



## **PROPOSED BILL**

To enact a proposed Bill to be entitled the "Home Inspectors Licensing Law"; to regulate the practice of home inspection in South Africa; to create and establish a State Board of Home Inspectors (as currently constituted by the South African Society of Home Inspectors ("SASHI")); to provide for the qualification and appointment of the members of the Board; to provide for the terms of office and compensation; to provide for the powers and duties of the Board; to provide relative to qualifications and fees for licensure; to provide for continuing education and insurance requirements; to provide relative to suspension, revocation and penalties; to provide relative to current practitioners; to provide relative to receipts and disbursements of funds; to authorize the adoption of rules and regulations; and to provide for related matters.

Be it enacted by the Parliament of South Africa.

Section 1 Bill number .....is hereby enacted to read as follows:

### **HOME INSPECTOR LICENSING LAW**

#### **1. Purpose**

The Legislature declares that it is in the best interest of the citizens of South Africa to require the licensure and regulation of Home Inspectors. The purpose of this Chapter is to require qualifying criteria in a professional field in which unqualified individuals may injure or mislead the public. The requirements of this Chapter shall contribute to the safety, health and welfare of the people of South Africa.

#### **2. Short Title**

This Chapter shall be known and may be cited as the "Home Inspectors Licensing Law."

#### **3. Definitions**

As used in this Chapter, the following words shall have the meanings ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Applicant" means a person who seeks to be examined for licensure by the Board.

(2) "Board" means the State Board of Home Inspectors.

(3) "Component" means a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up a component.

(4) "Home Inspection" means a written evaluation inclusive of photographs of two or more of the following components of a **resale** residential building: heating and cooling systems, plumbing system, electrical system, structural and or foundation system, components, foundation, roof, exterior and interior components, or any other related residential housing system as defined in the standards of practice, as promulgated by the Board.

(5) "Licensed Home Inspector" means any person who, in accordance with the provisions of this Chapter, holds him or herself out to the general public and engages in the business of performing Home Inspections on resale residential buildings for compensation, including any person who for the first time or presently examines any component of a building, through visual means and through normal user controls, without the use of mathematical sciences.

(6) "Licensee" means any person who has been issued a license by the Board in accordance with the provisions of this Chapter.

(7) "Residential Resale Building" means a structure intended to be, or that is in fact, used as a residence and consists of four or less living units, excluding commercial use space or units, and is not for sale for the first time.

(8) "System" means a combination of interactive or interdependent components, assembled to carry out one or more functions.

**4. State Board of Home Inspectors; creation; qualifications; domicile; terms of office; confirmation; oath of office; compensation**

A. The State Board of Home Inspectors is hereby created within the Department of Housing. The Board shall be a body corporate and may sue and be sued.

B. The Board shall be comprised of the current Board members of SASHI and one Board member from each Province, appointed by the incepted state Board of directors for the first year after promulgation. After the first year of office, the members from each Province shall be appointed by the Premier of that province upon the recommendation of the SASHI Board. The Premier shall consider the appointment of members from a list of names submitted by the board of directors of SASHI. Each member of the board shall be a citizen of South Africa, a resident of South Africa and shall have been actively engaged in the home inspection business for the previous three years. The initial Board members shall be deemed to have the required license in accordance with the provisions of this Chapter. Each subsequent appointee to the Board shall be a licensed Home Inspector.

C. The initial Board comprising of SASHI board members and each subsequent member appointed by the Premier shall be confirmed by the Cabinet.

D. Initially, the members of the Board shall be appointed for a three year term. No person shall be appointed for more than one full six year term. Thereafter, all members shall be appointed for six years. Any vacancy on the Board caused by death, resignation, or disability of a member shall be filled, for the unexpired terms, by appointment by the Premier of the Province where the vacancy occurs.

E. The board shall be domiciled in the Western Cape Province, Cape Town and may meet at such other locations in the country as may be determined by the Board. Eight voting members shall constitute a quorum of the Board for all purposes, including the granting or issuance of licenses and the rulemaking and adjudicative functions of the Board.

F. Each member of the initial Board shall receive a certificate or commission from the President before beginning his or her term of office and shall file with the Department of Housing a written oath or affirmation for faithful discharge of his or her official duties. Each subsequent member of the Board shall receive a commission from the Premier of the Province that he/she is appointed from before beginning his or her term of office and shall also file with the Department of Housing a written oath or affirmation for faithful discharge of his or her official duties.

G. No member of the Board shall receive a salary but shall be reimbursed for actual expenses incurred when attending a meeting of the board or any of its committees and for the time spent on behalf of the Board on official business. Each member shall be reimbursed, upon approval of the Board as evidenced by voucher, for all necessary travel and incidental expenses incurred in carrying out the provisions of this Chapter.

## **5. Powers and duties; meetings**

A. The Board shall:

(1) Elect a Chairperson and a Vice-Chairperson, each to serve a term of one year, provided that these officers may be re-elected for subsequent terms.

(2) Employ a Secretary-Treasurer who shall serve as the Chief Operating Officer of the Board, and who shall serve at the pleasure of the Board and employ such other staff as approved by the Board.

(3) Meet at quarterly meetings each year, and at special meetings which will be held at such time and place as specified or called by the Chairperson. The Board shall appoint an Executive Director who for the first year following promulgation shall be the Executive Director of SASHI. The Executive Director shall provide written

notice of all meetings to the members of the Board and to the interested public.

(4) Adopt rules and regulations to govern the practice of a Home Inspector in South Africa.

(5) Issue, suspend, modify, or revoke licenses to practice as a home inspector in South Africa.

(6) Report to the Attorney General all persons who violate the provisions of this Chapter.

(7) Maintain a current list of licensed Home Inspectors.

(8) Adopt, develop and conduct a licensing examination, which may be administered by a nationally accepted testing service as determined by the Board.

(9) Adopt its official seal and minimum standards of practice for Home Inspectors.

(10) Have the authority to impose fines.

(11) Prescribe and adopt regulations, governing the manner and conditions under which credit shall be given by the Board for participation in continuing professional education such as the Board may consider necessary.

(12) Authorize any affidavit necessary for the issuance of any interdict or other legal process authorized under this Chapter or under the rules and regulations of the Board.

(13) Issue subpoenas to require attendance and testimony and the production of documents for the purpose of enforcing the regulations relative to the home inspection industry and securing evidence of violations thereof.

(14) To incur debt.

## **6. Licensing required**

Effective .....200....., no person shall engage in or conduct or advertise or hold himself or herself out as engaging in or conducting the business, or acting in the capacity, of a licensed Home Inspector without first obtaining a license as provided for in this Chapter, unless he or she is exempted from obtaining a license as provided for in 7 below.

## **7. Application for licensure; fees**

A. The Board shall establish satisfactory minimum qualifications for licensing. Applications for licenses and for renewal licenses shall be made in writing to the Board on forms provided by the Board.

B. The Board may charge and collect fees not in excess of the following:

(1) Application for license: R1000

(2) License Renewal Fee: R500

(3) Delinquent Renewal Fee:

(January 1-February 15) R300

(February 16-June 30) R400

(4) Initial qualifying/continuing education provider: R1000

Annual renewal fee for education provider: R1000

Filing fee for additional course offerings: R200

(5) Inspection Report Fee: R25

C. To become eligible for licensure as a licensed home inspector an applicant shall fulfil the following requirements.

(1) Shall be at least eighteen years of age.

(2) Shall have successfully completed grade 10 and have three years experience in the home inspection, building or property related field OR have successfully completed grade 12 and have one year's experience in the building, home inspection or property related field.

(3) Shall have passed the examination required by this Chapter.

(4) Shall pay the appropriate fees.

(5) Shall complete a license application prescribed by the Board.

D. Effective ..... 200..... , any individual filing for an initial licensing application shall present evidence to the Board that he or she has satisfactorily completed at least thirty hours of instruction. At least twelve but not more than twenty of the hours required shall be obtained in course work containing actual practical home inspections, and the remainder of the training must be classroom hours pertaining to work approved by the Board, or, in the case of distance education, such course as may be approved by the Board. Satisfactory completion includes attendance of specified hours and passage of an examination on course contents.

### **8. Duties of inspector; written reports**

A licensed Home Inspector shall give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection which shall include photographs. The

inspector must give the person the report by the date set in a written agreement by the parties to the agreement for a home inspection. If the parties to the home inspection agreement do not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection is performed.

## **9. License issuance and renewal**

A. Every license issued under the provisions of this Chapter shall be issued for a period of one year and shall expire on the last day of the month of issuance in the preceding year. A license which is not renewed shall be considered to be expired, and any home inspection practice requiring a license as a licensed Home Inspector after expiration of the license shall be deemed a violation of this Chapter.

B. Any licensee who fails to renew timely may thereafter renew upon payment of the appropriate renewal and delinquent fees and upon filing of a complete renewal application. The period for delinquent renewal of an expired license shall be limited to the six month period immediately following the expiration date of the active license. Failure to delinquently renew an expired license during this six month period shall result in a forfeiture of renewal rights and shall require the former licensee to apply as an initial applicant and meet all requirements of an initial applicant.

## **10. Continuing education requirements**

A. As a prerequisite to renewal of a license, a licensed Home Inspector shall present evidence to the Board of having completed the continuing education requirements set forth in this Chapter.

B. The basic continuing education requirements for renewal of a license shall be the completion by the applicant, during the immediate preceding one-year term of license, of ten hours of instruction in courses which have received the approval of the Board, or in the case of distance education, such instruction as may be approved by the Board.

C. In lieu of meeting the requirements of Subsection B of this Section, an applicant for the renewal of a license, may satisfy all or part of the requirements of this section by presenting evidence of participation, other than as a student, in educational processes and programs in home inspection practices, or techniques, including, but not limited to, teaching, program development, and preparation of textbooks, monographs, articles, and other instructional materials, subject to the approval of the Board.

D. No amendment or repeal of a regulation adopted by the Board pursuant to this section shall operate to deprive a licensed home inspector, of credit toward renewal of a license for any course of instruction completed by the applicant prior to the amendment or repeal of the regulation, if the course would have qualified for

continuing education credit under the regulation as it existed prior to the repeal or amendment.

## **11. Insurance**

A. All active practitioners licensed in accordance with the provisions of this Chapter shall carry professional indemnity insurance to cover all activities contemplated under this Chapter.

The Board shall, by rule, provide for the establishment of a group insurance program, provided licensees shall have the option of obtaining professional indemnity insurance independently that complies with the coverage requirements established by the Board.

B. The Board shall establish the terms and conditions of coverage mandated under this Section, including but not limited to the minimum limits of coverage, the permissible deductible, and permissible exemptions.

C. Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty days prior to the annual renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed with the Board by the annual license renewal date by each active licensee who opts not to participate in the group insurance program administered by the Board.

D. All active licensees licensed in accordance with the provisions of this Chapter shall be required to carry general liability insurance to cover all activities contemplated under this Chapter.

## **12. Corporations, Partnerships**

No license shall be issued under the provisions of this Chapter to a corporation, limited liability company, partnership, firm or group. However, nothing herein shall preclude a licensed home inspector from rendering home inspections for or on behalf of a corporation, limited liability company, partnership, firm or group, provided that the home inspection report is performed by and is prepared by the licensed home inspector and is signed by such state licensed Home Inspector.

## **13. License form, exemptions from provisions**

A. The license, when issued, shall be in a form prescribed by the Board.

B. The provisions of this law shall not apply to:

(1) Persons licensed as professional engineers when acting within the scope of their license.

(2) Persons licensed as architects when acting within the scope of their license.

(3) Persons licensed by as electricians when acting within the scope of their license.

(4) Persons licensed as plumbers when acting within the scope of their license.

(5) Persons licensed as real estate brokers or real estate sales persons when acting within the scope of their license.

(6) Persons licensed as real estate appraisers, registered valuers, certified general appraisers, or residential real estate appraisers when acting within the scope of their license.

(7) Persons licensed as pest control operators when acting within the scope of their license.

(8) Persons regulated by law as insurance adjusters when acting within the scope of their profession.

(9) Persons who are employed as code enforcement officials when acting within the scope of their employment by such governmental entity.

(11) Persons licensed as building contractors when acting within the scope of their license.

C. The term "licensed Home Inspector" along with the license number, shall appear on all correspondence, advertising, and any documents incidental to a home inspection.

#### **14. Causes for censure, suspension, revocation, or fines**

A. The Board may suspend, censure, fine, revoke, or impose probationary or other restrictions on any licensee issued in accordance with the provisions of this Chapter for good cause shown which shall include but not be limited to the following:

(1) Conviction of a crime or entering a plea of guilty or criminal charge under the laws of South Africa or any Province.

(2) Deceit or perjury in obtaining any license issued under this Chapter.

(3) Providing false testimony before the Board.

(4) Efforts to deceive or defraud the public.

(5) Professional incompetence or gross negligence.

(6) Rendering, submitting, subscribing or verifying false, deceptive, misleading or unfounded opinions or reports.

(7) Violation of any rule or regulation promulgated by the Board.

(8) Aiding or abetting a person to evade the provisions of this Chapter or knowingly combining or conspiring with an unlicensed person, with intent to evade provisions of this Chapter.

(9) Violation of any provision of this Chapter not covered in this section.

(10) Violation of any standard of conduct promulgated by the Board.

(11) Engaging in conduct or advertising or holding him or herself out as engaging in or conducting the business or acting in the capacity of a home inspector without possessing a valid license.

(12) Falsely representing that a person in the holder of a valid license or registration by using the title licensed Home Inspector, or any title designation or abbreviation deceptively similar or likely to create the impression that they are licensed by the Board.

B. The Board may levy fines in an amount not to exceed one-thousand Rands per each separate violation.

#### **15. License revocation**

A. Revocation of a Home Inspector license as a result of disciplinary action by the Board may prohibit the re-licensure for a period of at least one - year from the date of revocation. An applicant for re-license shall successfully complete the examination for licensed Home Inspectors, in essence as currently provided for and endorsed by SASHI (The South African Society of Home Inspectors), and shall provide evidence of completion of twenty hours of continuing education as prescribed by the Board.

B. The Board, as a probationary condition or as a condition of a license being suspended or revoked hereunder, may require a licensee to pay all costs of the Board proceedings, including but not limited to investigators', stenographers' and attorneys fees and court costs.

#### **16. Licensing required**

Effective ..... 200....., it shall be unlawful for anyone to engage in, conduct or advertise or hold him or herself out as engaging in or conducting the business or acting in the capacity of a Home Inspector without possessing a valid license.

#### **17. Penalties**

Whoever wilfully violates any provisions of this Chapter may be fined not more than five thousand Rands, or imprisoned for not more than six months or both.

#### **18. Cease and desist orders; interdicts**

A. In addition to or in lieu of the criminal penalties and administrative sanctions provided in this Chapter, the Board is empowered to issue an order to any person engaged in any activity, conduct or practice constituting a violation of any provision of this Chapter, directing such person or firm to cease and desist from such activity, conduct or practice.

B. If the person or firm to whom the Board directs a cease and desist order does not cease and desist the prohibited activity, conduct or practice within two days from service of such cease and desist order by certified mail, the Board may seek, in any court of competent jurisdiction and proper venue, an interdict enjoining such person or firm from engaging in the activity, conduct or practice.

**19. Fund for the State Board of Home Inspectors**

A. All fees received by the Board under this chapter, and all monies otherwise received by the board shall be paid to the secretary-treasurer. Disbursements made by the Board shall be signed by the chairperson and the secretary-treasurer. In the absence of the chairperson or the secretary-treasurer, the vice-chairperson is authorized to sign all disbursements with the remaining authorized signatory.

B. All fees and monies received by the Board shall be used solely to effectuate the provisions of this Chapter including but not limited to, expenditures necessary for office fixtures, equipment and supplies, and all other expenses necessary to conduct the board's business.

**20. Rules and regulations**

The adoption of any rule or regulation, shall be subject to the provisions of the relevant Administrative Procedure Act(s).

**21. Occupational license tax; levy; collection**

This Section shall not be construed to prohibit the levying and collection of any other license tax authorised by any other Act of Parliament.

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