



BROKER/AGENT
HOME INSPECTION Q & A

BACKGROUND

QUESTION: What is the Home Inspection Law (Act 114 of 2000)?

ANSWER: The Home Inspection Law, 68 Pa. C.S. 7501 *et seq.*, regulates certain aspects of the performance of home inspections in order to increase professionalism throughout the home inspection industry. The Home Inspection Law is one of three Chapters (Chapter 75) of the Residential Real Estate Transfers Law, which also includes the Real Estate Seller Disclosure Law. The Home Inspection Law became effective on December 20, 2001. Minor modifications clarifying the role of licensed engineers and architects were passed as Act 51 of 2004, effective August 27, 2004.

QUESTION: Who was active in the drafting and passage of the Home Inspection Law?

ANSWER: The Home Inspection Law was a cooperative effort by the Pennsylvania Association of REALTORS® and representatives of the Pennsylvania chapters of the American Society of Home Inspectors and the National Association of Home Inspectors. Passage of the Home Inspection Law was a Legislative Priority Level I for PAR during the 1999-2000 session of the General Assembly.

QUESTION: Why should Pennsylvania regulate home inspectors?

ANSWER: Prior to the passage of the Home Inspection Law, Pennsylvania had no statutory provisions regulating the performance of home inspections or requiring a certain level of professionalism by home inspectors. As a result, consumers and REALTORS® have encountered difficulties working with individuals who advertise themselves as home inspectors, but lack the training and vocational background to qualify them to render professional opinions concerning the condition of a property.

DEFINITIONS

QUESTION: What is a “home inspection?”

ANSWER: A home inspection is “a noninvasive visual examination of some combination of the mechanical, electrical or plumbing systems or the structural and essential components of a residential dwelling designed to identify material defects in those systems and components and performed for a fee in connection with or preparation for a proposed or possible residential real estate transfer. The term also includes any consultation regarding the property that is represented to be a home inspection or that is described by any confusingly similar term. The term does not include an examination of a single system or component of a residential dwelling such as, for example, its electrical or plumbing system or its roof. The term also does not include an examination that is limited to inspection for, or of, one or more of the following: wood destroying insects, underground tanks and wells, septic systems, swimming pools and spas, alarm systems, air and water quality, tennis courts and playground equipment, pollutants, toxic chemicals and environmental hazards.”

QUESTION: What is a “material defect?”

ANSWER: A material defect is “a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system or subsystem is near, at or beyond the end of a normal useful life of such a structural element, system or subsystem is not by itself a material defect.”

QUESTION: Who can be a “home inspector?”

ANSWER: A home inspector is “an individual who performs a home inspection.” In certain situations, however, the law requires that a home inspection be performed by an architect, engineer, or “a full member in good standing of a national home inspection association...”

QUESTION: What is a “national home inspection association?”

ANSWER: As defined by the law, a national home inspection association: (1) is operated on a not-for-profit basis and not operated as a franchise; (2) has members in more than 10 states; (3) requires that a person may not be a full member unless the person has performed or participated in more than 100 home inspections and has passed a recognized or accredited examination testing knowledge of the proper procedures for conducting a home inspection; and (4) requires that its members comply with a code of conduct and attend continuing professional education classes as an ongoing condition of membership.

APPLICATION OF THE LAW

QUESTION: When does this law apply?

ANSWER: In general, the Home Inspection Law applies to any “residential real estate transfer,” which is defined as a transfer of not less than one nor more than four residential dwelling units. A list of eight exceptions to this rule is found in §7103(b) of the Residential Real Estate Transfers Law. Note that new construction is not excluded from the scope of the Home Inspection Law, nor is a mixed-use commercial transaction involving one to four residential dwelling units.

QUESTION: Who may conduct a home inspection?

ANSWER: In general, any home inspector may conduct a home inspection. HOWEVER, where the inspection is conducted as part of a contingency in an Agreement of Sale (i.e., where the results of the inspection may trigger certain duties to repair or renegotiate), the inspection must be conducted by a licensed or registered engineer, a licensed or registered architect, “a full member in good standing of a national home inspection association,” or an inspector who is not yet a full member of a national home inspection association but is supervised by a full member who signs the inspection report.

QUESTION: How can one verify that a home inspector is an engineer, architect or a full member of a national home inspection association?

ANSWER: Get it in writing. The law states that “A buyer shall be entitled to rely in good faith, without independent investigation, on a written representation by a home inspector” regarding the inspector’s qualifications. PAR has worked with home inspectors to develop a Pennsylvania Home Inspector Compliance Statement that inspectors can use to verify their qualifications. While this specific form is not required in a transaction, brokers and agents should educate their clients to ask inspectors to fill out the form or provide some other “written representation” that they comply with the law.

QUESTION: Who defines the scope of the home inspection?

ANSWER: The scope of a home inspection, the services to be performed, and the systems and conditions to be inspected or excluded from inspection may be defined by a contract between the home inspector and the client.

QUESTION: What specific information must a home inspection report include?

ANSWER: A home inspection report must be in writing and include: (1) a description of the scope of the inspection with an identification of the structural elements, systems and subsystems covered in the report; (2) a description of the material defects noted during the inspection with the recommendation that certain experts be retained to determine the extent of the defects and any corrective action that should be taken; and (3) four conspicuous statements (as set forth in § 7508 (a) (3)) concerning the contents of the report.

QUESTION: Who has access to the home inspection report?

ANSWER: Unless otherwise required by law, a home inspector may not deliver a report to anyone other than the inspector's client without the client's consent. A seller has the right, upon request, to receive without charge a copy of the home inspection report from the person for whom it was prepared.

QUESTION: May a home inspector give an estimate to repair any defects revealed in the home inspection report?

ANSWER: A certified home inspector may not express, either orally or in writing, an estimate of the cost to repair any defect found during a home inspection *unless*: (1) the report identifies the source of the estimate; (2) the estimate is stated as a range of costs; and (3) the report states that the parties should consider obtaining an estimate from a contractor who performs the type of repair involved.

QUESTION: What levels of liability insurance must certified home inspectors carry?

ANSWER: Home inspectors must maintain insurance against errors and omissions in the performance of a home inspection and general liability with coverage of not less than \$100,000 per occurrence and \$500,000 in the aggregate and with deductibles of not more than \$2,500. The home inspector must maintain the insurance for at least one year after the latest home inspection report the home inspector delivers. NOTE: These terms do not apply to a home inspection report that was delivered prior to Dec. 20, 2001.

QUESTION: Is it possible to have inspections that are not considered to be a "home inspection?"

ANSWER: The law specifically excludes examinations of a single system or component of a dwelling, such as the electrical system or the roof. Also excluded are examinations that are limited to inspection for, or of, one or more of the following: wood destroying insects, underground tanks and wells, septic systems, swimming pools and spas, alarm systems, air and water quality, tennis courts and playground equipment, pollutants, toxic chemicals and environmental hazards.

QUESTION: May a home inspector conduct other property examinations, (e.g., an appraisal or radon inspection), that are excluded from the definition of “home inspection?”

ANSWER: A home inspector may conduct any property examinations and engage in any other activities for which they are qualified and properly licensed. Unless the home inspector is registered or licensed under one or more of the following laws, they are not allowed to perform any activity that would constitute the practice of that profession: the Engineer, Land Surveyor and Geologist Registration Law; the Pennsylvania Sewage Facilities Act; the Pennsylvania Pesticide Control Act of 1973; the Architects Licensure Law; the Radon Certification Act; the Real Estate Appraisers Certification Act.

QUESTION: Are home inspectors prohibited from engaging in any inspection-related activities?

ANSWER: A home inspector, the employer of a home inspector, or any business or person that controls or has a financial interest in the employer of a home inspector, may not: (1) Perform or offer to perform for an additional fee repairs to a structure for which the home inspector or the employer of the home inspector prepared a home inspection report within the preceding 12 months. (2) Inspect for a fee any property in which the home inspector or the employer of the home inspector has any financial interest or any interest in the transfer of the property, unless the financial interest is disclosed in writing to the buyer before the home inspection is performed and the buyer acknowledges this disclosure in writing. (3) Offer or deliver any compensation or reward to the seller of the inspected property or to an agent for either or both the seller and the buyer for the referral of any business to the home inspector or the employer of the home inspector. (4) Accept an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions of the report, pre-established or prescribed findings or the closing of the transaction.

ENFORCEMENT STANDARDS AND PENALTIES

QUESTION: How will the Home Inspection Law be enforced?

ANSWER: The law is self-enforcing. As such, the parties in a real estate transaction must ascertain the membership status of a home inspector who will perform an inspection pursuant to a contingency provision in an agreement of sale.

QUESTION: What remedies or penalties apply to a home inspector that violates a provision of the law?

ANSWER: There are criminal penalties for persons who fail to carry the required insurance (§ 7509), for persons who falsely represent themselves as home inspectors in good standing with a national association (§ 7510), and for persons who violate the reporting provisions of the law (§ 7508). Other actions by home inspectors fall under the consumer protection provisions of the Unfair Trade Practices and Consumer Protection Law (§ 7505).

QUESTION: Can the provisions of the law be waived by contract?

ANSWER: A contract with a home inspector may not contain: (1) a limitation on the liability of the home inspector for gross negligence or willful misconduct; or (2) a waiver or modification of any provision of the law.

QUESTION: Is there a time limit in order to recover damages arising from a home inspection report?

ANSWER: Any action to recover damages arising from a home inspection report must be filed within one year after the date the report is delivered.