

## Addition of Subparts 197-4 and 197-5 to Title 19 NYCRR

### **SUBPART 197-4 CODE OF ETHICS AND REGULATIONS FOR HOME INSPECTORS**

#### Section 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 performing 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 197-4.8 Fraud, Misrepresentation and Dishonesty

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

#### Section 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.