

1 HOUSE BILL 319

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Mary Helen Garcia

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10 AN ACT

11 RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSURE; ENACTING
12 THE HOME INSPECTOR LICENSING ACT; PROVIDING PENALTIES; CREATING
13 A FUND; MAKING AN APPROPRIATION.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. SHORT TITLE.--This act may be cited as the
17 "Home Inspector Licensing Act".

18 SECTION 2. PURPOSE.--The purpose of the Home Inspector
19 Licensing Act is to provide for regulation and supervision of
20 the business of home inspection and evaluation, including
21 assessing the condition of residential real estate, providing a
22 report containing comprehensive analysis of the condition of
23 property and providing necessary evidence of the condition to
24 clients.

25 SECTION 3. DEFINITIONS.--As used in the Home Inspector

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1 Licensing Act:

2 A. "board" means the home inspector licensing
3 board;

4 B. "client" means a person who, through a written
5 preinspection agreement, engages the services of a home
6 inspector for the purpose of obtaining a report on the
7 condition of a residential real property;

8 C. "compensation" means the payment for home
9 inspection services pursuant to the written preinspection
10 agreement;

11 D. "fund" means the home inspector fund;

12 E. "home inspection" means a noninvasive,
13 nondestructive examination by a licensee of the interior and
14 exterior components of a residential real property, including
15 the property's structural components, foundation and roof, for
16 the purposes of providing a professional written opinion
17 regarding the site aspects and condition of the property and
18 its carports, garages and reasonably accessible installed
19 components. Also included is the examination of the property's
20 heating, cooling, plumbing and electrical systems, including
21 the operational condition of the systems' controls that are
22 normally operated by a property owner;

23 F. "home inspector" means a person who has a
24 license pursuant to the Home Inspector Licensing Act and who
25 engages in the business of performing home inspections and

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1 generates reports pursuant to a written preinspection
2 agreement;

3 G. "license" means a home inspector license;

4 H. "licensee" means the holder of a license;

5 I. "preinspection agreement" means the written
6 agreement by which a client engages the services of a home
7 inspector;

8 J. "report" means a professional written opinion
9 regarding the functional and physical condition of the
10 residential real property prepared by the home inspector
11 pursuant to the terms of a preinspection agreement; and

12 K. "residential real property" means any real
13 property used for residential purposes or a manufactured or
14 modular home, which is a single-family dwelling, duplex,
15 triplex, quadruplex or a unit as defined in the Condominium
16 Act, except that "residential real property" does not include
17 the common areas of a condominium as defined in the Condominium
18 Act.

19 SECTION 4. BOARD CREATED--COMPOSITION--TERMS--
20 VACANCIES--REMOVAL.--

21 A. The "home inspector licensing board" is created.
22 The board is administratively attached to the regulation and
23 licensing department. The board consists of five members whose
24 collective membership represents a diverse and geographically
25 dispersed cross-section of the state's population. The board

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1 members shall be composed as follows:

2 (1) one member shall be a public member;

3 (2) one member shall be a member who is active
4 in business in a licensed profession related to the real estate
5 industry; and

6 (3) three members shall be home inspectors
7 who:

8 (a) have actively engaged in the
9 practice of home inspection for at least five years immediately
10 preceding their appointment; and

11 (b) have demonstrated that they have
12 passed a proctored national home inspection examination
13 administered by the examination board of professional home
14 inspectors.

15 B. The initial members of the board shall be
16 nominated for appointment by the members of the working group
17 established pursuant to Senate Memorial 2 of the first session
18 of the fiftieth legislature and shall be approved for
19 appointment by the governor. Thereafter, the board members
20 shall be appointed by the governor.

21 C. Board members shall be appointed for five-year
22 terms and shall serve until their successors are appointed. To
23 provide for staggered terms, the members initially appointed
24 shall serve staggered terms from the date of their appointment
25 as follows:

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1 (1) two members, one home inspector member and
2 the public member, for three-year terms;

3 (2) two members, one home inspector member and
4 the member actively in the business related to the real estate
5 industry, for two-year terms; and

6 (3) one home inspector member for a one-year
7 term.

8 D. The governor may remove a member for cause.
9 Vacancies shall be filled by appointment by the governor.
10 Vacancy appointments shall be made within sixty days of the
11 vacancy and shall run for the remainder of the unexpired term.
12 Members shall be eligible for reappointment, but no member
13 shall serve more than two full terms on the board.

14 E. The board shall initially meet within sixty days
15 of the beginning of the fiscal year and shall elect from its
16 membership a chair and a vice chair. Thereafter, the board
17 shall meet at times deemed necessary or advisable by the chair
18 or a majority of the members, or at the request of the
19 governor, but in no event less than twice a year. Reasonable
20 notice of all meetings shall be given in a manner prescribed by
21 the board. A majority of the board shall constitute a quorum;
22 provided that at least two of the members present are home
23 inspectors.

24 SECTION 5. BOARD--POWERS AND DUTIES.--

25 A. Pursuant to the provisions of the Home Inspector

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1 Licensing Act, the board shall:

2 (1) adopt rules and procedures necessary to
3 administer and enforce the provisions of the Home Inspector
4 Licensing Act;

5 (2) issue and renew licenses to home
6 inspectors pursuant to the provisions of the Home Inspector
7 Licensing Act;

8 (3) suspend, revoke or deny the license of a
9 home inspector;

10 (4) establish standards for the training,
11 experience and continuing education requirements of the Home
12 Inspector Licensing Act;

13 (5) establish the amount and administer the
14 fees charged for examinations, licenses, renewals and other
15 services pursuant to the provisions of the Home Inspector
16 Licensing Act; and

17 (6) perform other functions and duties as may
18 be necessary to administer and carry out the provisions of the
19 Home Inspector Licensing Act.

20 B. In addition to any other authority provided by
21 law, the board may adopt and enforce rules to carry out the
22 provisions of the Home Inspector Licensing Act.

23 **SECTION 6. BOARD REIMBURSEMENT AND EXPENSES.**--Each board
24 member shall receive per diem and mileage as provided in the
25 Per Diem and Mileage Act and shall receive no other

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1 compensation, perquisite or allowance.

2 SECTION 7. REPORT--DISCLAIMER REQUIRED--BUILDING CODE
3 CITATION REQUIRED.--A report issued by a home inspector
4 pursuant to the Home Inspector Licensing Act shall contain a
5 disclaimer approved by the board stating that the report
6 contains an opinion based only on the observations of the home
7 inspector. The report shall also contain a statement of
8 qualifications providing that:

9 A. the home inspector is not licensed by the state
10 to determine if a building conforms to local or state building
11 code requirements; or

12 B. the home inspector is licensed by the state to
13 determine if a building conforms to local or state building
14 code requirements, has current national certifications and has
15 completed any required continuing education offered by those
16 groups that promulgate and publish the building codes adopted
17 by the state of New Mexico. A home inspector as provided for
18 in this subsection may comment in the report on relevant code
19 compliance issues observed during the course of the home
20 inspection. Such comments shall include a citation referring
21 to the section of the specific New Mexico building code,
22 including its year of publication, used as the reference for
23 the observation and opinion determining the existence of a
24 building code violation.

25 SECTION 8. LICENSE REQUIRED--EXEMPTIONS.--

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1 A. Unless licensed to practice as a home inspector
2 pursuant to the provisions of the Home Inspector Licensing Act,
3 a person shall not:

4 (1) conduct home inspections, develop a report
5 or otherwise engage in the business of home inspection;

6 (2) use the title "home inspector", "certified
7 home inspector", "registered home inspector", "licensed home
8 inspector", "professional home inspector" or any other title,
9 abbreviation, letters, figures or signs that indicate the
10 person is a licensed home inspector; or

11 (3) use the terms "state licensed" or
12 "licensed" to refer to an inspection conducted or a report
13 prepared by a person who is not a licensee pursuant to the
14 provisions of the Home Inspector Licensing Act.

15 B. A business entity shall not provide home
16 inspection services unless all of the home inspectors employed
17 by the business are licensees in accordance with the provisions
18 of the Home Inspector Licensing Act.

19 C. A business entity shall not use, in connection
20 with the name or signature of the business, the title "home
21 inspectors" to describe the business entity's services unless
22 each person employed by the business as a home inspector is
23 licensed in accordance with the provisions of the Home
24 Inspector Licensing Act.

25 D. The term "licensed home inspector" along with

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1 the license number of the home inspector shall appear on all
2 advertising, correspondence and documents incidental to the
3 business of home inspection.

4 E. The Home Inspector Licensing Act does not apply
5 to:

6 (1) a person licensed by the state in a
7 vocation or profession such as an engineer, an architect, a
8 real estate broker, a real estate salesperson, a real estate
9 appraiser, a certified general appraiser, a residential real
10 estate appraiser or a pest control operator, when acting within
11 the scope of the person's license;

12 (2) a person licensed by the state or any
13 political subdivision of the state as an electrician, a
14 contractor, a plumber or a heating and air conditioning
15 technician, when acting within the scope of the person's
16 license;

17 (3) a person regulated by the state as an
18 insurance adjuster, when acting within the scope of the
19 person's license;

20 (4) a person employed by the state or any
21 political subdivision of the state as a code enforcement
22 official, when acting within the scope of the person's
23 employment;

24 (5) a person who performs an energy audit of a
25 residential property;

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1 (6) a person who performs a warranty
2 evaluation of components, systems or appliances within a resale
3 residential property for the purpose of issuing a home
4 warranty; provided that all warranty evaluation reports include
5 a statement that the warranty evaluation performed is not a
6 home inspection and does not meet the standards of a home
7 inspection pursuant to the provisions of the Home Inspector
8 Licensing Act. A home warranty company shall not refer to a
9 warranty evaluation as a home inspection;

10 (7) a person who in the scope of the person's
11 employment performs safety inspections of utility equipment in
12 or attached to residential real property pursuant to the
13 provisions of Chapter 62 NMSA 1978 or rules adopted by the
14 public regulation commission; provided that the employee does
15 not hold out for hire to the general public or otherwise
16 conduct home inspections; and

17 (8) a person hired by the owner or lessor of
18 residential real property to perform an inspection of the
19 components of the residential real property for the purpose of
20 preparing a bid or estimate for performing construction,
21 remodeling or repair work in the residential real property;
22 provided that the person does not hold out for hire to the
23 general public or otherwise conduct home inspections.

24 **SECTION 9. HOME INSPECTOR LICENSURE.--**

25 A. An applicant for licensure shall apply to the

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1 board and provide with the application documentation
2 establishing that the applicant is at least eighteen years of
3 age and a legal resident of the United States. Prior to
4 issuance of a license, an applicant shall:

5 (1) at cost to the applicant, provide the
6 board with fingerprints and other information necessary for a
7 state and national criminal background check;

8 (2) have completed at least forty hours of
9 field training, or its equivalent as determined by the board,
10 and eighty hours of classroom training, the content of which
11 shall be established by rule of the board;

12 (3) pass a proctored national home inspector
13 examination as administered by the examination board of
14 professional home inspectors; and

15 (4) provide proof of and maintain insurance
16 coverage as provided in Section 14 of the Home Inspector
17 Licensing Act.

18 B. The board may issue a license to a person who
19 demonstrates that the person:

20 (1) has been actively and lawfully engaged in
21 home inspections for at least thirty-six months prior to
22 January 1, 2013;

23 (2) has provided the board with fingerprints
24 and other information necessary for a state and criminal
25 background check;

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1 (3) has passed a proctored national home
2 inspector examination as administered by the examination board
3 of professional home inspectors; and

4 (4) is licensed to conduct home inspections in
5 another state or territory in the United States or the District
6 of Columbia. The applicant for licensure pursuant to the
7 provisions of this subsection shall provide the board with a
8 certificate of good standing from the licensing authority under
9 which the applicant holds the license.

10 C. After submission of the application form,
11 payment of the application fee and successful completion of the
12 licensure requirements set forth in Subsection A or B of this
13 section, the board may issue or deny a license to the
14 applicant.

15 SECTION 10. LICENSE RENEWAL.--

16 A. All home inspector licenses shall be renewed
17 triennially as established by rule of the board.

18 B. No later than the last day of the month
19 immediately following the licensee's birth month, a licensee
20 may renew the license by submitting a renewal application,
21 renewal fee, proof of completion of the required continuing
22 education as established by rule of the board and updated
23 fingerprints and other information necessary for a state and
24 national criminal background check.

25 SECTION 11. LICENSEE--CONTINUING EDUCATION REQUIREMENT.--

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1 The board shall adopt rules providing for continuing education
2 programs that offer courses in home inspection practices and
3 techniques. The rules shall require that a home inspector, as
4 a condition of license renewal, shall successfully complete a
5 minimum of thirty classroom hours of board-approved instruction
6 every three years.

7 SECTION 12. LICENSE RECOGNITION--RECIPROCITY.--

8 A. The board may issue a license to a nonresident
9 home inspector; provided that the applicant's resident state
10 license requirements are the same as or similar to the
11 requirements set forth in the Home Inspector Licensing Act. In
12 the event that the state requirements for licensing a home
13 inspector are not substantially similar to the provisions of
14 the Home Inspector Licensing Act, or if the requirements cannot
15 be verified, a nonresident home inspector may be issued a
16 license upon successful application and completion of the
17 requirements, including payments of fees as provided in the
18 Home Inspector Licensing Act.

19 B. The board may negotiate agreements with other
20 states or licensing jurisdictions allowing reciprocity. A
21 license granted pursuant to a reciprocity agreement shall be
22 issued upon payment by the applicant of the application fee and
23 verification that the applicant has complied with the licensing
24 jurisdiction's requirements, including continuing education
25 requirements. The applicant shall provide documentation

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1 necessary to demonstrate that the applicant currently holds a
2 license in good standing in the licensing jurisdiction.

3 C. Prior to the issuance of a home inspector
4 license to a nonresident applicant, the applicant shall file
5 with the board an irrevocable consent that lawsuits and actions
6 may be commenced against the applicant in the proper court of
7 any county of this state in which a cause of action may arise
8 from the applicant's actions as a home inspector or in which
9 the plaintiff may reside by service of any processes or
10 pleadings authorized by the laws of New Mexico on the board
11 with the consent stipulating and agreeing that such service of
12 processes or pleadings on the board shall be taken and held in
13 all courts to be valid and binding as if personal service has
14 been made upon the applicant in New Mexico. Service of process
15 or pleadings shall be served in duplicate upon the board; one
16 shall be filed in the office of the board and the other
17 immediately forwarded by certified mail to the nonresident New
18 Mexico licensed home inspector to whom the process or pleadings
19 are directed.

20 SECTION 13. DENIAL, SUSPENSION OR REVOCATION OF A
21 LICENSE.--

22 A. The board may deny issuance of a license or may
23 suspend, revoke, limit or condition a license if the applicant
24 or licensee is convicted of a felony, has by false or
25 fraudulent representations obtained a license or, in performing

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1 or attempting to perform any of the activities covered by the
2 provisions of the Home Inspector Licensing Act, the applicant
3 or licensee:

4 (1) has made a substantial misrepresentation
5 and pursued a continued course of misrepresentation;

6 (2) is guilty of unprofessional conduct as
7 defined by rule of the board;

8 (3) has violated any of the provisions of the
9 Home Inspector Licensing Act or any rule of the board;

10 (4) is guilty of obtaining or attempting to
11 obtain any home inspection fee by fraud or misrepresentation or
12 has otherwise acted in a manner or by conduct likely to
13 deceive, defraud or harm the public;

14 (5) has inspected for a fee a property in
15 which the home inspector or the home inspector's company has a
16 financial interest or an interest in the transfer of the
17 property;

18 (6) has offered or delivered compensation,
19 inducement or reward to the owner of the inspected property or
20 the broker or the agent for the referral of any business to the
21 home inspector or the home inspector's company;

22 (7) has accepted an engagement to make a home
23 inspection or prepare a report in which the inspection itself
24 or the fee payable for the inspection is contingent upon the
25 conclusions in the report, preestablished findings or the close

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1 of escrow;

2 (8) has had a license to perform home
3 inspections revoked, suspended, denied, stipulated or otherwise
4 limited in any state, jurisdiction, territory or possession of
5 the United States or another country for actions of the
6 licensee similar to acts prescribed in this subsection. A
7 certified copy of the decision of the jurisdiction taking such
8 disciplinary action shall be conclusive evidence;

9 (9) has failed to furnish the board, its
10 investigators or its representatives with information requested
11 by the board in the course of an official investigation;

12 (10) has performed or offered to perform for
13 an additional fee any repair to a structure on which the home
14 inspector or the home inspector's company has prepared a report
15 at any time during the twelve months immediately prior to the
16 repair or offer to repair, except that a home inspection
17 company that is affiliated with or that retains a home
18 inspector does not violate this paragraph if the home
19 inspection company performs repairs pursuant to a claim made
20 pursuant to the terms of a home inspection contract; or

21 (11) has committed an act whether of the same
22 or different character from an act prescribed in this
23 subsection that is related to activities as a home inspector
24 that constitutes or demonstrates bad faith, incompetency,
25 untrustworthiness, impropriety, fraud, dishonesty, negligence

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1 or an unlawful act.

2 B. Disciplinary proceedings may be instituted by
3 sworn complaint by any person, including a board member, and
4 shall conform with the provisions of the Uniform Licensing Act.

5 C. A licensee shall bear the costs of disciplinary
6 proceedings unless the licensee is exonerated of the
7 allegations that are the basis of the disciplinary action.

8 SECTION 14. INSURANCE REQUIREMENTS.--

9 A. All active practicing licensed home inspectors
10 or their employers shall carry errors and omissions insurance
11 to cover all activities contemplated pursuant to the provisions
12 of the Home Inspector Licensing Act. The errors and omissions
13 coverage requirements shall be established by rule of the
14 board.

15 B. The board, by rule, may enter into a contract
16 with a qualified insurance carrier to make available to
17 licensees a group policy of errors and omissions insurance and
18 general liability insurance. The board shall establish the
19 terms and conditions of coverage, including but not limited to
20 the permissible deductible and exemptions.

21 SECTION 15. FEES.--The board shall charge and collect the
22 following fees not to exceed:

23 A. a license application fee, one hundred fifty
24 dollars (\$150);

25 B. a state and national criminal background check

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1 fee, one hundred dollars (\$100);

2 C. a three-year license fee, five hundred dollars
3 (\$500);

4 D. a license renewal fee, five hundred dollars
5 (\$500);

6 E. a reactivation fee, two hundred dollars (\$200);

7 and

8 F. for each duplicate license issued because a
9 license is lost or destroyed and an affidavit as to its loss or
10 destruction is made and filed, fifty dollars (\$50.00); and fees
11 to cover reasonable and necessary administrative expenses.

12 SECTION 16. INACTIVE STATUS.--

13 A. A licensee may put the licensee's license on
14 inactive status by returning the license to the board.

15 B. A licensee whose license has been placed on
16 inactive status may not conduct home inspections as described
17 in the Home Inspector Licensing Act.

18 C. A license may be reactivated upon application to
19 the board.

20 SECTION 17. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE
21 RELIEF.--

22 A. A person who violates any provision of the Home
23 Inspector Licensing Act is guilty of a fourth degree felony and
24 shall be punished by a fine of not more than five thousand
25 dollars (\$5,000) or by imprisonment for not more than eighteen

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1 months, or both.

2 B. In the event that a person has engaged in or
3 proposes to engage in any act or practice violating a provision
4 of the Home Inspector Licensing Act, the attorney general or
5 the district attorney of the judicial district in which the
6 person resides or the judicial district in which the violation
7 has occurred or will occur shall, upon application of the
8 board, maintain an action in the name of the state to prosecute
9 the violation or to enjoin the proposed act or practice.

10 SECTION 18. FUND--CREATED.--

11 A. The "home inspector fund" is created in the
12 state treasury and shall be administered by the board. All
13 fees received by the board pursuant to the Home Inspector
14 Licensing Act shall be deposited with the state treasurer to
15 the credit of the home inspector fund. Income earned on
16 investment of the fund shall be credited to the fund.

17 B. Money in the fund shall be used by the board to
18 meet necessary expenses incurred in the enforcement of the
19 provisions of the Home Inspector Licensing Act, in carrying out
20 the duties imposed by the Home Inspector Licensing Act and for
21 the promotion of education and standards for home inspectors.
22 Payments from the fund shall be pursuant to vouchers issued and
23 signed by the person designated by the board and upon warrants
24 drawn by the department of finance and administration. All
25 unexpended or unencumbered balances remaining at the end of a

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1 fiscal year shall remain in the home inspector fund for use in
2 accordance with the provisions of the Home Inspector Licensing
3 Act.

4 SECTION 19. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2013.

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