

Home Inspection Professional Licensing Act - Further Protection for Purchasers of Residential Real Estate in New Jersey



by Lee Tesser

Consider these facts: Mr. and Mrs. Jones buy their dream home in a wealthy section of New Jersey. In anticipation of the purchase, they retain a home inspector recommended by their real estate broker. The broker tells them that the home inspection company, Flinstone Home Inspections, is experienced and has performed many home inspections. Satisfied with the recommendation, they hire Fred, president of Flinstone Home Inspection, and pay him his fee of \$450 on the day of the inspection.

The inspection appears to be routine; Fred notes some strong aspects of the home and lists several deficiencies. When inspecting the basement, however, Fred notes several pipes covered with asbestos. Fred's inspection report notes the asbestos, but says that it is "of no concern."

Mr. and Mrs. Jones buy the house. After several months in the house, a friend in the construction business notes the asbestos-covered pipes and indicates to the couple that they are cause for alarm. A professional engineer is retained to review the problem, and concludes that not only are the basement pipes covered with asbestos but, in fact, the entire basement ceiling consists of asbestos tiles routinely used in 1950s home construction.

To guard against any hazard to the couple and their children, and to protect their investment, it is recommended that Mr. and Mrs. undertake a complete remediation

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of the basement. The cost is estimated at between \$50,000 and \$65,000. The owners' engineer tells them that the home inspector should have realized that the asbestos-covered pipes were cause for alarm or, at the very least, should have recommended further testing or inspection to ascertain the extent of asbestos in the home.

The owners pay for the remediation and commence litigation against the Flinstone Home Inspection Company. During the early stages of the litigation, it is learned that the inspection company is out of business and does not maintain insurance for negligent inspections. Months later, Mr. and Mrs. Jones learn that Fred, a former restaurant owner, has started a new home inspection company and apparently has operated at least seven or eight similar companies in the last 10 years. Upon advice of counsel, and after spending thousands of dollars, the couple drop the lawsuit.

Likely fact pattern? It apparently happens so often that effective July 6, 1998, the New

Jersey Legislature enacted the Home Inspection Professional Licensing Act. The act is New Jersey's first successful effort to license and regulate home inspectors. On its face, the act was designed to guard against the various problems highlighted in the above fact pattern. These problems typically consist of:

1. Poorly trained home inspectors;
2. Home inspection companies that fail to carry insurance to protect consumers from negligently performed home inspections and;
3. Fly-by-night home inspection companies that go in and out of business and/or hire unqualified inspectors.

Historically, little legislative authority has guided home inspectors. While many are legitimate professional companies, we have all heard of home inspectors who lack any real construction or engineering experience. Typically, one might hear of the above fact pattern resulting from an inspection that took place in 45 minutes for a nominal fee of \$250. We have all heard the stories: The heating system that blew-up several weeks after the homeowners moved in; a roof that leaks excessively after the inspector said that it had 10-15 years of integrity left; a foundation in need of immediate structural repair even though the same foundation evidenced numerous large cracks at the time of inspection and drew comment by the inspector.

While everyone concedes that a home inspector is not supposed to

inspector license or an associate home inspector license upon proof that the inspector:

a. disclosed any information concerning the results of the home inspection without the approval of a client or the client's representative;

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.

Finally, the state board is also responsible for establishing certain on-going standards for continuing education of home inspectors, as well as a code of ethics and standards of practice.

For many of us, the purchase of a home is the biggest purchase and investment of our lives. Our home represents a major source of financial security for retirement. Any problem with the home in its construction or maintenance could decrease its potential resale value, which could be devastating. For this reason, it is important that home inspections that occur prior to the purchase of a home be performed competently and by a well-trained home inspector. It is not unreasonable for consumers to look for this type of protection in the purchase of their home. Indeed, by way of contrast, consider who else is involved in the purchase of a home.

Consumers hire attorneys to insure the passage of good title and to prepare a contract to protect their position in the transaction. Real estate brokers and salespeople are involved to facilitate the sale and purchase of a home. Often, brokers offer professional opinions about the community in which a house is

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located or opine upon the listed sales price of a home.

Similar to the real estate broker and attorney, a final component in the transaction is traditionally the home inspector. A home inspector is typically hired to offer an opinion on the numerous major components of a home, such as its electrical, plumbing, heating, and ventilating systems. In addition, one might expect the home inspector to look into the structure, exterior façade, and roof. In terms of the structure itself, the home inspector is often the *only* technical professional retained by a residential buyer prior to the purchase of a home. If a home inspector fails to do his or her job, the effect can be devastating.

For example, failure to identify termite damage could lead to major structural damage; failure to identify significant cracks in the masonry foundation could lead to expensive repairs; failure to identify a roof in poor condition could cost a homeowner several thousand dollars, all of which might have been otherwise avoided by a comprehensive home inspection.

While the act does not guarantee that home inspectors will be perfect, it does strive to create a framework to protect consumers from unscrupulous home inspectors who may perform lousy and inadequate inspections. The act envisions a minimum threshold that licensed home inspectors must meet before they can provide their services to the public. The act requires not only a license, but errors and omissions insurance to safeguard consumers from negligent home inspections.

Finally, while the act does not require a licensed home inspector to know every facet of a roof or electrical system, it does expect a licensed professional home inspector to at least know when a system is suspect, requiring further inspection. Is the roof in poor condition resulting in leakage, or does the roof look good? A licensed home inspector should know the answer. In other words, the next time you do a closing for a friend, make sure that he or she retains a licensed home inspector and not just some guy named Fred. ■

Endnotes

1. The qualification for licensure as an associate home inspector are:
 1. good moral character
 2. completion of high school equivalent
 3. passed on approved course of study, as prescribed by the board
 4. performed no less than 50 home inspections in the presence of a licensed home inspector
 5. passed the examination of ASHI.
2. See Section 2.2 of ASHI Standards of Practice.

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catch every defect or guarantee every nook and cranny of the house, the above examples illustrate situations we might all expect a competent home inspector to identify.

Home inspectors who fail to identify the technical problems of a residential home can later cost homeowners thousands of dollars if they proceed with the transaction. Before this act, there were no legislative guidelines or regulatory authorities requiring licensing for home inspectors. Nor were there any mandatory requirement that a home inspection company maintain insurance.

While many consumers viewed home inspectors as analogous to licensed architects or engineers, the truth is that for many inspectors any comparison was unwarranted. Unlike licensed engineers or architects, there has been no state board governing the actions of residential home inspectors. While a majority were well-qualified, many were inexperienced and lacked any formal training. Before this act, anyone could operate without a license or certification assuring a minimum level of competence.

Further, unlike a consumer's dealings with engineers and/or architects, home inspectors have historically operated without errors and omissions insurance. Indeed, unlike commercial transactions, where parties may be in a position to require insurance as part of a negotiated contract, unsophisticated consumers have been powerless to require that their home inspector carry a reasonable insurance policy to guard them from negligent inspections. Typical advertisements that inspectors are "fully insured" usually meant that they carried a general liability insurance policy, not protection against their own errors and/or omissions.

For that matter, many consumers would not even know to ask the home inspector if the company carries errors and omissions insurance. In the end, if Fred was

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negligent but went out of business, or was judgment-proof, you were stuck without recourse.

The act's primary goal is to protect consumers of residential real estate from untrained and unsophisticated home inspectors without insurance. The key aspects of the Home Inspection Professional Licensing Act are clearly set forth in the new legislation. Simply stated, to operate as a home inspector, one must be licensed and maintain errors and omissions insurance. To obtain a license, one must be:

1. of good moral character
2. have a high school education or equivalent
3. be engaged as a licensed associate home inspector' for no less than one year, and have performed not less than 250 home inspections for compensation, and
4. pass the examination offered by the American Society of Home Inspectors (ASHI)

Also, the act mandates that associate inspectors must train under and be supervised by a fully licensed home inspector. While the associate may perform inspections for a fee, he or she is obliged to perform at least 250 inspections during a year or more. In addition, the associate inspectors also must pass the ASHI test.

The act also provides a "grandfather" clause to those inspectors active in the industry. A

home inspector currently in the business may obtain a license when he or she:

1. Holds a valid license issued by another state that has standards substantially equivalent to those of this state.

2. Is licensed in this state to practice architecture or professional engineering, provided that the person meets the requirements #1, 2, & 4 above.

3. During the first 360 days after the effective date of this act (July 1, 1999), the committee shall issue a license to any individual who meets #1, 2, & 4 above and has been engaged in the practice of home inspections for compensation for not less than three years prior to the effective date of this act and has performed no less than 300 home inspections for compensation.

With regard to the insurance aspects of the act, a licensed home inspector must maintain, and file with the state Board of Professional Engineers and Land Surveyors, proof of a certificate of an errors and omissions policy, which shall be in the minimum amount of \$500,000 per occurrence.

The ASHI will issue the test required to obtain a license. ASHI sets forth the standards of practice and specific guidelines that govern home inspections. ASHI requires, for example, that inspectors observe installed systems and components of a home, issue a report, and describe whether any inspected systems or components are in need of immediate repair.² ASHI also delineates specific points home inspectors are not required to address, such as "predict future conditions, including the failure of a component."

The act's new regulations shall be enforced and overseen by the State Board of Professional Engineers and Land Surveyors. Similar to professional engineers and architects, the act envisions that licensed home inspectors will be monitored on an on-going basis. For example, the state board committee may refuse to grant or may suspend or revoke a home