the location of the main water and main fuel shut-off valves. In preparing a report, home inspectors shall state whether the water supply and waste disposal systems are a public, private or unknown.

§197-5.9 Electrical System.

(a) Home inspectors shall observe and report upon readily accessible and observable portions of:

1. Service drop;

2. Service entrance conductors, cables and raceways;

3. The main and branch circuit conductors for property over current protection and condition by visual observation after removal of the readily accessible main and sub electric panel covers;

4. Service grounding;

5. Interior components of service panels and sub-panels;

6. A representative number of installed lighting fixtures, switches and receptacles;

7. A representative number of ground fault circuit interrupters.

(b) Home inspections shall describe readily accessible and observable portions of:

1. Amperage and voltage rating of the service;

2. The location of main disconnects and sub-panels;

3. The presence of aluminum branch circuit wiring;

4. The presence or absence of smoke detectors and carbon monoxide detectors;

5. The general condition and type of visible branch circuit conductors that may constitute a hazard to the occupant or the residential building by reason of improper use or installation of electrical components.

(c) Home inspectors are not required to:

1. Observe and report on remote control devices;
2. Observe and report on alarm systems and components;
3. Observe and report on low voltage wiring systems and components such as doorbells and intercoms;
4. Observe and report on ancillary wiring systems and components which are not a part of the primary electrical power distribution system;
5. Insert any tool, probe or testing device into the main or sub-panels;
6. Activate electrical systems or branch circuits which are not energized;
7. Operate overload protection devices;
8. Observe and report on low voltage relays, smoke and/or heat detectors, antennas, electrical de-icing tapes, lawn sprinkler wiring, swimming pool wiring or any system controlled by timers;
9. Move any object, furniture or appliance to gain access to any electrical component;
10. Test every switch, receptacle and fixture;
11. Remove switch and outlet cover plates;
12. Observe and report on electrical equipment not readily accessible;
13. Dismantle any electrical device or control;
14. Measure amperage, voltage or impedance;
15. Observe and report on any solar powered electrical component or any standby emergency generators or components.

§197-5.10 Heating System.

(a) Home inspectors shall:

1. Describe the type of fuel, heating equipment and heating distribution system;
2. Operate the systems using thermostats;
3. Open readily accessible and operable access panels provided by the manufacturer or installer for routine homeowner maintenance;
4. Observe and report on the condition of normally operated controls and components of the systems;
5. Observe and report on visible flue pipes, dampers and related components for functional operation;
6. Observe and report on the presence of and the condition of a representative number of heat sources in each habitable space of the residential building;
7. Observe and report on the operation of fixed supplementary heat units;
8. Observe and report on visible components of vent systems, flues and chimneys;

(b) Home inspectors are not required to:

1. Activate or operate the heating systems that do not respond to the thermostats or have been shut down;
2. Observe, evaluate and report on heat exchangers;
3. Observe and report on equipment or remove covers or panels that are not readily accessible;
4. Dismantle any equipment, controls or gauges;
5. Observe and report on the interior of chimney flues;
6. Observe and report on heating system accessories, such as humidifiers, air purifiers, motorized dampers and heat reclaimers;

7. Activate heating, heat pump systems or any other system when ambient temperatures or other circumstances are not conducive to safe operation or may damage the equipment;

8. Evaluate the type of material contained in insulation and/or wrapping of pipes, ducts, jackets and boilers;

9. Evaluate the capacity, adequacy or efficiency of a heating or cooling system;

10. Test or operate gas logs, built-in gas burning appliances, grills, stoves, space heaters or solar heating devices or systems;

11. Determine clearance to combustibles or adequacy of combustion air;

12. Test for gas leaks or carbon monoxide;

13. Observe and report on in-floor and in-ceiling radiant heating systems.

§197-5.11 Air Conditioning Systems.

(a) Home inspectors shall:

1. Observe, describe and report on the type of air conditioning equipment and air conditioning distribution system;
2. Operate the system using the thermostat;
3. Open a representative number of readily accessible and operable access panels provided by the manufacturer for routine homeowner maintenance;
4. Observe and report on the condition of normally operated controls and components of the system.

(b) Home inspectors are not required to:

1. Activate or operate air conditioning systems that have been shut down;
2. Observe and report on gas-fired refrigeration systems, evaporative coolers, or wall or window-mounted air conditioning units;
3. Check the pressure of the system coolant or determine the presence of leakage;
4. Evaluate the capacity, efficiency or adequacy of the system;
5. Operate equipment or systems if exterior temperature is below 65 degrees Fahrenheit or when other circumstances are not conducive to safe operation or may damage equipment;
6. Remove covers or panels that are not readily accessible or that are not part of routine homeowner maintenance;
7. Dismantle any equipment, controls or gauges;
8. Check the electrical current drawn by the unit;
9. Observe and report on electronic air filters.

§197-5.12 Interior.

(a) Home inspectors shall:

1. Observe and report on the material and general condition of walls, ceilings and floors;
2. Observe and report on steps, stairways and railings;
3. Observe, operate and report on garage doors, garage door safety devices and garage door operators;
4. Where visible and readily accessible, observe and report on the bath and/or kitchen vent fan ducting to determine if it exhausts to the exterior of the residential building;
5. Observe, operate and report on a representative number of primary windows and interior doors;
6. Observe and report on visible signs of water penetration.

(b) Home inspectors are not required to:

1. Ignite fires in a fireplace or stove to determine the adequacy of draft, perform a chimney smoke test or observe any solid fuel device in use;
2. Evaluate the installation or adequacy of inserts, wood burning stoves or other modifications to a fireplace, stove or chimney;
3. Determine clearance to combustibles in concealed areas;
4. Observe and report on paint, wallpaper or other finish treatments;
5. Observe and report on window treatments;
6. Observe and report on central vacuum systems;
7. Observe and report on household appliances;
8. Observe and report on recreational facilities;
9. Observe and report on lifts, elevators, dumbwaiters or similar devices.

§197-5.13 Insulation and Ventilation.

(a) Home inspectors shall:

1. Observe, describe and report on insulation in accessible, visible unfinished spaces;
2. Observe, describe and report on ventilation of accessible attics and foundation areas;
3. Observe and report on mechanical ventilation systems in visible accessible areas.

(b) Home inspectors are not required to:

1. Disturb insulation;
2. Operate mechanical ventilation systems when weather or other conditions are not conducive to safe operation or may damage the equipment.

§197-5.14 Fireplaces.

(a) Home inspectors shall:

1. Observe and report on visible and accessible system components;
2. Observe and report on visible and accessible chimneys and vents;
3. Observe and report on chimney caps;
4. Observe and report on fireplaces and solid fuel burning appliances;
5. Observe and report on chimneys;
6. Observe, operate and report on accessible fireplace dampers.

(b) Home inspectors are not required to:

1. Observe and report on the interiors of flues or chimneys;
2. Observe and report on fire screens and doors;
3. Observe and report on automatic fuel feed devices;
4. Observe and report on mantles and fireplace surrounds;
5. Observe and report on combustion make-up air devices;
6. Observe and report on heat distribution assists;
7. Ignite or extinguish fires;
8. Determine draft characteristics;
9. Move fireplace inserts and stoves or firebox contents.

§197-5.15 Attics.

(a) Home inspectors shall observe and report on any safe and readily accessible attic space describing:

1. The method of observation used; and

2. Conditions observed.

(b) Home inspectors are not required to enter any attic where no walkable floor is present or where entry would, in the opinion of the home inspector, be unsafe.

§197-5.16 Limitations and Exclusions.

(a) Home inspectors are not required to observe any item that is concealed or not readily accessible to the home inspector. The home inspector is not required to move furniture, personal or stored items; lift floor coverings; move attached wall or ceiling coverings or panels; or perform any test or procedure which could damage or destroy the item being evaluated.

(b) Home inspectors are not required to observe appliances, recreational facilities, alarm systems, intercoms, speaker systems, radio controlled devices, security devices and lawn irrigation systems.

(c) Home inspectors shall not be required to determine the presence or absence of any suspected hazardous substance including but not limited to, latent surface and/or subsurface volatile organic compounds, PCB's, asbestos, urea formaldehyde insulation, toxins, carcinogens, diseases, wood destroying organisms, mold, hazardous plants, illicit drugs or drug making equipment, lead paint, noise or contaminants in soil, water, air quality, wet lands or any other environmental hazard.

(d) Except as otherwise necessary and required by this Standards of Practice, home inspectors are not required to use special instruments or testing devices, such as amp meters, pressure gauges, moisture meters, gas detectors and similar equipment.

(e) Home inspectors are not required to report on real property, geological, environmental or hazardous waste conditions, manufacturer recalls or conformance of proper manufacturer installation of any component or system, or information contained in Consumer Protection Bulletins. Home inspectors are not required to report upon past or present violations of codes, ordinances or regulations.

(f) Home inspectors are not required to provide an inspection of any condominium common component or system, or to evaluate condominium reserve accounts.

(g) Home inspectors are not required to enter any residential building or area of a building that, in the opinion of the home inspector, is dangerous to the safety of the home inspector or others or that will result in damage to the property, its systems or components.

(h) Home inspectors shall not be required to enter any area or perform any procedure which, in the opinion of the home inspector, may damage the property or its components.

(i) Home inspectors shall not be required to observe any system or component that is not included in this Standards of Practice.

(j) Home inspections performed in accordance with these Standards of Practice are not technically exhaustive and are not required to identify concealed conditions, latent defects or consequential damages.

(k) Home inspectors are not required to determine:

1. Conditions of systems or components that are not readily accessible;
2. The remaining life expectancy of any system or component;
3. The strength, adequacy, effectiveness or efficiency of any system or component;
4. The causes of any condition or deficiency;
5. The methods, materials or costs of corrections;
6. The future condition of a system or component including, but not limited to, the failure of the system and/or components;
7. The suitability of the property for any specialized use;
8. The advisability of purchase of the property;

9. The presence of potentially hazardous plants or animals including, but not limited to, wood destroying organisms or diseases harmful to humans including molds or mold-like substances;

10. The presence of any environmental hazard including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water and air;

11. The effectiveness of any system installed or method utilized to control or remove suspected hazardous substances;

12. Operating costs of systems of components;

13. Acoustical properties of any system or component;

14. Soil conditions related to geo-technical or hydrologic specialties.

(l) Home inspectors are not required to offer:

1. To perform work in any trade or profession other than home inspection;

2. Warranties or guarantees of any kind.

(m) Home inspectors are not required to operate:

1. Any system or component that is shut down or otherwise inoperable;

2. Any system or component that does not respond to normal operating controls and shall not be required to dismantle any system or component, except as explicitly required by these Standards of Practice;

3. Shut off valves or manual stop valves;

4. Any system or component that, in the opinion of the home inspector, is dangerous to the home inspector or other persons, or will result in damage to the residential building, its systems or its components.

(n) Home inspectors are not required to observe:

1. Concealed spaces or components or underground items including, but not limited to, underground storage tanks or other underground indications of their presence, whether abandoned or otherwise;

2. Items that have not been installed;

3. Installed decorative items;

4. Items that are not entered in accordance with subdivision 15 of this section;

5. Detached structures other than garages and carports.

(o) Home inspectors shall not be required to describe or report on any system or component that is not included in these Standards of Practice and was not inspected.

(p) Home inspectors shall not be required to move personal property, furniture, equipment, plants, soil, snow, ice or debris.

(q) These Standards of Practice are not intended to limit home inspectors from excluding systems and components from the home inspection if requested by the client.