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S T A T E O F N E W Y O R K

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2003-2004 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 8, 2003

Introduced by M. of A. JOHN, WIRTH, ROBINSON, ORTIZ, LAVELLE, ESPAILLAT
-- Multi-Sponsored by -- M. of A. COOK, EDDINGTON, ENGLEBRIGHT, GALEF,
GORDON, GREEN, HOOPER, HOYT, LAFAYETTE, MILLMAN, J. RIVERA, P. RIVERA,
SANDERS, WEISENBERG -- read once and referred to the Committee on
Judiciary -- recommitted to the Committee on Judiciary in accordance
with Assembly Rule 3, sec. 2 -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee --
reported and referred to the Committee on Codes -- committee
discharged, bill amended, ordered reprinted as amended and recommitted
to said committee

AN ACT to amend the real property law, in relation to establishing the
home inspection professional licensing act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The real property law is amended by adding a new article
2 12-B to read as follows:

3 ARTICLE 12-B

4 HOME INSPECTION PROFESSIONAL LICENSING

5 SECTION 444-A. SHORT TITLE.

6 444-B. DEFINITIONS.

7 444-C. STATE HOME INSPECTION COUNCIL.

8 444-D. LICENSE REQUIREMENTS FOR HOME INSPECTORS.

9 444-E. QUALIFICATIONS FOR LICENSURE.

10 444-F. LICENSE PERIODS, RENEWALS AND FEES.

11 444-G. DUTY OF CARE OF HOME INSPECTORS.

12 444-H. SUSPENSION AND REVOCATION OF LICENSES.

13 444-I. DENIAL OF LICENSE; COMPLAINTS; NOTICE OF HEARING.

14 444-J. PRACTICE OF ARCHITECTURE AND PROFESSIONAL ENGINEERING.

15 444-K. LIABILITY COVERAGE.

16 444-L. DUTIES OF THE SECRETARY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
{ } is old law to be omitted.

LBD02067-10-4

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1 444-M. CONSTRUCTION WITH OTHER LAWS.

- 2 444-N. UNLICENSED ACTIVITIES.
- 3 444-O. VIOLATIONS AND PENALTIES.
- 4 444-P. JUDICIAL REVIEW.
- 5 444-Q. SEVERABILITY.

6 S 444-A. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
7 THE "HOME INSPECTION PROFESSIONAL LICENSING ACT".

8 S 444-B. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
9 SHALL HAVE THE FOLLOWING MEANINGS:

10 1. "COUNCIL" MEANS THE STATE HOME INSPECTION COUNCIL ESTABLISHED
11 PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED FORTY-FOUR-C OF THIS
12 ARTICLE.

13 2. "CLIENT" MEANS ANY PERSON WHO ENGAGES OR SEEKS TO ENGAGE THE
14 SERVICES OF A HOME INSPECTOR FOR THE PURPOSE OF OBTAINING INSPECTION OF
15 AND WRITTEN REPORT ABOUT THE CONDITION OF A RESIDENTIAL BUILDING.

16 3. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

17 4. "HOME INSPECTOR" MEANS A PERSON LICENSED AS A HOME INSPECTOR PURSU-
18 ANT TO THE PROVISIONS OF THIS ARTICLE.

19 5. "HOME INSPECTION" MEANS THE PROCESS BY WHICH A HOME INSPECTOR
20 OBSERVES AND PROVIDES A WRITTEN REPORT OF THE SYSTEMS AND COMPONENTS OF
21 A RESIDENTIAL BUILDING INCLUDING BUT NOT LIMITED TO HEATING SYSTEM,
22 COOLING SYSTEM, PLUMBING SYSTEM, ELECTRICAL SYSTEM, STRUCTURAL COMPO-
23 NENTS, FOUNDATION, ROOF, MASONRY STRUCTURE, EXTERIOR AND INTERIOR COMPO-
24 NENTS OR ANY OTHER RELATED RESIDENTIAL BUILDING COMPONENT AS RECOMMENDED
25 BY THE HOME INSPECTION COUNCIL AND IMPLEMENTED BY THE DEPARTMENT THROUGH
26 REGULATION TO PROVIDE A CLIENT WITH OBJECTIVE INFORMATION ABOUT THE
27 CONDITION OF THE RESIDENTIAL BUILDING. THE HOME INSPECTOR SHALL CLEARLY
28 IDENTIFY IN THE WRITTEN REPORT WHICH SYSTEMS AND COMPONENTS OF THE RESI-
29 DENTIAL BUILDING WERE OBSERVED. A HOME INSPECTION SHALL NOT INCLUDE AN
30 INSPECTION FOR RADON OR PESTS.

31 6. "RESIDENTIAL BUILDING" MEANS A STRUCTURE CONSISTING OF ONE TO FOUR
32 DWELLING UNITS AND THEIR GARAGES AND CARPORT BUT SHALL NOT INCLUDE ANY
33 SUCH STRUCTURE NEWLY CONSTRUCTED OR NOT PREVIOUSLY OCCUPIED AS A DWELL-
34 ING UNIT.

35 7. "SECRETARY" MEANS THE SECRETARY OF THE DEPARTMENT OF STATE.

36 S 444-C. STATE HOME INSPECTION COUNCIL. 1. THERE IS HEREBY ESTABLISHED
37 A STATE HOME INSPECTION COUNCIL WITHIN THE DEPARTMENT. THE COUNCIL
38 SHALL CONSIST OF THE SECRETARY OR THE SECRETARY'S DESIGNEE AND SIX ADDI-
39 TIONAL MEMBERS WHO ARE RESIDENTS OF THE STATE, OF WHOM FOUR SHALL BE
40 PERSONS LICENSED AND ACTIVELY ENGAGED IN THE BUSINESS OF HOME INSPECTION
41 IN THE STATE OF NEW YORK FOR AT LEAST FIVE YEARS IMMEDIATELY PRECEDING
42 THEIR APPOINTMENT AND TWO OF WHOM SHALL BE CONSUMERS WHO ARE THE OWNERS
43 AND PRINCIPAL RESIDENTS OF A RESIDENTIAL BUILDING IN THE STATE OF NEW
44 YORK. APPOINTMENTS SHALL REFLECT THE GEOGRAPHICAL DIVERSITY OF THE
45 STATE.

46 2. FOR A PERIOD OF ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION,
47 AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION TO THE CONTRA-
48 RY, THE FIRST FOUR HOME INSPECTORS APPOINTED AS MEMBERS OF THE COMMITTEE
49 SHALL NOT BE REQUIRED, AT THE TIME OF THEIR FIRST APPOINTMENT, TO BE
50 LICENSED TO PRACTICE HOME INSPECTION, PROVIDED THAT SUCH MEMBERS BE
51 LICENSED PURSUANT TO THIS ARTICLE WITHIN ONE YEAR OF APPOINTMENT.

52 3. THE GOVERNOR SHALL APPOINT EACH MEMBER OF THE COUNCIL FOR A TERM OF
53 THREE YEARS EXCEPT THAT OF THE MEMBERS FIRST APPOINTED, TWO SHALL SERVE
54 FOR TERMS OF THREE YEARS, TWO SHALL SERVE FOR TERMS OF TWO YEARS AND TWO
55 SHALL SERVE FOR A TERM OF ONE YEAR. THE GOVERNOR SHALL APPOINT TWO HOME
56 INSPECTORS AND ONE CONSUMER UPON THE RECOMMENDATION OF THE TEMPORARY

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1 PRESIDENT OF THE SENATE AND TWO HOME INSPECTORS AND ONE CONSUMER UPON
2 THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY. EACH MEMBER SHALL
3 HOLD OFFICE UNTIL HIS OR HER SUCCESSOR HAS BEEN QUALIFIED. ANY VACANCY
4 IN THE MEMBERSHIP OF THE COUNCIL SHALL BE FILLED FOR THE UNEXPIRED TERM
5 IN THE MANNER PROVIDED FOR THE ORIGINAL APPOINTMENT. NO MEMBER OF THE
6 COUNCIL MAY SERVE MORE THAN TWO SUCCESSIVE TERMS IN ADDITION TO ANY
7 UNEXPIRED TERM TO WHICH HE OR SHE HAS BEEN APPOINTED.

8 4. MEMBERS OF THE COUNCIL SHALL RECEIVE NO COMPENSATION BUT SHALL BE

9 REIMBURSED FOR THEIR ACTUAL AND NECESSARY EXPENSES AND PROVIDED WITH
10 OFFICE AND MEETING FACILITIES AND PERSONNEL REQUIRED FOR THE PROPER
11 CONDUCT OF THE COUNCIL'S BUSINESS.

12 5. THE COUNCIL SHALL ANNUALLY ELECT FROM AMONG ITS MEMBERS A CHAIR AND
13 VICE-CHAIR AND MAY APPOINT A SECRETARY, WHO NEED NOT BE A MEMBER OF THE
14 COUNCIL. THE COUNCIL SHALL MEET AT LEAST TWICE A YEAR AND MAY HOLD ADDI-
15 TIONAL MEETINGS AS NECESSARY TO DISCHARGE ITS DUTIES.

16 6. THE ROLE OF THE COUNCIL SHALL BE ADVISORY. THE COUNCIL SHALL ADVISE
17 THE SECRETARY IN THE ADMINISTRATION AND ENFORCEMENT OF THE PROVISIONS OF
18 THIS ARTICLE AND RECOMMEND TO THE SECRETARY REGULATIONS TO IMPLEMENT THE
19 PROVISIONS OF THIS ARTICLE INCLUDING BUT NOT LIMITED TO:

20 (A) STANDARDS FOR TRAINING INCLUDING APPROVAL OF THE COURSE OF STUDY
21 AND EXAMINATION REQUIRED FOR LICENSURE OF HOME INSPECTORS;

22 (B) REQUIREMENTS AND STANDARDS FOR CONTINUING EDUCATION OF HOME
23 INSPECTORS;

24 (C) A CODE OF ETHICS AND STANDARDS OF PRACTICE FOR LICENSED HOME
25 INSPECTORS CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE AND SOUND
26 ETHICAL PRACTICES WHICH CODE AND STANDARDS SHALL BE SUBJECT TO PUBLIC
27 NOTICE AND COMMENT PRIOR TO A COUNCIL RECOMMENDATION TO THE SECRETARY.
28 THE STANDARDS OF PRACTICE SHALL NOT REQUIRE A REPORTING FORMAT OR LIMIT
29 INFORMATION WHICH LICENSEES ARE AUTHORIZED TO PROVIDE A CLIENT PURSUANT
30 TO THIS ARTICLE; AND

31 (D) DEVELOPMENT OF INFORMATION AND EDUCATIONAL MATERIALS ABOUT HOME
32 INSPECTION FOR DISTRIBUTION TO CLIENTS.

33 NOTHING IN THIS SECTION SHALL BE DEEMED TO SUPERSEDE ANY ESTABLISHED
34 AUTHORITY, DUTY AND POWER ESTABLISHED BY LOCAL LAW, STATE LAW OR REGU-
35 LATION OR OTHERWISE GRANTED TO ANY AGENCY, BODY OR ENTITY.

36 S 444-D. LICENSE REQUIREMENTS FOR HOME INSPECTORS. NO PERSON SHALL
37 CONDUCT OR REPRESENT THAT HE OR SHE HAS THE ABILITY TO CONDUCT A HOME
38 INSPECTION FOR COMPENSATION UNLESS SUCH PERSON IS:

39 1. LICENSED AS HOME INSPECTOR PURSUANT TO THIS ARTICLE; OR

40 2. A PERSON REGULATED BY THE STATE OR A POLITICAL SUBDIVISION THEREOF
41 AS AN ARCHITECT WHO IS ACTING WITHIN THE SCOPE OF HIS OR HER PROFESSION;
42 OR

43 3. A PERSON REGULATED BY THE STATE OR A POLITICAL SUBDIVISION THEREOF
44 AS AN ENGINEER WHO IS ACTING WITHIN THE SCOPE OF HIS OR HER PROFESSION;
45 OR

46 4. A PERSON WHO IS EMPLOYED AS A CODE ENFORCEMENT OFFICIAL BY THE
47 STATE OR A POLITICAL SUBDIVISION THEREOF WHEN ACTING WITHIN THE SCOPE OF
48 THAT GOVERNMENT EMPLOYMENT; OR

49 5. A PERSON MAKING HOME INSPECTIONS FOR THE PURPOSE OF MEETING THE
50 REQUIREMENTS OF SECTION FOUR HUNDRED FORTY-FOUR-E OF THIS ARTICLE TO
51 QUALIFY FOR LICENSURE AS A HOME INSPECTOR.

52 S 444-E. QUALIFICATIONS FOR LICENSURE. 1. AN APPLICANT FOR A LICENSE
53 AS A HOME INSPECTOR SHALL:

54 (A) HAVE SUCCESSFULLY COMPLETED HIGH SCHOOL OR ITS EQUIVALENT; AND

55 (B) (I) HAVE SUCCESSFULLY COMPLETED A COURSE OF STUDY OF NOT LESS THAN
56 ONE HUNDRED FORTY HOURS APPROVED BY THE COUNCIL OF WHICH AT LEAST FORTY

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1 HOURS SHALL HAVE BEEN IN THE FORM OF UNPAID FIELD BASED INSPECTIONS IN
2 THE PRESENCE OF AND UNDER THE DIRECT SUPERVISION OF A HOME INSPECTOR
3 LICENSED BY THE STATE OF NEW YORK OR A PROFESSIONAL ENGINEER OR ARCHI-
4 TECT REGULATED BY THE STATE OF NEW YORK WHO OVERSEES AND TAKES FULL
5 RESPONSIBILITY FOR THE INSPECTION AND ANY REPORT PRODUCED; OR

6 (II) HAVE PERFORMED NOT LESS THAN ONE HUNDRED HOME INSPECTIONS IN THE
7 PRESENCE OF AND UNDER THE DIRECT SUPERVISION OF A HOME INSPECTOR
8 LICENSED BY THE STATE OF NEW YORK OR A PROFESSIONAL ENGINEER OR ARCHI-
9 TECT REGULATED BY THE STATE OF NEW YORK WHO OVERSEES AND TAKES FULL
10 RESPONSIBILITY FOR THE INSPECTION AND ANY REPORT PRODUCED; AND

11 (C) HAVE PASSED A WRITTEN OR ELECTRONIC EXAMINATION APPROVED BY THE
12 COUNCIL AND DESIGNED TO TEST COMPETENCE IN HOME INSPECTION PRACTICE AS
13 DETERMINED BY A RECOGNIZED ROLE DEFINITION METHODOLOGY AND DEVELOPED AND
14 ADMINISTERED TO THE EXTENT PRACTICABLE IN A MANNER CONSISTENT WITH THE
15 AMERICAN EDUCATIONAL RESEARCH ASSOCIATION'S "STANDARDS FOR EDUCATIONAL

16 AND PSYCHOLOGICAL TESTING." AN APPLICANT MAY HAVE PASSED AN EXISTING
17 NATIONALLY RECOGNIZED EXAMINATION, AS APPROVED BY THE COUNCIL, PRIOR TO
18 THE EFFECTIVE DATE OF THIS ARTICLE; AND

19 (D) PAY THE APPLICABLE FEES.

20 2. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A PERSON PERFORM-
21 ING A HOME INSPECTION PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (B) OF
22 SUBDIVISION ONE OF THIS SECTION FOR THE PURPOSE OF MEETING REQUIREMENTS
23 FOR A HOME INSPECTOR LICENSE.

24 3. UPON SUBMISSION OF AN APPLICATION AND PAYMENT OF THE APPLICATION
25 AND LICENSURE FEES TO THE SECRETARY, THE SECRETARY SHALL ISSUE A HOME
26 INSPECTOR'S LICENSE TO A PERSON WHO HOLDS A VALID LICENSE AS A HOME
27 INSPECTOR ISSUED BY ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR
28 THE DISTRICT OF COLUMBIA WHICH HAS STANDARDS SUBSTANTIALLY EQUIVALENT TO
29 THOSE OF THIS STATE AS DETERMINED BY THE COUNCIL.

30 4. ON OR BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, THE SECRETARY
31 SHALL, UPON APPLICATION, ISSUE A HOME INSPECTOR LICENSE TO A PERSON WHO:

32 (A) MEETS THE REQUIREMENTS OF PARAGRAPHS (A) AND (C) OF SUBDIVISION
33 ONE OF THIS SECTION AND HAS PERFORMED ONE HUNDRED OR MORE HOME
34 INSPECTIONS FOR COMPENSATION WITHIN TWO YEARS PRIOR TO THE EFFECTIVE
35 DATE OF THIS SECTION; OR

36 (B) MEETS THE REQUIREMENTS OF PARAGRAPH (A) OF SUBDIVISION ONE OF THIS
37 SECTION AND HAS BEEN ENGAGED IN THE PRACTICE OF HOME INSPECTION FOR
38 COMPENSATION FOR NOT LESS THAN THREE YEARS PRIOR TO THE EFFECTIVE DATE
39 OF THIS SECTION DURING WHICH SUCH PERSON HAS PERFORMED TWO HUNDRED FIFTY
40 HOME INSPECTIONS FOR COMPENSATION WITHIN THREE YEARS PRIOR TO THE EFFEC-
41 TIVE DATE OF THIS SECTION; OR

42 (C) HAS EDUCATION AND EXPERIENCE WHICH THE SECRETARY, IN CONSULTATION
43 WITH THE COUNCIL, CONSIDERS EQUIVALENT TO THAT REQUIRED PURSUANT TO
44 PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION.

45 S 444-F. LICENSE PERIODS, RENEWALS AND FEES. 1. HOME INSPECTOR
46 LICENSES AND RENEWALS THEREOF SHALL BE ISSUED FOR A PERIOD OF TWO YEARS,
47 EXCEPT THAT THE SECRETARY MAY, IN ORDER TO STAGGER THE EXPIRATION DATE
48 THEREOF, PROVIDE THAT THOSE LICENSES FIRST ISSUED OR RENEWED AFTER THE
49 EFFECTIVE DATE OF THIS SECTION SHALL EXPIRE OR BECOME VOID ON A DATE
50 FIXED BY THE SECRETARY, NOT SOONER THAN SIX MONTHS NOR LATER THAN TWEN-
51 TY-NINE MONTHS AFTER THE DATE OF ISSUE. NO RENEWAL OF A LICENSE SHALL
52 BE ISSUED UNLESS THE APPLICANT HAS SUCCESSFULLY COMPLETED A COURSE OF
53 CONTINUING EDUCATION APPROVED BY THE COUNCIL.

54 2. THE SECRETARY SHALL COLLECT A FEE OF TWO HUNDRED FIFTY DOLLARS FOR
55 THE FIRST APPLICATION FOR A LICENSE AND THE LICENSE AS A HOME INSPECTOR.
56 THE SECRETARY SHALL COLLECT A FEE OF ONE HUNDRED DOLLARS TO RENEW A HOME

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1 INSPECTOR LICENSE. ALL FEES AND ANY FINES IMPOSED BY THE SECRETARY
2 PURSUANT TO THIS ARTICLE SHALL BE PAID TO THE DEPARTMENT OF STATE AND
3 SHALL FIRST BE DEDICATED TO ALL PROPER EXPENSES INCURRED BY THE SECRE-
4 TARY AND THE COUNCIL TO ADMINISTER THIS ARTICLE. FUNDS IN EXCESS OF
5 EXPENSES SHALL BE FORWARDED TO THE STATE TREASURER AND BECOME PART OF
6 THE GENERAL FUND.

7 S 444-G. DUTY OF CARE OF HOME INSPECTORS. 1. EVERY HOME INSPECTOR
8 SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE, AND THE RULES, REGU-
9 LATIONS AND STANDARDS ADOPTED PURSUANT THERETO. THE DUTY OF EVERY HOME
10 INSPECTOR SHALL BE TO THE CLIENT.

11 2. EVERY HOME INSPECTOR SHALL DISPLAY HIS OR HER LICENSE NUMBER AND
12 STATUS AS A LICENSED HOME INSPECTOR ON EVERY HOME INSPECTION REPORT AND
13 IN ALL ADVERTISING. UPON REQUEST OF ANY CLIENT OR INTERESTED PARTY TO A
14 REAL ESTATE TRANSACTION, EVERY HOME INSPECTOR SHALL PROVIDE SUCH PROOF
15 OF LICENSURE PURSUANT TO THIS ARTICLE AS SHALL BE ISSUED BY THE SECRE-
16 TARY FOR SUCH PURPOSE.

17 3. AFTER THE COMPLETION OF A HOME INSPECTION ON BEHALF OF A CLIENT,
18 EACH HOME INSPECTOR SHALL PROVIDE SUCH CLIENT WITH A WRITTEN REPORT OF
19 THE FINDINGS OF SUCH INSPECTION. THE HOME INSPECTION SHALL CLEARLY IDEN-
20 TIFY IN THE WRITTEN REPORT WHICH SYSTEMS AND COMPONENTS OF THE RESIDEN-
21 TIAL BUILDING WERE OBSERVED. EVERY SUCH WRITTEN REPORT AND THE INFORMA-
22 TION CONTAINED THEREIN SHALL BE DEEMED CONFIDENTIAL AND SHALL NOT BE

23 DISCLOSED WITHOUT THE EXPRESS CONSENT OF THE CLIENT.

24 4. NO HOME INSPECTOR SHALL:

25 (A) PERFORM OR OFFER TO PERFORM, FOR ANY ADDITIONAL FEE, ANY REPAIR,
26 IMPROVEMENT OR REPLACEMENT OF ANY COMPONENT OR SYSTEM IN A RESIDENTIAL
27 BUILDING FOR WHICH SUCH INSPECTOR, OR PARTNER THEREOF SHALL HAVE
28 PREPARED A HOME INSPECTION REPORT PRIOR TO THE CLOSE OF ESCROW. THIS
29 PARAGRAPH SHALL NOT INCLUDE REPAIRS TO COMPONENTS AND SYSTEMS NOT
30 INCLUDED IN THE STANDARDS OF PRACTICE ADOPTED PURSUANT TO THIS ARTICLE;

31 (B) INSPECT ANY RESIDENTIAL BUILDING IN WHICH SUCH INSPECTOR, PARTNER
32 OR RELATIVE THEREOF HAS A FINANCIAL INTEREST OR ANY INTEREST IN THE
33 TRANSFER THEREOF, INCLUDING THE RECEIPT OF ANY COMMISSION AS AN AGENT;

34 (C) OFFER TO PROVIDE OR PROVIDE ANY COMMISSION, REFERRAL FEE OR KICK-
35 BACK TO THE SELLER OF ANY INSPECTED RESIDENTIAL BUILDING, OR TO THE
36 AGENT OF EITHER OR BOTH THE SELLER AND BUYER OF SUCH BUILDING, FOR THE
37 REFERRAL OF ANY BUSINESS TO SUCH INSPECTOR OR PARTNER THEREOF; OR

38 (D) AGREE TO PERFORM ANY HOME INSPECTION OR PREPARE ANY HOME
39 INSPECTION REPORT FOR WHICH COMPENSATION OR EMPLOYMENT IS CONTINGENT
40 UPON THE CONCLUSIONS OF THE HOME INSPECTION REPORT, PRE-ESTABLISHED OR
41 PRESCRIBED FINDINGS, OR THE CLOSING OF A REAL ESTATE TRANSACTION.

42 NOTHING IN THIS ARTICLE AUTHORIZES A HOME INSPECTOR TO PRACTICE ENGI-
43 NEERING OR ARCHITECTURE.

44 S 444-H. SUSPENSION AND REVOCATION OF LICENSES. 1. THE SECRETARY MAY
45 REFUSE TO GRANT OR MAY SUSPEND OR REVOKE A HOME INSPECTOR LICENSE, OR IN
46 LIEU THEREOF IMPOSE A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS
47 PER VIOLATION, UPON PROOF TO THE SATISFACTION OF THE SECRETARY THAT THE
48 HOLDER THEREOF HAS:

49 (A) VIOLATED THE PROVISIONS OF SUBDIVISION FOUR OF SECTION FOUR
50 HUNDRED FORTY-FOUR-G OF THIS ARTICLE;

51 (B) DISCLOSED ANY INFORMATION CONCERNING THE RESULTS OF THE HOME
52 INSPECTION WITHOUT THE APPROVAL OF THE CLIENT OR THE CLIENT'S REPRESEN-
53 TATIVES;

54 (C) ACCEPTED COMPENSATION FROM MORE THAN ONE INTERESTED PARTY FOR THE
55 SAME SERVICE WITHOUT THE CONSENT OF ALL INTERESTED PARTIES;

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1 (D) ACCEPTED COMMISSIONS OR ALLOWANCES, DIRECTLY OR INDIRECTLY, FROM
2 OTHER PARTIES DEALING WITH THE CLIENT IN CONNECTION WITH WORK FOR WHICH
3 THE LICENSEE IS RESPONSIBLE;

4 (E) FAILED TO DISCLOSE PROMPTLY TO A CLIENT INFORMATION ABOUT ANY
5 BUSINESS INTEREST OF THE LICENSEE WHICH MAY REASONABLY AFFECT THE CLIENT
6 IN CONNECTION WITH THE HOME INSPECTION; OR

7 (F) BEEN CONVICTED OF A FELONY INVOLVING FRAUD, THEFT, PERJURY OR
8 BRIBERY.

9 2. WHENEVER A LICENSE IS REVOKED PURSUANT TO THIS SECTION, SUCH
10 LICENSE SHALL NOT BE REINSTATED OR REISSUED UNTIL AFTER THE EXPIRATION
11 OF A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH REVOCATION.

12 3. A VIOLATION OF THIS ARTICLE BY A PROFESSIONAL ENGINEER OR ARCHITECT
13 REGULATED BY THE STATE OF NEW YORK SHALL BE ENFORCED BY THEIR RESPECTIVE
14 STATE LICENSING BOARDS.

15 S 444-I. DENIAL OF LICENSE; COMPLAINTS; NOTICE OF HEARING. 1. DENIAL
16 OF LICENSE. THE DEPARTMENT SHALL, BEFORE MAKING A FINAL DETERMINATION TO
17 DENY AN APPLICATION FOR A LICENSE, NOTIFY THE APPLICANT IN WRITING OF
18 THE REASONS FOR SUCH PROPOSED DENIAL AND SHALL AFFORD THE APPLICANT AN
19 OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL PRIOR TO DENIAL OF THE
20 APPLICATION. SUCH NOTIFICATION SHALL BE SERVED PERSONALLY OR BY CERTI-
21 FIED MAIL OR IN ANY MANNER AUTHORIZED BY THE CIVIL PRACTICE LAW AND
22 RULES FOR SERVICE OF A SUMMONS. IF A HEARING IS REQUESTED, SUCH HEARING
23 SHALL BE HELD AT SUCH TIME AND PLACE AS THE DEPARTMENT SHALL PRESCRIBE.
24 IF THE APPLICANT FAILS TO MAKE A WRITTEN REQUEST FOR A HEARING WITHIN
25 THIRTY DAYS AFTER RECEIPT OF SUCH NOTIFICATION, THEN THE NOTIFICATION OF
26 DENIAL SHALL BECOME THE FINAL DETERMINATION OF THE DEPARTMENT. THE
27 DEPARTMENT, ACTING BY SUCH OFFICER OR PERSON IN THE DEPARTMENT AS THE
28 SECRETARY MAY DESIGNATE, SHALL HAVE THE POWER TO SUBPOENA AND BRING
29 BEFORE THE OFFICER OR PERSON SO DESIGNATED ANY PERSON IN THIS STATE AND
30 ADMINISTER AN OATH TO AND TAKE TESTIMONY OF ANY PERSON OR CAUSE HIS OR

31 HER DEPOSITION TO BE TAKEN. A SUBPOENA ISSUED UNDER THIS SECTION SHALL
32 BE REGULATED BY THE CIVIL PRACTICE LAW AND RULES. IF, AFTER SUCH HEAR-
33 ING, THE APPLICATION IS DENIED, WRITTEN NOTICE OF SUCH DENIAL SHALL BE
34 SERVED UPON THE APPLICANT PERSONALLY OR BY CERTIFIED MAIL OR IN ANY
35 MANNER AUTHORIZED BY THE CIVIL PRACTICE LAW AND RULES FOR THE SERVICE OF
36 A SUMMONS.

37 2. REVOCATION, SUSPENSION, REPRIMANDS, FINES; UNLICENSED ACTIVITIES.
38 THE DEPARTMENT SHALL, BEFORE REVOKING OR SUSPENDING ANY LICENSE OR
39 IMPOSING ANY FINE OR REPRIMAND ON THE HOLDER THEREOF, OR BEFORE ISSUING
40 ANY ORDER DIRECTING THE CESSATION OF UNLICENSED ACTIVITIES, AND AT LEAST
41 TEN DAYS PRIOR TO THE DATE SET FOR THE HEARING, NOTIFY IN WRITING THE
42 HOLDER OF SUCH LICENSE, OR THE PERSON ALLEGED TO HAVE ENGAGED IN UNLI-
43 CENSED ACTIVITIES, OF ANY CHARGES MADE AND SHALL AFFORD SUCH PERSON AN
44 OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFERENCE THERETO.
45 SUCH WRITTEN NOTICE MAY BE SERVED BY DELIVERY THEREOF PERSONALLY TO THE
46 LICENSEE OR PERSON CHARGED, OR BY MAILING THE SAME BY CERTIFIED MAIL TO
47 THE LAST KNOWN BUSINESS ADDRESS OF SUCH PERSON, OR BY ANY METHOD AUTHOR-
48 IZED BY THE CIVIL PRACTICE LAW AND RULES FOR THE SERVICE OF A SUMMONS.
49 THE HEARING ON SUCH CHARGES SHALL BE CONDUCTED AT SUCH TIME AND PLACE AS
50 THE DEPARTMENT SHALL PRESCRIBE AND SHALL BE CONDUCTED IN ACCORDANCE WITH
51 THE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

52 3. THE DEPARTMENT, ACTING BY SUCH OFFICER OR PERSON IN THE DEPARTMENT
53 AS THE SECRETARY MAY DESIGNATE, SHALL HAVE THE POWER TO SUBPOENA AND
54 BRING BEFORE THE OFFICER OR PERSON SO DESIGNATED ANY PERSON IN THIS
55 STATE AND ADMINISTER AN OATH TO AND TAKE TESTIMONY OF ANY PERSON OR

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1 CAUSE HIS OR HER DEPOSITION TO BE TAKEN. A SUBPOENA ISSUED UNDER THIS
2 SECTION SHALL BE REGULATED BY THE CIVIL PRACTICE LAW AND RULES.

3 S 444-J. PRACTICE OF ARCHITECTURE AND PROFESSIONAL ENGINEERING. A
4 PERSON REGULATED BY THE STATE OF NEW YORK TO ENGAGE IN THE PRACTICE OF
5 ARCHITECTURE WHEN ACTING WITHIN THE SCOPE OF THE PRACTICE, A PERSON
6 LICENSED IN THE STATE OF NEW YORK TO PRACTICE PROFESSIONAL ENGINEERING
7 WHEN ACTING WITHIN THE SCOPE OF THAT PRACTICE OR A PERSON WHO IS
8 EMPLOYED AS A CODE ENFORCEMENT OFFICIAL BY THE STATE OR A POLITICAL
9 SUBDIVISION THEREOF WHEN ACTING WITHIN THE SCOPE OF THAT GOVERNMENT
10 EMPLOYMENT MAY PERFORM HOME INSPECTIONS WITHOUT NEED OF LICENSURE PURSU-
11 ANT TO THIS ARTICLE.

12 S 444-K. LIABILITY COVERAGE. 1. EVERY LICENSED HOME INSPECTOR WHO IS
13 ENGAGED IN HOME INSPECTION SHALL SECURE, MAINTAIN, AND FILE WITH THE
14 SECRETARY PROOF OF A CERTIFICATE OF LIABILITY COVERAGE, WHICH TERMS AND
15 CONDITIONS SHALL BE DETERMINED BY THE SECRETARY IN CONSULTATION WITH THE
16 COUNCIL.

17 2. EVERY PROOF OF LIABILITY COVERAGE REQUIRED TO BE FILED WITH THE
18 SECRETARY SHALL PROVIDE THAT CANCELLATION OR NONRENEWAL OF THE POLICY
19 SHALL NOT BE EFFECTIVE UNLESS AND UNTIL AT LEAST TEN DAYS` NOTICE OF
20 INTENTION TO CANCEL OR NONRENEW HAS BEEN RECEIVED IN WRITING BY THE
21 SECRETARY.

22 S 444-L. DUTIES OF THE SECRETARY. THE SECRETARY SHALL, IN CONSULTATION
23 WITH THE COUNCIL, ESTABLISH SUCH RULES AND REGULATIONS AS SHALL BE
24 NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

25 S 444-M. CONSTRUCTION WITH OTHER LAWS. NOTHING IN THIS ARTICLE SHALL
26 PREVENT ANY LICENSED ENGINEER, REGISTERED ARCHITECT OR ANY OTHER
27 LICENSED OR REGULATED PROFESSION OR GOVERNMENTAL EMPLOYEE FROM ACTING
28 WITHIN THE SCOPE OF HIS OR HER PROFESSION OR EMPLOYMENT.

29 S 444-N. UNLICENSED ACTIVITIES. THE SECRETARY MAY ISSUE AN ORDER
30 DIRECTING THE CESSATION OF ANY ACTIVITY FOR WHICH A LICENSE IS REQUIRED
31 BY THIS ARTICLE UPON A DETERMINATION THAT A PERSON HAS ENGAGED IN OR
32 FOLLOWED THE BUSINESS OR OCCUPATION OF, OR HELD HIMSELF, HERSELF, OR
33 ITSELF OUT AS OR ACTED AS, TEMPORARILY OR OTHERWISE, A HOME INSPECTOR
34 WITHIN THIS STATE WITHOUT A VALID LICENSE BEING IN EFFECT. THE DEPART-
35 MENT SHALL, BEFORE MAKING SUCH DETERMINATION AND ORDER, AFFORD SUCH
36 PERSON AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFERENCE
37 THERETO IN AN ADJUDICATORY PROCEEDING HELD PURSUANT TO THIS ARTICLE.

38 S 444-O. VIOLATIONS AND PENALTIES. ANY PERSON WHO DIRECTLY OR INDI-

39 RECTLY ENGAGES IN THE BUSINESS OF HOME INSPECTION, HOLDS HIMSELF OR
40 HERSELF OUT TO THE PUBLIC AS BEING ABLE TO ENGAGE IN THE BUSINESS OF
41 HOME INSPECTION WITHOUT A LICENSE THEREFOR, ENGAGES IN THE BUSINESS OF
42 HOME INSPECTION AFTER HAVING HIS OR HER LICENSE REVOKED OR SUSPENDED, OR
43 WITHOUT A LICENSE TO ENGAGE IN THE BUSINESS OF HOME INSPECTION, DIRECTLY
44 OR INDIRECTLY EMPLOYS, PERMITS OR AUTHORIZES AN UNLICENSED PERSON TO
45 ENGAGE IN THE BUSINESS OF HOME INSPECTION IN VIOLATION OF AN ORDER
46 DIRECTING THE CESSATION OF UNLICENSED ACTIVITY ISSUED BY THE SECRETARY
47 PURSUANT TO SECTION FOUR HUNDRED FORTY-FOUR-N OF THIS ARTICLE SHALL BE
48 GUILTY OF A MISDEMEANOR AND UPON THE FIRST CONVICTION THEREOF SHALL BE
49 SENTENCED TO A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS; UPON A SECOND
50 OR SUBSEQUENT CONVICTION THEREOF SHALL BE SENTENCED TO A FINE OF NOT
51 LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS. EACH
52 VIOLATION OF THIS ARTICLE SHALL BE DEEMED A SEPARATE OFFENSE.

53 S 444-P. JUDICIAL REVIEW. THE ACTION OF THE SECRETARY IN SUSPENDING,
54 REVOKING, OR REFUSING TO ISSUE OR RENEW A LICENSE, OR IMPOSING AN ORDER
55 DIRECTING THE CESSATION OF UNLICENSED ACTIVITY OR IMPOSING A FINE OR

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1 REPRIMAND MAY BE REVIEWED BY THE SUPREME COURT IN THE MANNER PROVIDED BY
2 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

3 S 444-Q. SEVERABILITY. IN THE EVENT IT IS DETERMINED BY A COURT OF
4 COMPETENT JURISDICTION THAT ANY PHRASE, CLAUSE, PART, SUBDIVISION, PARA-
5 GRAPH OR SECTION, OR ANY OF THE PROVISIONS OF THIS ARTICLE, IS UNCONSTI-
6 TUTIONAL OR OTHERWISE INVALID OR INOPERATIVE, SUCH DETERMINATION SHALL
7 NOT AFFECT THE VALIDITY OR EFFECT OF THE REMAINING PROVISIONS OF THIS
8 ARTICLE.

9 S 2. This act shall take effect on the three hundred sixty-fifth day
10 after it shall have become a law; provided that the secretary of state
11 is authorized to promulgate any and all rules and regulations and take
12 any other measures necessary to implement this act on its effective date
13 on or before such date.