

NORTH CAROLINA HOME INSPECTOR LICENSURE BOARD



Code of Ethics

Student Guide

Board-developed Update Course

2013 - 2014

Ethics can, and should, be taught. Socrates successfully argued that assertion over 2,500 years ago. Today, for good reasons, ethics courses are taught in business schools, medical schools, law schools, public policy schools, military schools, and others. I'm most pleased to see the NCHILB take the initiative to approve a CE course specifically tailored to a Code of Ethics for our Home Inspectors.

The Study Guide and associated Power Point slides are well written, clear, and substantive. The inclusion of case studies in Chapters 2, 3, 4, and 5 are especially useful in illustrating "gray areas" where ethical decisions play an important role. Having small group discussions that address various case study issues are of particular value and usefulness. Research confirms that active involvement by participants not only promotes better learning, but also allows others to teach group participants by way of personal knowledge and experience.

Home Inspectors need to have a moral compass to help guide them with safeguarding the public's interest. This course is a noteworthy positive step in ensuring the compass is accurate and useful.

Sincerely yours,

Ted Triebel
Captain, USN (ret)
NCHILB Public Member, 2008-2011

We bring mostly bad news in our work. It's our duty. What we say, do and write about creates lots of reactions in our clients, the sellers, and their agents. We are also faced with the challenge of establishing credibility with all those stakeholders. All of this judging and interactive 'stuff' is filled with ethical choices.

I can imagine heated, useful discussions among home inspectors taking this course. The examples that you have constructed should generate lively interest among us.

John J. Woodmansee
NCHILB Licensed Home Inspector member, 1996 – 2002
MASTER INSPECTOR BY REVIEW designee by the NC Chapter of the American Society of Home Inspectors

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Preface

Several times each week you help people make one the biggest financial investment decisions they may ever make by observing and reporting the condition of a house they might make their home. Your clients are often the buyers. Sometimes they are the sellers. Occasionally, you may also work for an agent or third-party, such as a bank or attorney representing an estate. Each brings their own expectations to your business of home inspection. In fact, so do you as a licensee. As we all know, everyone's expectations are not always met.

While the primary mission of the NCHILB is to protect the public from unqualified persons, it also regulates use of the title "Licensed Home Inspector." In my years as a board member I have been privileged to serve on the Investigation Review Committee. This experience suggested to me that there is a persistent perception by the public, and perhaps within the housing industry, that home inspectors need to be watched. This disturbs me. Sometimes complaints are submitted to the board in an effort to "leverage" the home inspector into paying to fix something that he couldn't have seen during the inspection.

It is my hope that this continuing education update course--the first one dedicated to the Code of Ethics--and this student guide will give you some food for thought and added perspective when representing our profession, because your behavior and actions are a reflection on us all.

Marion Peeples
Chairman

Introduction

The material in this course is the result of a joint effort by the NCHILB Education and Investigation Review Committees. In the process of developing this update course, a few people have told us, “You can’t teach someone ethics.” While we appreciate the truth of that statement, from the outset the goal of this course has been to explain how the Code of Ethics is relevant to licensees in their day-to-day activities. Toward that end, we have tried to explain each of the ten requirements of Board Rule 11 NCAC 08.1116 by using typical scenarios that have given rise to complaints.

To some extent, implementation of the provisions of the Home Inspector Licensure Act has been a 16-year experiment and remains a work in progress, prompting some to quip that the profession is still in adolescence. As of the date of publication of this student guide, there have been approximately 3,200 licenses issued since 1996 out of some 10,000 potential applicants. Currently there are nearly 1,000 licenses on active status. If we estimate that 1,200 inspectors inspected 5 houses per week, 50 weeks per year for the past 16 years, it is possible that more than 4.5 million home inspections have been done in North Carolina since a state license was required. The 2010 decennial census counted nearly 4.5 million dwelling units in the state. Theoretically, every home has had a home inspection. Of course, practically speaking, that probably isn’t true, but it does give us something to think about as far as the percentage of people who have had an opportunity to observe a home inspector and form a first impression – good or bad.

During these 16 years, approximately 480 complaints have been submitted to the board of which roughly 120 (or 25%) have resulted in disciplinary action, such as a *Letter of Reprimand*, license revocation, suspension, probation, additional education or submission of reports for review. In some cases, licensees have voluntarily surrendered licenses rather than accept disciplinary action. About one-third have resulted in non-disciplinary *Letters of Caution* to licensees citing minor Standards of Practice compliance issues in the written home inspection report. Occasionally, complaints are dismissed for lack of evidence, or withdrawn during or after the investigation. Within the first few years of the law’s enactment, many people who inspected homes as their main occupation or part-time work applied for and were issued licenses to legally continue receiving compensation for their inspections. The immediate

result was a significant number of disparate professionals--such as contractors, real estate agents, engineers and architects--became subject to regulation by a politically appointed board that had not yet gained the trust of the public or licensees. Perhaps it would not be stretching the imagination to say the board may even have been viewed with a fair bit of suspicion as it began to exercise its authority.

This brings us to a critical responsibility of the board; licensee discipline. By what standards does the Board determine, in its quasi-judicial capacity, whether the behavior of licensees in dealing with their clients and the public is acceptable or warrants punishment? What conduct is so egregious as to warrant forfeiture of license and livelihood? Do *you* know what kind of behavior most often results in suspension of a license or probation? It might not surprise you to know some of the most severe discipline has been prescribed when there is compelling evidence that a licensee has attempted to deceive their client, the public, investigators and by inference, the board. In fact, licensees subscribe to and *agree* to abide by a Standards of Practice the moment they are issued a certificate and license number. A portion of those standards are enumerated in the Code of Ethics, which is the subject of this course. Some requirements prohibit “bad” behavior; others are included to inspire “good” behavior.

In a disciplinary hearing, allegations are stated and evidence is presented by the complainant and the licensee similar to courtroom proceedings in the criminal and civil judicial systems. After all, violations of the provisions of the Home Inspector Licensure Act are a Class 2 misdemeanor. In the end, a majority of board members will decide whether the facts presented constitute grounds for disciplinary action and appropriate sanctions against the license. How well aligned is your sense of ethics with those of the board members who must weigh your actions?

While it is safe to assume that truly “bad” behavior by licensees often results in complaints submitted to the board, it may also be true that public perception of home inspectors as lacking ethics may predispose parties toward conflict. As they say, one rotten banana can spoil the bunch. While you may feel your conduct is above reproach, sometimes a series of slight missteps and misunderstandings can form the basis of a chain reaction that escalates the situation between you and your client or a third party into a complaint simply because your work only “confirmed what we already knew about home inspectors!”

This guide is loosely organized to provide the student with information on a number of topics as summarized below.

Chapter 1 provides an overview of our “study of ethics” as commonly taught and applied in professional life and its significance to the public health, safety and welfare. This chapter also sets the stage for thinking about a home inspection as something more than a purely technical enterprise.

Chapter 2 discusses the expectations of buyers as clients in the typical pre-purchase home inspection and the importance of the contract required by the Standards of Practice.

Chapter 3 talks about why sellers file complaints against home inspectors--whether they hired them to inspect their home prior to listing, or once they have read the home inspection report commissioned by a potential buyer.

Chapter 4 covers the roles of other housing industry professionals in the home transaction process and how they may view and interpret the behavior of home inspectors.

Chapter 5 reviews the complaint, investigation and board disciplinary process in general and when dealing with allegations of violations of the Code of Ethics.

Chapter 6 returns to a broader discussion of ethics beyond your role as an independent home inspector using a well-known “whistleblower.” Our goal is to get you thinking about the “big picture” of the industry in which you work by asking yourself tough questions. Should you include limitations of liability language in your contract? If so, what message does that convey to your client? How do professional associations and franchises influence industry policy and board rules?

The appendices provide supplemental information that may be of interest to licensees, such as an actual letter of complaint received by the board, sample complaint form and sample consent agreement.

This student guide was designed to accompany the classroom or online course, both of which employ group discussion activities, since we can all learn from others. It may also serve as a reference book. Much of the information provided reflects my initial years of personal contact in this assignment with licensees, potential and actual complainants (both buyers and sellers), real estate brokers, contractors, and others involved in the housing industry. To the extent that I have inappropriately generalized specific situations, or specifically applied general impressions that are at odds with the reader’s experience, I apologize. Licensees are reminded that this student guide to the Code of Ethics

update course is the first of its kind developed by the board and therefore subject to improvement. I am hopeful future editions will address our deficiencies. We are grateful for the assistance provided by the board's legal counsel furnished by the N.C. Dept. of Justice, Assistant Attorney General and the N.C. Dept. of Insurance, Public Information Office. The board and staff would appreciate your feedback. Please complete and submit the evaluation form provided by your continuing education provider.

Mike Hejduk
Executive Director

Chapter 1–Overview of our “Study of Ethics”

Why and how does one undertake a study of ethics? To begin with, it need not be a boring, pointless academic exercise. More likely, it is something most of us do unconsciously every day the moment we turn on the television to see the morning news, or when we switch on the car radio and drive to the day’s first inspection. We might even stumble across the topic in a simple “Dear Amy” column as found in *The News & Observer*.

The question posed by “Conflicted” to advice columnist Amy Dickinson was how to handle a friend “who is an affluent money manager” that orders water to get a cup, but then fills the cup with soda from the self-serve fountain. The heading above the column is “Friend wonders how to confront soda jerk.” Conflicted says the theft embarrasses her and that she finds “stealing on even a small level to be a sign of bad morals...and I do not want my children thinking this behavior is OK.”

Amy replied, “Dear Conflicted: Your children’s morals will not be polluted (or diluted) by being around other people who behave unethically...because you are raising them...this presents a teachable moment...You can say to her privately, ‘I notice you always help yourself to the soda when you haven’t paid for it. Do you think that’s ethical?’ She’ll have a ready answer for why this is justifiable behavior, and you can respond honestly by telling her that you completely disagree.”

There you have it. An overview of our study of ethics as a simple study of human behavior and how we judge others and perceive ourselves while striving to live our lives the best we can. Depending on your frame of reference, you may believe the person helping himself to a soda he didn’t pay for may have a minor character flaw. Conflicted may be a control freak *or* there is no ethical issue because the price of the cup is usually enough to cover the cost of the soda.

Unfortunately, not all ethical questions are as trivial as whether or not one pays for a soda fountain drink. Unlike a clear legal or moral choice, an ethical dilemma may be the most difficult decision we face in the course of a workday. Ethical issues typically arise in situations in which one must choose from one of two or more *unsatisfactory* alternatives--the “least bad” choice. This study guide assumes that the student is sufficiently mature to make the appropriate legal and moral choices required to run a home

inspection business. If not, it is likely that the individual will sooner or later face consequences from authorities other than the NCHILB.

The first NCHILB Code of Ethics requirement in 11 NCAC 08.1116 (a) states,

“Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.”

The behavior sought of licensees stated here is familiar; treat those you are hired to serve (and others affected by your work) honestly and fairly. This is a universal message sometimes referred to as the “Golden Rule” where we are expected to treat others as we would like them to treat us. In kindergarten, the direction is “play nice with others.” As a matter of *principle*, this provision sets a standard of good behavior against which licensees’ conduct may be judged. Finally, the distinction for licensees is that, as written in the Code of Ethics, it is not just a guideline but a *duty*, and such behavior is an obligation.

We will see in the following chapter how the pre-purchase agreement between the home inspector and the client, by citing the Standards of Practice, makes the *duty* a contractual obligation enforceable both under civil law and through the board’s administrative hearing process. Where this requirement may present ethical difficulties is in reconciling how one’s routine, “due diligence” work for a buyer can result in a lengthy report of defects that the seller may believe is an unfair characterization of his property condition. If a licensee is working for a buyer, how can he be “fair and impartial” to the seller as well? The client may see the glass as half full, the seller and listing agent, as half empty. What is fair? Who decides?

When faced with such ethical questions, we might consider employing a problem-solving model taught in the Ethics and Professional Practice curriculum offered by N.C. State University:

- First, clarify the facts of the situation and assess the interests of all parties who have a stake in the outcome of the situation and how they are potentially affected. This is also called stakeholder analysis.
- Second, determine the obligations of one’s role in a business or organization, the expectations associated with that position and consider any additional professional obligations. Analyze the situation from several viewpoints, such as what your duties are contractually and by applicable

regulations, your moral sense of obligation, and how to promote the best outcome/consequences.

List the options/alternatives you consider.

- Third, choose the best alternative and provide justification for this decision in order to facilitate implementation, then monitor and evaluate the results. Make adjustments, as necessary.

At this point you may very well be wondering why you would *ever* need to go through such an elaborate and detailed process to arrive at a decision when you always just follow your “gut.” For one, this rational process for evaluating situations on a case-by-case basis might prove useful should you find yourself called to account before the board during a disciplinary hearing. (As opposed to merely stating, “It seemed like a good idea at the time.”)

You should be aware that the second step of the above model introduces consideration of the “best consequences.” An immediate question that comes to mind is “For whom?” An inherent limitation of considering ethical dilemmas from one’s own perspective is the failure to consider what decision might create the most good for the most people affected. This is sometimes the burden for a regulatory body such as the board when weighing the all-important question of licensee intent when a complaint alleges a violation of the Code of Ethics.

The NCHILB as a public agency must consider what decision yields the best consequences for the most people. Or stated another way, what decision provides the best outcome for the public health, safety and welfare? This is the primary perspective of the board during disciplinary hearings and consideration of terms and conditions in consent agreements. While licensees may fully understand their duties and obligations under the law in their everyday work, extraordinary circumstances, such as accepting disciplinary sanction, may require an understanding and appreciation of the board’s unique perspective.

The next page includes a list of the requirements from the NCHILB Code of Ethics as of the May 1, 2013 edition of the rules.

.1116 CODE OF ETHICS (effective May 1, 2013)

- (a) Licensees shall discharge their duties with fidelity to the public and to their clients, and with fairness and impartiality to all.
- (b) Opinions expressed by licensees shall be based only on their education, experience, and honest convictions.
- (c) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative.
- (d) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.
- (e) No licensee shall compensate, either financially or through other services or benefits, realty agents or other parties with a financial interest in closing or settlement of real estate transactions for the following:
 - (1) Referral of inspections; or
 - (2) Inclusion on a list of recommended inspectors or preferred providers
- (f) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.
- (g) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest he or she has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.
- (h) A licensee shall not solicit for repairs of systems or components found defective in the course of a home inspection performed by the licensee or that licensee's company.
- (i) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.
- (j) Licensees shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

Chapter 2–Buyers as Clients/Complainants

Imagine yourself as a first-time or out-of-town home buyer with little or no experience in purchasing or owning a house in North Carolina. First of all, from the Atlantic coast to the Blue Ridge Mountains, the geography changes drastically, as do the styles of homes. You may have been a city slicker looking to retire on the Outer Banks, where hurricanes have wrought devastation. Or you could have been a farm boy from the mid-west who now has a career in data analysis in Research Triangle Park. Might you be wary of committing yourself to a significant financial obligation of 15- or 30-year duration when you didn't really know what you were buying? What experience do you have owning a log cabin, a house on "stilts," or a condo? On top of that, does it occur to you that the real estate listing agent only realizes a commission if you buy the property? Perhaps in the past you have purchased a used car without having had a mechanic look over the vehicle before you handed over the cash. Now you know better and would never do that again!

Before the establishment of the NCHILB by the N.C. General Assembly, what consumer protection applied to the quality of home inspections? One of the earliest complaints received by the board cited a home inspection performed *prior* to the effective date of the Home Inspector Licensure Act on October 1, 1996. A portion of the redacted letter of complaint submitted to the board is reproduced in the classroom presentation for this course because it so succinctly states the problem buyers as clients may have with home inspectors. The entire letter, portions redacted, is provided in Appendix A of this student guide.

As a buyer, you may be inclined to hire someone to inspect the house and provide you with a comprehensive written report of the condition of the property. Who can you trust to furnish objective, meaningful information? Hiring a licensed home inspector is intended to provide some measure of assurance that you will receive an unbiased, professional opinion. However, many complaints received by the board include a statement similar to the following: *My real estate agent arranged for the inspection or recommended inspector (your name here) because they work with him all the time.* Many

inspectors are keen to establish good working relationships with real estate professionals in order to have a reliable supply of clients. Some inspectors go so far as to pay for nearly exclusive access to some realty firms or agents. However, these inspectors may be blind to the downside of such a close association. Unfortunately for the inspector, clients usually complain about the impropriety of such arrangements after they have purchased the house and heard a repair contractor exclaim “This is something your home inspector should have caught.” **The litany of allegations and overall tone of such complaints either states outright, or strongly implies, the home inspector misrepresented the condition of the house to facilitate the sale of the home.** In other words, the agent purposely recommended a home inspector whose report would “soft pedal,” understate, overlook, or ignore “obvious” problems with the house for personal gain. The buyer is often angry because he believes he was taken in by the now “obvious” conspiracy.

If you have concentrated “marketing” your services to a few brokerage firms, grooming listing agents in the hopes of increasing your business leads, be aware of this perceived appearance of impropriety by potential clients. You should also be aware of the federal law entitled *Real Estate Settlement Procedures Act* (RESPA) that makes “steering” of consumers to certain service providers illegal. Contrary to what you may hope or have been told, many agents will not give your name out exclusively because it is against the law. Usually, yours will be one of at least three names mentioned so as to present the consumer with a choice he/she is solely responsible for. Given the increased sophistication of buyers in the current marketplace who are wary of cozy arrangements between brokers and inspectors, some potential clients may avoid home inspectors who appear too closely associated with real estate professionals. These consumers perceive a potential conflict of interest may exist for the inspector because, by finding a few minor things wrong with a house, the inspector helps the broker facilitate the sale of a property that yields a commission. In return, the broker refers more inspections to the inspector.

This is one of the reasons why the board rules require a written contract signed by the client before the inspection. The pre-purchase real estate or home inspection agreement/contract provides the opportunity to establish expectations for both parties. After all, the contract must clearly state that the

inspection will be performed in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board. Most contracts state that a copy of the Standards of Practice is available from the board or through its website www.nchilb.com. Seldom is either a full or partial copy of the currently effective Standards of Practice provided as an attachment to the contract. Instead, most contracts include a summary of the actual requirements or paraphrase what the visual inspection and written report will address. Most contracts include a lengthy list of what is excluded from the inspection and a limitation of liability clause offering a maximum refund of the fee paid for the inspection. Some even include a free 90-day warranty. It is somewhat curious, given public concern over potential collusion between brokers and inspectors, that more agreements do not state the following prohibition found in the Code of Ethics 11 NCAC 08.1116(j).

“Licensees shall not inspect properties...whereby...future referrals are dependent on reported findings or on the sale of the property.”

One would think such an outright declaration in the agreement, emphasized by the inspector, might allay some client fears.

However, the protections offered by this first line of defense against an ethics complaint are greatly diminished if the real estate professional signs the contract “as an agent” of the client. This practice appears to be longstanding and widespread according to anecdotal reports. When this occurs, it is difficult to discern what the client expected from the home inspection and report. In other words, problems may develop if an agent sets up the appointment for the home inspection on behalf of both parties and does not explain the limitations of the visual home inspection to the buyer. In some cases the buyer is only provided with a copy of the inspection summary prior to closing, not the entire home inspection report. The summary often does not include all of the issues listed in the report with the potential to affect safety, habitability or those issues in need of further investigation.

To reiterate, 11 NCAC 08.1103(b)(1) requires the home inspector to provide a written contract, signed by the client, *before* the home inspection is performed. Over the years there have been some “unofficial” interpretations of when the home inspection is performed, and thus when the contract or agreement must be signed. The most popular fantasy has been that since a “home inspection” is defined

in N.C. Gen. Stat. § 143-151.45(4) as “A *written evaluation* of two or more of the following components....” [*italics added for emphasis*], the home inspector may perform the on-site visual inspection of the property first and then wait to release the report until the client signs the contract. Technically speaking, so the logic goes, the *written* report (and consequently the home inspection) is then provided after the contract has been signed.

This is not correct and is a risky practice. Consider, for example, that the only reason the home inspector has the permission of the property owner to inspect the house is pursuant the buyer’s legal right to inspection under the *Offer to Purchase and Contract*. Consider also, that the first Code of Ethics requirement is 11 NCAC 08.1116(a).

“Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.”

The obligation, or duty, to perform a home inspection for the client is not created until the home inspector is hired through the signing of the contract. Who is the home inspector conducting a visual inspection of the home for without a signed contract? Similarly, 11 NCAC 08.1116(c) states,

“A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client’s designated representative.”

It is certainly plausible that while performing a visual inspection of the home without the buyer/client present, the seller or listing agent overhears an inspector talking on the phone to his client during the inspection. Such a conversation is not privileged and has perhaps occurred before the contract has been signed. If the Code of Ethics states the inspection is confidential, then approval to *disclose* information about the inspection should be intentionally authorized by the client, in writing, to avoid subsequent problems related to “who was told what and when.” Curiously, many pre-purchase agreements and contracts submitted for staff review include standard language where the client agrees to *wave* the confidentiality of the home inspection report when he signs the agreement. Consider the following language in a contract:

“CONFIDENTIAL REPORT: Client understands that the inspection and the Inspection Report are performed and prepared for the Client’s sole, confidential use. Company agrees that it will not transfer, disseminate or otherwise disclose any part of the Inspection Report to any other persons. The ONLY exceptions to this non-disclosure are as follows: (a) one copy may be provided to the current Seller (b), one copy may be provided to the Real Estate Agent directly representing Client and/or Client’s lending institution for the use in the Client’s transaction only, (c) one copy may be provided to the Attorney directly representing Client.

From time to time, the board is informed that a client was given the contract and signed it upon the initial on-site meeting with the home inspector at the start of the inspection of the property or, if the client arrived late, at some point after the visual inspection had already begun. It is sometimes a matter of debate whether the client truly understood all of the provisions stated within the agreement. 11 NCAC 08.1116(g) states,

“Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest he or she has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.

Clearly, if a home inspector is conducting the field examination of the property prior to having the client sign the contract, a buyer may claim the inspector has engaged in improper behavior. Licensees who hold certifications in specialty areas, such as radon or mold testing, or who are also licensed general or trade contractors (electrical, plumbing, heating and air conditioning, roofing), must make sure they have fully informed their clients of ancillary services they provide. Otherwise, the buyer may feel such other business interests have influenced the inspection results. When in doubt, disclose. For example, would this provision apply if the home inspector is asked to inspect a home that he previously inspected for the current owners when they were his clients as buyers? What if the home inspector had previously repaired trim work or performed other handyman services at the home?

Chapter 3-Sellers as Clients/Complainants

Housing prices across the country have taken a beating in recent years due to the poor economy. Many articles say it is a buyer's market. This means there is significant leverage to be applied by buyers on the seller's bottom line sale price for the home. In addition, revisions to the Standard Offer to Purchase and Contract effective January 1, 2011, replaced "Alternative 1" repair negotiation structure, and "Alternative 2" in the previous offer, with a new "Buyer's Due Diligence Process" approach that differs in some significant ways. While this may be good news for buyers, this environment has sometimes put home inspectors in an awkward position. With a significant number of sellers "upside down" on their mortgage, or in some stage of foreclosure, there may be strong pressure to sell. The problem is that the seller may be realizing little or no return on his housing investment, or may even be facing a financial loss. Sometimes, listing agents suggest that sellers hire a home inspector to get an objective assessment of the defects in the property prior to establishing an initial listing price. A house that has significant "issues," where many systems and components do not function, will likely result in a lengthy summary and home inspection report with many repair items listed. While a diligent home inspector may list all of the defects in an impartial, matter-of-fact way, sellers may often view the report as a largely biased document. Once the report is distributed amongst real estate professionals, some conditions may be regarded as "material facts" that may impact negotiations with all potential buyers.

Sellers are often emotionally invested in the home in which they live. A lengthy home inspection report may be viewed just as much a personal insult as an objective evaluation of the condition of the property. A home inspection may be regarded as an invasive inconvenience for the owners. Unless the home has been adequately maintained, and thoroughly cleaned of dirt and clutter, a bad report will probably result in more distress. Many complaints submitted by sellers allege that the potential buyer walked away from the deal *because* of items listed in the home inspection report. Based on the evidence submitted in many cases, the board and the Investigation Review Committee have found it difficult to

attribute such decisions unequivocally to the home inspection report, as many other factors are usually in play.

Even if a seller hires a home inspector himself before listing the property for sale--let's say to fix some things that may need attention--the seller soon realizes that no two home inspection reports are the same. Often the buyer's home inspection report contains additional defects in systems and components that are in need of repair or further evaluation by a specialist. Sellers often believe that the buyer's home inspector "wrote up everything he could" to help his buyer negotiate repair concessions or a lower price on the house. Proving such bias, motive and/or intent in such cases is extremely difficult.

Seller complaints typically allege that home inspectors violated the Code of Ethics because they were not impartial and misrepresented the true condition of the home. It may be difficult to prove that an inspector intentionally cited many defects to give his buyer an advantage in negotiations. However, such reports often do not fully comply with all requirements of the Standards of Practice. Therefore, evidence gathered during an investigation may support additional allegations of violations of the Standards of Practice and disciplinary action, such as additional education and a probationary period, may be recommended. In some cases, the wording or tone of the home inspection report and/or opinions expressed by the licensee show a lack of tact by the inspector. Such language does not help third parties see the licensee as impartial.

Occasionally, sellers may allege a violation of .1116(b),

“Opinions expressed by licensees shall only be based on their education, experience, and honest convictions”

This can occur when the home inspection report directs repair or further investigation by a specialist. In this situation, the seller may hire an electrical or heating and ventilation contractor to check out a system or component that the home inspector suggests may be faulty. The contractor performs extensive testing and determines the equipment is working properly and remarks that the home inspector is not a licensed specialist and didn't know what he was talking about. In this case, the seller may be out the cost of the diagnostic visit and the buyers may have withdrawn their offer based on the home inspection report

alone. Similarly, wood decay, pest damage, radon detection, water sampling (especially on well systems), septic system inspection, and mold sampling are add-on / value-added services that some home inspectors offer with additional education, training and certifications. Additional problems noted in any of these specialty areas may anger sellers as their property now has documented liabilities when compared to other homes being considered.

Defective conditions reported with mold and mildew, probing of exterior wood siding, structural concerns or roof and cladding systems such as Exterior Insulating Finish System (EIFS) or adhered masonry veneer may be viewed as high-dollar, chronic items that affect the immediate and long-term habitability of the home or occupant safety. Such concerns, and/or statements to the effect that a system or component was not installed per code create major sticking points in negotiations because they tend to shift the balance of power toward the buyer. Where certain defects may be minor and easily addressed following closing and after the buyer moves in, other problems may require fixing prior to occupancy and jeopardize the settlement.

An important consideration is that home inspections remain a credible, unbiased service in the eyes of property owners and listing agents. Toward this end, home inspectors should enjoy their reputation as generalists knowing a little about everything in a home, and not confuse this with being a jack-of-all-trades / handyman. In today's complicated world, it is difficult to be an expert in many areas. Home inspectors are cautioned that the Board rule, 11 NCAC 08.1105 GENERAL EXCLUSIONS (c)(2) specifically prohibits inspectors to offer or perform job functions requiring an occupational license unless the home inspector holds such a license. The Code of Ethics states in .1116(h),

“A licensee shall not solicit for repairs of systems or components found defective in the course of a home inspection performed by the licensee or that licensee’s company.”

Nothing arouses a seller's suspicions like a buyer adamantly insisting on repairing or replacing certain systems or components by referring to the home inspection report *and* then stating he/she only wants to use the home inspector to do those repairs! This brings us to the issue of repair negotiations.

When a home inspection report is prepared for the buyer during the due diligence period, the interest that the buyer has in the house relates primarily to his ability to inspect, or have the home inspected. This is addressed in Section 4 BUYER'S DUE DILIGENCE PROCESS of STANDARD FORM 2-T jointly approved by the North Carolina Bar Association and the North Carolina Association of REALTORS®. The seller owns the house and is living in it. Who then is really in the driver's seat with regard to what, if any, further investigations are to be made and what is to be repaired? Following the property investigation, subparagraph (c) **Repair/Improvement Negotiations/Agreement** states that the buyer should make any repair/improvement requests in time to allow negotiations to be completed prior to the expiration of the due diligence period. "Any agreement that the parties may reach with respect to repairs/improvements shall be considered an obligation of the parties and is an addition to this Contract...." The Due Diligence Request and Agreement, STANDARD FORM 310-T, Section 1 states, "Based upon the Buyer's Due Diligence, the Buyer requests and the Seller agrees to the following: (fill in the blank). In the event the parties have agreed to any adjustment in the condition of the Property, then such adjustment shall be completed prior to Settlement in a good and workmanlike manner. Seller shall notify Buyer upon completion of the above and provide the Buyer with documentation thereof. Buyer shall have the right to verify that the items above have been completed in a good and workmanlike manner." Some home inspector services include a "re-inspection" to verify for the buyer that repairs requested were actually performed. Unfortunately, the process of selecting contractors suitable for further investigation and/or repairs does not always proceed smoothly, as both the buyer and seller may perceive potential conflict-of-interest issues related to the other's choices.

It should be noted that subparagraph (d) **Buyer's Obligation to Repair Damage** states, "the Buyer shall not be responsible for any damage caused by accepted practices either approved by the N.C. Home Inspector Licensure Board or applicable to any other N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property." Because the NCHILB Standards of Practice require home inspectors to probe structural and exterior wood components where deterioration is suspected, sellers have sometimes complained that the "siding now looks like Swiss cheese" and that

such probing caused extensive, costly damage affecting the marketability of the home while it remains on the market. While it appears from the above language that the buyers would thus not be held responsible for such damage, it is understandable why sellers might have a dim view of reckless home inspectors. In response to this concern, the board issued an interpretation that the required “probing” of components may be satisfied by gently pressing on spongy exterior siding components to avoid damage where deterioration is suspected, rather than poking a screwdriver or awl into the trim or siding.

In summary, there are some specific technical aspects of a home inspection performed by North Carolina licensees that may inconvenience, irritate or anger home sellers. In addition to this, the attitude and demeanor displayed by the inspector while he is on private property can also be a factor in whether a complaint is filed. Licensees are encouraged to always be courteous. As the expression goes, some people have the personality of a “sticky doorknob” – don’t be one of them!

Chapter 4–The Real Estate Industry

Buyers and sellers are not the only people with an interest in your home inspection and written report. Unless the property is listed “For Sale by Owner,” one or more real estate professionals are probably involved in any sale of an existing home. You may also come in contact with other parties, such as builders (new construction), mortgage lenders, pest control specialists, professional engineers, roofing, electrical, mechanical and plumbing contractors, and appliance vendors. Since “anyone” may submit a complaint to the NCHILB regarding your conduct, this chapter discusses potential ethics issues beyond the relationship you have with your client. This chapter should alert you to the ethical implications of working with others in the industry.

11 NCAC 08.1116(f) states,

“No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.”

While it may be clear to most people that home inspections are not appraisals, this rule anticipates the possibility that a home inspector might be tempted to report that a property either is, or is not, worth the money being asked. Some inspectors report being approached by realty agents or mortgage lenders and asked to provide a letter attesting to the structural integrity or serviceability of the home in fulfillment of lending institution requirements. The board has not issued an interpretation on such letters, but licensees are cautioned in light of the Code of Ethics language.

A potential conflict-of-interest issue that any of the above-mentioned professionals might witness is the scenario where a home inspector reports a list of defective conditions in the property, and subsequently offers his services (or his services are recommended by another) to fix the problems. 11 NCAC 08.1116(h) states,

“A licensee shall not solicit for repairs of systems or components found defective in the course of a home inspection performed by the licensee or that licensee’s company.”

It is worthwhile to note that roughly half of all licensed home inspectors are also, or have been, licensed general contractors. Because of the nature of the industry, individuals with a talent for home repairs usually become well-known in an area by their reputation. In a typical transaction, it is easy to see how a buyer or listing agent might ask for a rough estimate of how much it might cost to fix the deficiencies after the buyer takes possession of the property. Sellers might also consider retaining the home inspector as a contractor to fix problems prior to listing a home or before settlement. Either of these arrangements might “look bad” from the perspective of a third party, such as an independent contractor. Any follow up work clearly benefits the home inspector and raises questions about the impartiality of the home inspection from the outset. Clearly, potential problems can be avoided when the home inspector just inspects the property in *that* capacity and reports on the condition with no involvement in the eventual resolution of the problems.

A similar concern about inspection impartiality arises if the home inspector’s livelihood depends on the reported condition of the home and the probability that the property will “close.” 11 NCAC 08.1116(j) states,

“Licensees shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent upon reported findings or on the sale of the property.”

There are anecdotal reports by home inspectors that some buyer’s agents consistently recommend a thorough inspector, whereas when that same agent is acting in the capacity of a seller’s agent, they may provide the names of inspectors who are not quite so diligent. The implication being that “the fewer issues raised by the home inspection report” the more likely the sale will proceed without major difficulty. Consequently, such home inspectors may receive increased future referrals because “they are easy to work with.” The board has no data to support such claims at this time.

On the other hand, there has been some discussion as to the ethics of being paid at closing or waiving (or simply not collecting) the inspection fee if the house does not close. As an alternative, if a house does not close, some inspectors offer to inspect the next house for that same client for free. There have also

been reports of “walk-through” home inspections performed by home inspectors for sellers where the inspection fee does not cover preparation and submission of a written home inspection report. The stated purpose of such “limited inspections” are to “hit the highlights/major items” for sellers and allow them to prep their property for listing. Problems could arise if the same inspector were to be subsequently retained by a buyer for this property.

To date, the board has viewed the collection of inspection fees as a business problem best left solved by individual inspectors. In other words, the board does not want to be perceived as telling licensees how they should be running their business, especially in keeping up with their accounts receivables. However, the board does see a home inspection as a “thing of value,” and various discounts and incentives offered to real estate firms (as opposed to marketing to the public) in exchange for business referrals is a concern. The board is aware of the practice wherein realty agents or firms may “schedule” home inspections in an agency capacity on behalf of the buyer. Unfortunately, sometimes this is being done by a listing or selling agent, not a bona fide buyer’s agent. Not only does the home inspector *not* have the true client’s signature on the contract, often the home inspector only provides the summary to the realty agent and/or client via email--not the complete report. The summary may provide the basis for a Due Diligence Request and Agreement and may be disseminated to various trades for repair estimates based on the deficient systems and components listed.

SUMMARY PAGE

As stated in N.C. Gen. Stat. § 143-151.58(a1), a written report provided under subsection (a) of this section for a pre-purchase home inspection of three or more systems must include a summary page that contains the information required by this subsection. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement:

“This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.”

As explained in the General Statute:

- The summary page *must* describe any system or component of the home that *does not function as intended*, allowing for normal wear and tear that does not prevent the system or component from functioning as intended.
- The summary page *must* also describe any system or component that *appears not to function as intended*, based on documented tangible evidence, and that requires either subsequent examination or further investigation by a specialist.
- The summary page *may* describe any system or component that poses a safety concern.

Obviously, the summary page, by definition, is intended to provide an abridged version of the home inspection report that may well run 40 to 80 pages, as formatted by commercially available software. While the required description of systems or components that do not function, or appear not to function, could be viewed as a simple index to items within the full home inspection report, in actual practice there is a tendency for the summary to duplicate language and photos from the full report to the extent that it may be a primary document used in repair negotiations by realty agents. In this respect, while the summary may be viewed as a “quick reference” assessment or inventory of the condition of the home for the sole use of the client, it may be widely distributed by realty agents to specialists for repair estimates, if such disclosure has been approved by the client (as discussed in Chapter 2).

Recent revisions to the ten-page standard Offer to Purchase and Contract (Standard Form 2-T jointly approved by the North Carolina Bar Association and the North Carolina Association of REALTORS®

and issued January 1, 2011) provide for a “due diligence period” during which time the buyer, or his assigns, must complete their inspection of the property. Furthermore, the “Buyer is advised to make any repair/improvement requests in sufficient time to allow repair/improvement negotiations to be concluded prior to the expiration of the Due Diligence Period. Any agreement that the parties may reach with respect to repairs/improvements shall be considered an obligation of the parties and is an addition to this Contract and as such, must be in writing and signed by the parties in accordance with Paragraph 20.” The Due Diligence Request and Agreement (Standard Form 310-T) provides the mechanism to memorialize buyer requests and seller agreements to adjustments in the condition of the property to be completed prior to settlement in a “good and workmanlike” manner.

The new due diligence period language differs from the previous Alternative 1 and 2 contract provisions in an effort to “reduce many of the disputes that have frequently been stumbling blocks to the negotiation of repairs, including disputes over whether an item is ‘covered’ under the list of items in Alternative 1, whether an item is ‘performing the function for which intended’ or is ‘in need of immediate repair,’ whether repair requests and responses to repair requests are timely, whether an item is includable under the Cost of Repair Contingency, whether the estimated cost of repairs is reasonable, and whether and when a contract is ‘over’ following a breakdown in repair negotiations.”¹

North Carolina licensed home inspectors who have been in practice for many years are reminded of the significance of recent changes to the general statutes and board rules regarding the summary. The October 1, 2009 edition of the board rules was the last to include 11 NCAC 08.1103(d) which prescribed what must *and must not* be included in the summary. As written, this rule required the separate section labeled “Summary” to include any system or component that (1) does not function as intended or adversely affects the habitability of the dwelling, or (2) warrants further investigation by a specialist or requires subsequent observation. This rule *prohibited* the summary from containing “recommendations for routine upkeep of a system or component to keep it in proper functioning condition or

¹ From “Significant Revisions to Standard Offer to Purchase and Contract” by Bob Ramseur, Miriam Baer and Will Martin; Real Property Section Council of the NC Bar Association and co-chairs of Joint Forms Task Force.

recommendations to upgrade or enhance the function or efficiency of the home.” Beginning with the April 1, 2010 edition of the rules, the summary requirements were removed from the agency rules and addressed by N.C. Gen. Stat. § 143-151.58, which eliminated the prohibition and effectively removed restrictions on what could be included in the summary.

RE-INSPECTIONS

Occasionally, home inspectors are asked to perform a “re-inspection” once repairs of defective conditions have been made. There have been numerous complaints submitted related to re-inspections. Typically, a licensee will return to the property upon being provided with notice that various defective conditions cited in the home inspection report have been repaired. However, the licensee is not compensated to perform a complete home inspection of the property. Instead, the scope of the inspection is limited to a list of specific items repaired. The home inspector is then placed in the unenviable position of having to determine if the repair is sufficient. Often the repairs may be deemed sufficient by the person vacating the property, but not by the one about to occupy the property.

Home inspectors should be aware of the importance of their visual inspection and written evaluation of the condition of the property as a key component of the entire real estate transaction. Typically, the items listed in the summary form the basis for negotiations between the agents of the buyer and seller, and are often the basis for clients and realty agents contacting one or more additional parties mentioned above. Often, the manner in which defective conditions or habitability concerns are described in the report may have implications for additional parties.

For example, in warm weather, some home inspectors make a point of measuring the air temperature at the supply and return air registers while the air conditioning system is operating. Some inspection reports include photos of handheld digital thermometers at these two locations showing the temperature in degrees Fahrenheit. The temperature differential (i.e., the difference between the high and low) is then noted as an indicator of either the proper or deficient condition of the system’s operation. If the

temperature drop is small, indicating little cooling effect, the summary typically directs the client that further investigation or repair is required by a specialist.

A problem sometimes arises when the client or a realty agent arranges for a licensed mechanical contractor to test and evaluate the system based on the home inspector's report. According to educational materials provided by Carson Dunlop & Associates, a temperature drop of "14°F to 22°F [some say 15°F to 20 °F]" *across the evaporator coil* indicates a properly functioning system. However, the home inspector's measurements were not taken at these locations. The licensed mechanical contractor's testing and evaluation sometimes concludes the system is operating within manufacturer's recommended parameters and subsequently states that the home inspector didn't know what he was doing. This can give rise to a complaint citing a Code of Ethics violation of 11 NCAC 08.1116(b),

“Opinions expressed by the licensee shall only be based on their education, experience and honest convictions.”

How can this be? The home inspector was doing more than was required under the NCHILB Standards of Practice. First, Board Rule 11 NCAC 08.1104(a) states that home inspections done in accordance with the rules are not “technically exhaustive,” which is defined in Rule 08.1101(28) as “an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.” The inspector's use of a digital thermometer certainly reflects use of an instrument to measure air temperatures.

Second, Board Rule 11 NCAC 08.1105(b)(2) states that home inspectors are not required to calculate the adequacy or efficiency of any system or component. Determining the differential temperature between the supply and return register requires a mathematical calculation.

Third, Board Rule 11 NCAC 08.1105(c)(2) states that home inspectors shall not offer or perform any other job function requiring an occupational license unless the home inspector holds such valid occupational license. Combined, the measurements, calculations, conclusions and recommendations performed by the home inspector may be viewed by a licensed contractor as beyond the expertise and

training of the home inspector. Similar issues may arise when assessing the condition of electrical, plumbing and structural systems and components.

A different ethics concern sometimes occurs when a home inspector offers to provide a client with the names of tradesmen who could give repair estimates for the defects cited in the home inspection report. Some clients believe such recommendations are really referrals and that the home inspector receives “kickbacks” from the subcontractors for steering business their way.

OTHER BUSINESS

Some home inspectors provide additional services for a fee, such as indoor air quality, radon, water and mold sampling. While not prohibited by the Standards of Practice or Code of Ethics, licensees should be aware of the potential issues that can arise from performance of additional services. First and foremost, licensees have a duty to inform their clients of any such other business interests per 11 NCAC 08.1116(g) which states,

“Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.”

Chapter 5-Complaints, Investigations and Board Discipline

As we have seen, the number of complaints resulting in disciplinary action against licensees seems relatively small given the tremendous number of home inspections performed over the years by licensees. Anecdotal evidence suggests that many potential complaints are resolved as “customer service” issues between the home inspector and the client. In other words, if a home inspector forgets to run the water in one of the bathroom sinks, and the buyer subsequently discovers a leaky drain after moving in, the home inspector may deny that there was a problem with the drain when he inspected it, or he may offer to pay for repairs by a plumber. Perhaps by paying \$100 to satisfy the client, the home inspector has earned some goodwill and a future recommendation. Some inspectors will offer to fix small problems such as these themselves, which saves them paying out-of-pocket. However, doing this runs the risk of violating 11 NCAC 08.1116(h) by,

“Soliciting for repairs of systems or components found defective in the course of the home inspection performed by the licensee or that licensee’s company.”

Human nature being what it is, an alternate scenario sometimes plays out as well--usually when the cost of estimated repairs is significantly higher, such as those related to serious structural problems. The client may submit a complaint to the board in order to “leverage” the licensee into covering more of the costs. Sometimes this is in addition to filing an insurance claim or civil litigation. Complainants sometimes believe, incorrectly, that the board has the power to make licensees pay to fix problems with the home. While this course of action may seem a practical alternative, the board does not have the authority to compel the licensee to do so. Licensees should also be aware that becoming hostile toward the client or seller is rarely an effective tactic to persuade another party to drop their complaint.

It is often very apparent from the choice of words used in the complaint, and licensee’s written response, that the inspector and client feel very strongly about the quality of services rendered—and are at opposite ends of the spectrum! The complainant may allege that the inspector was “totally incompetent,” while the licensee counters the complainant is “just trying to blame someone.” Sometimes, staff has seen

complaints withdrawn as a result of further negotiations between the home inspector (or his insurance carrier) and the client. While the investigation into the complaint may be closed at this stage, often a cursory review of the home inspection report submitted with the complaint reveals violations of the Standards of Practice. The board has an interest in addressing such issues with licensees in its ongoing efforts to improve the quality of reports. After consultation with the Investigation Review Committee, licensees sometimes receive a non-disciplinary *Letter of Caution*, advising them of the home inspection report shortcomings.

Many inspector/client contracts include a limitation of liability clause stating that in the event of a dispute regarding an unreported deficiency with the home, the client agrees to arbitration (or mediation), and in no case is the inspector liable for more than the fee (or some multiple of the fee – i.e. 2X) for the home inspection. The client may feel as though they have been taken advantage of, or not fully informed by the home inspector’s report if a latent defect was not discovered. While the majority of complaints filed with the board seek punitive action against the licensee, some complainants say that they feel an obligation to prevent the inspector from causing this kind of problem in the future for other clients “because no one else should have to go what we went through.”

As noted in Chapter 1, the board website includes a description of the complaint process and a form for complainants, including a signature sheet to be notarized. A copy of the complaint form is included in Appendix B. Complainants are advised to include all evidence and documentation to support the allegations of violations of the general statutes and board rules. The majority of complaints include a copy of the home inspection report provided by the licensee, as well as additional photos of defective conditions that were not addressed in the report and were discovered subsequent to moving into the home. Often, contractors hired to repair or further investigate problems documented in the home inspection report may tell the buyer or seller, “your home inspector should have caught this....”

Board Rule 11 NCAC 08.1202(a) limits the time period for submission of a complaint to a maximum of three years from the date of the home inspection. Some inspection contracts include language intended to limit the time frame for clients to submit complaints to one year from the date of the home inspection.

11 NCAC 08.1204 states that the Engineering Division shall make an investigation of the charges in the complaint. The Engineering Division is staffed by employees of the North Carolina Department of Insurance, Office of State Fire Marshal. A copy of the complaint is sent to the licensee, who must provide a written response within two weeks, along with any documentation he/she believes should be considered as evidence. During the investigation, a site visit may be conducted of the property and staff may interview the complainants, licensee and other persons who may have knowledge about the circumstances of the property. The NCHILB by-laws provide for a standing investigation review committee whose members are aware of all investigations. The committee may dismiss the complaint, or dismiss the complaint with a *Letter of Caution* to the licensee. If sufficient evidence to support the allegations of violations is found, the committee may recommend that the complaint be resolved by consent agreement. Or, the committee may schedule a formal disciplinary hearing before the Board.

The executive director and board attorney typically draft the terms and conditions of the proposed consent agreement to be presented to the licensee. 11 NCAC 08.1208(a) states consent agreements may impose upon the licensee a penalty, or penalties, including the following: requiring the licensee to take training or educational courses, probation, letter of reprimand, suspension of license, or revocation of license. NC Gen. Stat. § 143-151.56(b) allows licensees to make an application for reinstatement of a revoked license if the revocation has been in effect for at least one year. If signed by the licensee, the proposed consent agreement is then presented to the board at the next regular meeting. The board may accept the consent agreement as written, modify the consent agreement and send it back to the licensee for agreement, or reject the consent agreement. Because the potential for a board hearing exists until a consent agreement is signed, there is usually little or no discussion of the specific circumstances of a case when the chairman of the Investigation Review Committee presents a consent agreement signed by a licensee to the board. In essence, the committee is asking the board to trust its disciplinary recommendation in the proposed consent agreement without knowing the whole story. Consent agreements often include the following provision to allow for limited discussion:

LICENSEE wishes to resolve this matter by consent and agrees that the Board staff and counsel may discuss this Consent Agreement with the Board *ex parte*, whether or not

the Board accepts this Consent Agreement as written. LICENSEE understands and agrees that this Consent Agreement is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board meeting.

An example consent agreement is included in Appendix C. Licensees have the right to speak with an attorney when considering terms and conditions proposed in a consent agreement.

Board members who do not serve on the Investigation Review Committee may hear and decide cases under the procedural requirements set out in the Administrative Procedure Act found in Article 3A of Chapter 150B of the North Carolina General Statutes. Per NC Gen. Stat. § 150B-40, hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments. If a party fails to appear in a contested case hearing after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

Board members who hear a case shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. When a majority of an agency is unable, or elects not to hear a contested case, the agency shall apply to the director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case. Finally, Article 4, NC Gen. Stat. § 150B-43 provides that any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision.

If a case goes to hearing, the remaining board members who are not part of the Investigation Review Committee will hear the evidence and issue a final agency decision. Who are the members? Seven of the

eight members of the Board are appointed under the provisions of NC Gen. Stat. § 143-151.46(a) by recommendations as follows:

- Governor: one home inspector, one licensed general contractor and one licensed real estate broker,
- President Pro Tempore of the Senate: two home inspectors,
- Speaker of the House of Representatives: one home inspector, one public member.

Because the NCHILB is established in the Department of Insurance, the remaining member of the board is either the Commissioner of Insurance or the Commissioner's designee. Traditionally, this position has been filled by the Deputy Commissioner, Office of State Fire Marshal, Engineering Division manager, who also supervises staff provided to the board. Thus composed, the various unique viewpoints of the members of the board consider the balance of the interests of the public and licensees.

The board members are subject to the State Government Ethics Act NC Gen. Stat. § 138A and to oversight by the N.C. State Ethics Commission. As a minimum standard of conduct, the expectation is that in their capacity as public servants, board members will not use their position of public trust for private gain, but instead, will be ever mindful of the public good. For initial appointment and annually thereafter, appointees must submit a Statement of Economic Interest (SEI) form that discloses their business interests. State Ethics Commission staff attorneys evaluate member SEIs and provide an opinion to the appointing authority with statements similar to, "I did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict of interest identified does not prohibit service on this entity." Conflicts-of-interest and potential conflicts-of-interest are thereby identified where the appointee might stand to gain financially from decisions made in his official capacity. In those situations, the course of action is for the board member to recuse (excuse) himself or herself from any and all discussions where the potential for such conflict of interest or appearance of impropriety may seem likely.

In addition to the conflicts standards noted above, NC Gen. Stat. § 138A-32 prohibits public servants from accepting gifts, directly or indirectly (1) from anyone in return for being influenced in the discharge

of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. While there are some specific exceptions to the gifts restrictions, the strict ethical standards, practically speaking, prevent appointees from even accepting a cup of coffee unless certain public function criteria are met.

Appointees are required to take an oath of office prior to serving as board members. In addition to supporting the Constitutions of the United States and the State of North Carolina, the oath requires members to solemnly swear (or affirm) that they will well and truly execute the duties of their office as a member of the board according to the best of their skill and ability, according to law.

When the board convenes to hear a case regarding allegations of violations of the Code of Ethics, the board acts in a quasi-judicial capacity. Perhaps the former version of Board Rule .1116(e) has caused the most discussion among licensees asking what the board considers acceptable ethical behavior. This rule stated:

“No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible.”

During the public comment portion of the February 19, 2009, regular meeting of the Board in Greensboro, NC, several licensees stated that some real estate offices were requiring licensed home inspectors to become a preferred partner or vendor and pay them money to be able to leave documentation, cards and brochures for advertising home inspection business. Fees were reported in the range of thousands of dollars, as well as promises of exclusive referrals. The nature of these payments has since been referred to generically as “Pay to Play” by the NCHILB. In March 2010, staff issued guidance to licensees that noted two issues with such arrangements: 1) in order to be considered legitimate advertising expenses, any appearance of a home inspector's business on marketing materials produced by real estate agents should be clearly marked – PAID ADVERTISEMENT, and 2) payments must not guarantee or facilitate exclusive access or partnerships between a single home inspector (or firm)

and a realty office. Subsequently, staff received requests via email, telephone and in response to an online survey/poll for clarification of what types of specific payments between inspectors and realty firms are prohibited. For example, do business networking, concierge programs, branding, website advertising, discounts and coupons violate the code of ethics? Are there categories of gift giving between business professionals, friends or to charity that are acceptable such as a golf outing, lunches, box of donuts, bottle or case of wine at the holidays. What are acceptable marketing and advertising activities?

In early January 2013, an online poll question was posed to licensees: “Do you agree the NCHILB Code of Ethics should specifically prohibit paying real estate professionals for home inspection referrals?” Staff received a total of 891 responses. The poll provided the following response options: Disagree 52 (5.8%), No Opinion 18 (2.0%), or Agree 804 (90.2%). 181 (20.3%) written comments were received. Clearly, an overwhelming number of licensees believe it is wrong or unethical for home inspectors to pay real estate professionals for business referrals. Licensees stressed that real estate agent referrals should be earned based on the quality of services rendered, not paid for where there may be a “quid pro quo” expectation of a favor for a favor, especially when the propriety or equity in the transaction is in question. There is a perception that paid referrals induce home inspectors to “go easy” on inspection reports facilitating the sale of homes and payment of sales commissions which directly benefits real estate agents. However, many written comments indicated that some exceptions should apply to gifts of nominal value (perhaps defined by a dollar threshold) that were obviously not intended to influence decision-making. This is similar to the exemption for gifts under the ethics act that are “gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the employee’s public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.” For example, from time to time, a home inspector and broker, who are also neighbors and friends, meet for lunch. They alternate picking up the tab for one another to show their appreciation for each other’s work and mutual respect.

Effective May 1, 2013, the board has amended 11 NCAC 08.1116(e) which provides:

“(e) No licensee shall compensate, either financially or through other services or benefits, realty agents or other parties with a financial interest in closing or settlement of real estate transactions for

the following:

- (1) Referral of inspections; or
- (2) Inclusion on a list of recommended inspector or preferred providers.

Chapter 6–The Value of Ethics

On July 31, 1985, Roger Boisjoly (pronounced “Beaujolais” like the French wine) wrote a two-page interoffice memo to his boss, the vice president of engineering at Morton Thiokol, Inc. that read in part: (Letters of Note, 2009)

COMPANY PRIVATE

“This letter is written to insure that management is fully aware of the seriousness of the current O-ring erosion problem in the SRM joints from an engineering standpoint.

The mistakenly accepted position on the joint problem was to fly without fear of failure and to run a series of design evaluations which would ultimately lead to a solution or at least a significant reduction of the erosion problem. This position is not drastically changed as a result of the SRM 16A nozzle joint erosion which eroded a secondary O-ring with the primary O-ring never sealing.

If the same scenario should occur in a field joint (and it could), then it is a jump ball as to the success or failure of the joint because the secondary O-ring cannot respond to the clevis opening rate and may not be capable of pressurization. The result would be a catastrophe of the highest order – loss of human life...

It is my honest and very real fear that if we do not take immediate action to dedicate a team to solve the problem with the field joint having the number one priority, then we stand in jeopardy of losing a flight along with all the launch pad facilities.”

COMPANY PRIVATE

On January 28, 1986, 73 seconds after launch, the *Challenger* space shuttle broke apart killing all seven crew members. The world watched in disbelief.

The Rest of the Story... (Wikipedia, 2012)

“Following the announcement that the Challenger mission was confirmed...Boisjoly and his colleagues tried to stop the flight. Temperatures were due to be down to -1 °C (30 °F) overnight. Boisjoly felt that this would severely compromise the safety of the O-ring, and potentially lose the flight. The matter was discussed with Morton Thiokol managers, who agreed that the issue was serious enough to recommend delaying the flight. They arranged a telephone conference with NASA management and gave their findings. However, after a while, the Morton Thiokol managers asked for a few minutes off the phone to discuss their final position again. Despite the efforts of Boisjoly and others in this off-line briefing, Morton Thiokol managers decided to advise NASA that their data was inconclusive. NASA asked if there were objections. Hearing none, the decision to fly the ill-fated STS-51L *Challenger* mission was made.

After President Ronald Reagan ordered a presidential commission to review the disaster, Boisjoly was one of the witnesses called. He gave accounts of how and why he felt the O-rings had failed. After the commission gave its findings, Boisjoly found himself shunned by colleagues and managers and he resigned from the company.

Boisjoly became a speaker on workplace ethics. He argued that the caucus called by Morton Thiokol managers, which resulted in a recommendation to launch, "constituted the unethical decision-making forum resulting from intense customer intimidation."

For his honesty and integrity leading up to and directly following the shuttle disaster, Boisjoly was awarded the Award for Scientific Freedom and Responsibility by the American Association for the Advancement of Science in 1988. Roger Boisjoly died of cancer on January 6, 2012.²

² Subsequently on February 1, 2003, the nation watched in horror as space shuttle *Columbia* disintegrated during re-entry because foam debris shaken loose during launch damaged heat shield tiles. The Columbia Accident Investigation Board stated “The Space Shuttle Program had been built on compromises hammered out by the White House and NASA headquarters. As a result, NASA was transformed from a research and

What ethics lessons may be learned from this national disaster and applied to the profession of home inspections? Perhaps simply, that there is much work left to be done. The Institute of Electrical and Electronics Engineers (IEEE) published a paper presented by Mr. Boisjoly entitled “PROFESSIONALISM.” (Roger M. Boisjoly, 1999) In this paper Boisjoly, as a mechanical engineer, urged, “It is incumbent for all of us as professionals, with or without a [PE] license, to practice our profession with the utmost of Integrity, Ethics and Professionalism.” Interestingly, this article posed the following question: [bold emphasis added]

“How many of you have ever considered a common free-standing household stove as a dangerous product since it has a UL-approved sticker prominently displayed on the stove and literature? When the oven door is in the fully opened (horizontal) position, it takes only about 42 pounds placed at the outer edge of the oven door to cause immediate tipping. This has been a known problem since the 1960s, and still persists to this day because the manufacturers and UL have no personal stake in making the required changes to eliminate the problem. Even though the stove and specification defects had been exposed during litigations a number of times over many years, the manufacturer ignored the normally used, prioritized list for the elimination of product defects. The prioritized list to fix any defective product is as follows:

1. Redesign the product to eliminate the defect,
2. If it is not possible to redesign, then design a safety guard to protect the user,
3. If it is not possible to redesign or guard then as a minimum warn the user of the known danger.

In the attempt to maximize profits, the stove manufacturers jumped directly to number 3, because it is by far the cheapest. However, it doesn’t solve the real problem. There are warning stickers on the over door that picture the stove tipping danger, and warnings in the manual about stove tipping, but how does a young child who cannot yet read come to understand the danger? **There is also a sheet metal bracket supplied with each stove**

development agency to more of a business, with schedules, production pressures, deadlines and cost efficiency goals elevated to the level of technical innovation and safety goals...*Instead of proving it was safe to fly, they were asked to prove it was unsafe to fly.*”

which captures one of the rear leveling feet and that is supposed to be installed by either the stove owner or professional installer to prevent tipping.

However, when I called and questioned workers at several appliance stores about the anti-tip brackets supplied with the stoves, they didn't have a clue about their usage. Additionally, the case concerning the child happened with a stove that was purchased as a used stove in the secondary appliance market and it didn't come with either an anti-tip bracket or a manual. So how was the user to know about the stove tipping danger?

One manufacturer claimed that it had spent about one million dollars trying to solve the problem, without success. However, I never have much faith in that statement since I redesigned the oven door hinge within two weeks to eliminate the problem, built the new design, and it worked as expected. All I did was modify the design of the existing hinge to add another cam action so that the redesigned hinge would cause the oven door to collapse to the floor when excessive load was applied. The redesign did not affect the functionality or the operation of the stove or the oven door. Both cases were settled before trial without depositions after opposing counsel was presented with a video showing the testing and success of the redesigned oven door hinge.”

Boisjoly's paper included some advice he received from a senior manager early in his career on the Apollo space program. He said, “Ask yourself the following question: Would you allow your spouse or another member of your family to use the product in question without any reservations whatsoever? If you cannot answer that question with an immediate ‘Yes’, then you have no business signing off on that product for a stranger to use.” In other words, it is critical to have a personal stake in the consequences of your decisions and actions.

Boisjoly also cited a more well-known example of this concept of *'put your money where your mouth is'*:

“This is exactly what former Navy Admiral Rickover did when he contracted with Electric Boat Company in Connecticut to design and build the Navy's Nuclear Submarines. The top program managers and some workers were selected to ride on the maiden voyage of each submarine. This was the way the Admiral insured top

quality design and manufacture of submarines. He simply made those responsible for the program act professionally by making them personal stakeholders by placing them personally in harm's way should they end up doing poor quality work.”

Roger Boisjoly spent the majority of his career trying to do the right thing. As an employee of a major aerospace company, he responsibly informed his supervisors in a confidential memo of a potential problem with a technical component. He acted ethically from all three philosophical perspectives – *duty, virtue and principle*. However, in hindsight, had he truly considered the action that would have produced consequences of the greatest good for the greatest number of people – either the seven astronauts or society as a whole? Technically speaking, he was not what we now commonly refer to as a “whistleblower” because he did not go to the press or appeal directly to a government regulator. When Boisjoly was essentially black-balled by the major contractors, and forced to transition to private consulting work in forensic engineering, he was free to influence people and industry from a different vantage point.

As independent, professional home inspectors, many of you have the freedom to decide for whom and under what circumstances you work. And, while your contract must state that your home inspection is in accordance with the North Carolina Home Inspector Licensure Board Standards of Practice, you may also include other conditions. Many of today's standard pre-purchase agreements include terms and conditions to limit inspector financial liability. Typical language states that, should a dispute arise subsequent to delivery of the written home inspection report, the client agrees to mediation or arbitration, but in no event is the inspector liable for more than the fee paid for the inspection. This means that the typical inspector has a day's labor and somewhere around a \$350 financial stake in the \$250,000 home his client is considering buying or selling. This amount represents the inspector's *personal stake in the consequences of his decisions and actions*. Some inspectors provide a limited 90-day warranty for certain

systems and components inspected to address unforeseen failures of components that were functional at the time of the inspection.

Is this an ethical business practice? It might surprise you to know that some inspectors have resisted this industry trend. Such thinking may be “old school,” but they feel it detracts from the perceived value of their service and professional commitment to their clients.

For one thing, pre-purchase agreements are often transmitted electronically and may be quickly read and acknowledged in the busy time that often follows acceptance of an Offer to Purchase and Contract. Or, the contract may be hastily presented by the inspector to the client upon meeting at the property, reviewed and then signed by the client without taking the time to explain its specific provisions. In either case, the client may not be fully informed of the limitations of liability of the home inspector’s services.

Another issue is that even though these contracts are required to state that the inspection will be performed in accordance with the NCHILB Standards of Practice (SOP), rarely is a copy of the SOP attached to the contract or provided to the client. Usually, the contract states that the SOP is available from the NCHILB upon request. Sometimes the web site link www.nchilb.com is provided. More often than not, a major portion of the text of the contract states *what is not covered* by the home inspection. The end result is that the client may have little real knowledge of what constitutes a home inspection. Upon what then, does one suppose the client’s expectations are based?

By including a limitation of liability clause in the contract, so the logic goes, the inspector has already put the client on notice that any problems he may have with the house after the purchase aren’t the inspector’s concern. Obviously, there are various approaches to the issue of financial liability, and some inspectors simply try to limit the time to file a claim to one year from the date of the inspection.

APPENDIX A LETTER OF COMPLAINT

July 21, 1997

██████████
N.C. Home Inspector Licensure Board
P.O.Box 26387
Raleigh, N.C. 27611-6387

Dear ██████████:

Thank you for your letter of July 18, 1997 concerning my complaint against home inspector ██████████. After reading your letter and the memorandum from Mr. ██████████, I can say I am not satisfied with either response. Mr. ██████████ was licensed by the state of North Carolina; this should imply some responsibility by the Licensure Board to the general public. Mr. ██████████ is negligently inspecting houses, and when I report this to the Licensure Board, the response is that because the board did not have their governing rules before October 1, 1996, then Mr. ██████████ is totally unaccountable for his actions. What are the requirements set by your board for being a home inspector? I know of no other profession where the individual can do whatever he/she pleases and not be responsible for their activities. Now, I am not complaining about some little piddly thing...I am talking about a house that is collapsing. Mr. ██████████ inspected the property for ██████████ Properties and deemed the house structurally sound. Based on his expertise, I purchased the property. After investigating, I discovered that several people on this island knew the property was structurally unsound, yet Mr. ██████████ did not tell me this. And yes, there were clear, visible signs to indicate this to a competent home inspector. I ask you, if you were to examine this case today and judge Mr. ██████████ to be grossly negligent and incompetent by your rules of October 1, 1996, would not Mr. ██████████ also be negligent and incompetent prior to October 1, 1996? What are your rules governing negligence and incompetence?

I find very little comfort in Mr. ██████████ comment " I suppose that if a home inspector has been grossly negligent or incompetent or has harmed the public in the past, he will be it, or do it, again after October 1; and consequently this Board will weed him out of the industry in due course". Suppose Mr. ██████████ continues to negligently inspect houses. Suppose Mr. ██████████ tells another family a house is structurally sound when it is not. Suppose that family purchases the house. Suppose a few months later the house collapses. Suppose that family is killed....now...suppose that family was your family. Now you can weed Mr. ██████████ out.

Imagine that many realtors and home inspectors in coastal North Carolina are in cahoots and engaged in negligent behavior...simply to make a buck. Imagine a realtor and a home inspector that have been personally involved; imagine that realtor hiring this home inspector to inspect property and telling a trusting buyer that a house is structurally sound, when it is not. Imagine they both make nice profits from the sale. Is this negligence....yes....unethical....yes....a great scam....absolutely. Imagine the poor buyer when the house begins to collapse a few months later and no one will help the buyer. Imagine that buyer trying to stop such deceit, fraud, and deceptive trade in her home state. It happens....it happened to me. And when I report this to the N. C. Home Inspector Licensure Board, the response is because we had no rules prior to October 1, 1996, we will do nothing. To me that is just another example of negligent and incompetent behavior. The least you can do is write Mr. ██████████ a letter stating I have filed a complaint against him.

APPENDIX B COMPLAINT FORM

COMPLAINT INFORMATION MEMO & FORM dated 5-2-11

The complaint shall identify the individual licensee (not the business name) and describe the conduct complained about. Cite specific violations of the General Statutes or the Board's Rules on the following pages. Supporting information/evidence must be included to support allegations of violations. Such information may be provided by the complainant, an architect, professional engineer, licensed contractor, another licensed inspector, or other person with knowledge of the Standards of Practice. **Copies of the Contract Agreement, Inspection Report, and any reports made by other consultants must be included with this complaint. This complaint shall be in writing, dated, signed by the complainant and notarized on page 5. The complaint shall include the complainant's current mailing address, daytime phone number, and street address of the structure of the property inspected.**

Home Inspector's Name: _____ *NC License No.* _____

Complainant's Name: _____ Date: _____

Mailing Address: _____

Phone Number: _____

Email (if available): _____

Street Address of Property Inspected and subject of this Complaint:

_____ Date of Inspection: _____

The Engineering Division of the NC Department of Insurance provides technical and administrative staff to the Board, makes investigation of charges and issues an Investigation Report. An on-site investigation of the property may be performed however, the Engineering Division does not have the personnel to do a complete building, electrical, mechanical and plumbing inspection of houses and buildings which are the subject of a complaint against an inspector. The purpose of the Engineering Division investigation is to verify whether the alleged defects listed in the complaint are actual violations of the Board's statutes or rules.

The Board encourages you to have an inspection performed by a private consultant such as an architect, engineer, contractor, or licensed home inspector familiar with construction of houses and the Board's Standards of Practice.

The Investigation Report will be reviewed with counsel and/or the investigation committee and recommendations will be submitted to the Board for final action.

- Pursuant to 11 NCAC 8.1202 (f), the Board "shall not consider services that are under the jurisdiction of other regulatory agencies or licensing boards, such as, termite inspections, appraisals, services rendered by licensed architects, engineers, or general contractors, unless the persons rendering those services hold themselves out to be home inspectors."
- Pursuant to 11 NCAC 8.1202 (g) the Board "has no jurisdiction over persons who make specialized inspections as part of their repair or maintenance business, such as, roofing repair contractors, chimney sweeps, duct cleaning and interior environment specialists."
- The Board has no jurisdiction over personality conflicts, fees, scheduling, items not required to be inspected by the Standards of Practice, and similar items.
- The complaint must be received by the Board within 36 months (3 years) of the date of the inspection report written by the home inspector.
- The Board has no jurisdiction over conduct by home inspectors that occurred prior to October 1, 1996.

Anyone who believes that a licensee is or has been engaged in any conduct set out in NC General Statute 143-151.56(a) may file a written complaint against that licensee. Please circle the specific item number of the alleged violation(s) below **and** cite applicable Standards of Practice/Code of Ethics sections on the following pages.

1. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license.

2. Committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections.

3. Without having a current license, either performed home inspections for compensation or claimed to be licensed. _____
4. Engaged in conduct that could result in harm or injury to the public. _____

5. Been convicted of or pled guilty or nolo contendere to any crime involving moral turpitude.

6. Been adjudicated insane or incompetent and has not presented proof of recovery from the condition.

7. Engaged in any act or practice that violates any of the provisions of this Article [Chapter 143, Article 9F - NC Home Inspector Licensure Board] or any rule issued by the Board, or aided, abetted, or assisted any person in a violation."* (see pages 3 and 4 to list specific violations). _____

8. Failed to maintain the requirements provided in NCGS 143-151.58(b) general liability insurance, etc. (becomes effective October 1, 2011). _____

****For alleged violations of the Standards of Practice or Code of Ethics please read the REGULATIONS effective at the time of the home inspection available through the Board's website link below:***

[North Carolina Home Inspector Licensure Act](#)

ALLEGED VIOLATIONS OF THE STANDARDS OF PRACTICE

Please include the relevant section numbers from the rules on the lines below: [i.e. .1106(a)(1)]

1. The home inspector did not enter / observe / inspect:

2. The home inspector did not operate / test:

3. The home inspector did not state / describe / report:

4. The home inspector did not provide a better understanding of the property conditions of systems or components because he did not state the implications of items noted on the home inspection report or direct me to a course of action:

ALLEGED VIOLATIONS OF THE CODE OF ETHICS

- (a) Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.

- (b) Opinions expressed by licensees shall only be based on their education, experience, and honest convictions. _____
- (c) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative. _____

- (d) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties. _____

- (e) No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible. _____

- (f) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property. _____

- (g) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform. _____

- (h) A licensee shall not solicit for repairs of systems or components found defective in the course of a home inspection performed by the licensee or that licensee's company _____

- (i) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public. _____
- (j) Licensees shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of the property. _____

STATE OF NORTH CAROLINA

_____ COUNTY

VERIFICATION

_____, being duly sworn, depose and says that the contents of the foregoing complaint against _____ are true to his/her own knowledge.

(Signature of Complainant)

Sworn to and subscribed before me,
This the _____ day of _____, 20_____.

SEAL

Notary Public (Signature)
My commission expires: _____

Please mail written complaints and supporting documentation to:

ATTN: North Carolina Home Inspector Licensure Board.
1202 Mail Service Center
Raleigh, NC 27699-1202

The Board offices are located at 322 Chapanoke Rd, Suite 115, Raleigh, NC

APPENDIX C CONSENT AGREEMENT
NORTH CAROLINA HOME INSPECTOR LICENSURE BOARD
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

CONSENT AGREEMENT

IN THE MATTER OF
THE LICENSURE OF
LICENSEE

WHEREAS, the North Carolina Home Inspector Licensure Board (hereinafter “Board”) is a duly authorized State agency, having the authority and responsibility for enforcing Chapter 143, Article 9F, of the General Statutes of North Carolina and Title 11, Chapter 8, of the North Carolina Administrative Code, including the Standards of Practice and Code of Ethics for licensed home inspectors; and

WHEREAS, LICENSEE NAME (hereinafter “LICENSEE”) is currently licensed as a home inspector in North Carolina, holding license number XXXX; and

WHEREAS, in a written complaint received by the Board on DATE, the complainant, COMPLAINANT NAME, alleged that on DATE, LICENSEE violated the Board’s Standards of Practice in the performance of a home inspection of the residence located at PROPERTY ADDRESS; and

WHEREAS, the Board’s investigator has conducted an investigation and review of the allegations of the complaint; and

WHEREAS, LICENSEE has received the Board’s Investigative Report, dated DATE; and

WHEREAS, the Board’s Investigation Review Committee met on DATE to review the above Investigation Report and consider staff recommendation for terms and conditions of proposed disciplinary actions by the Board; and

WHEREAS, the Board and LICENSEE, for the purposes of resolving the controversy herein concerning LICENSEE’s license and avoiding an administrative hearing, hereby enter into this Consent Agreement and agree to the terms below.

NOW, THEREFORE, it is agreed by and between the Board and LICENSEE as follows:

1. LICENSEE agrees to comply with all statutory and regulatory requirements applicable to licensed home inspectors in North Carolina.
2. LICENSEE agrees that there is sufficient evidence to support the allegation that
3. LICENSEE agrees to accept a Letter of Reprimand for the (improper contract and the deficiencies in the inspection report) of the home located at PROPERTY ADDRESS, with the understanding that this letter will be placed in his permanent file.

4. LICENSEE voluntarily agrees to have his home inspection license (number xxxxx) suspended for a period of thirty (30) days. The suspension period will begin one (1) day after LICENSEE has received this Consent Agreement, signed by the Chairman of the Board. LICENSEE fully understands that he cannot supervise any associate home inspectors or perform any home inspections for compensation in North Carolina during this suspension period. If it can be determined that LICENSEE has supervised any associate home inspectors or performed any home inspections for compensation in North Carolina during the suspension period, LICENSEE agrees to forfeit his license for one year.
5. LICENSEE agrees to be placed on probation for a period of twelve (12) months. The probationary period will begin on the date that his suspension ends pursuant to the paragraph immediately above. If any additional complaints are filed against LICENSEE during the probationary period, which contain a basis in fact to support a violation of the Standards of Practice, LICENSEE agrees that those complaints, along with the complaint in this matter, may be presented to the Board for disciplinary action.
6. LICENSEE agrees to attend, within the first six (6) months of the probation period of this Consent Agreement, one (1) four-hour class related to report writing. LICENSEE also agrees that these additional four hours of classes will not count toward any continuing education requirements for the renewal of his license. LICENSEE agrees that the Board must provide its approval of the four-hour report writing class in advance in order for it to be credited under this provision.
7. LICENSEE agrees to submit to the Board for review, during the suspension period of this Consent Agreement, a written contract. This written contract must comply with the Standards of Practice of the Board.
8. LICENSEE agrees to submit to the Board for review one (1) inspection report during the probationary period of this Consent Agreement. This inspection report must have been completed after LICENSEE has completed the aforementioned home inspection training class but before the ninth (9th) month of the probationary period. The report must comply with the Standards of Practice of the Board. LICENSEE understands and agrees that failure of any of these reports to comply with the Standards of Practice of the North Carolina Home Inspection Licensure Board is a violation of the probation and may be a basis for further disciplinary action by the Board.
9. LICENSEE agrees that if he violates, or fails to comply with, any of the terms of this Consent Agreement, the Board shall have a right to hold an Administrative Hearing on LICENSEE's violation of, or failure to comply with, said terms. If LICENSEE is found to be in violation of the terms of this Consent Agreement, LICENSEE agrees that his license issued by this Board may be revoked. Alternatively, if LICENSEE is found to be in violation of the terms of this Consent Agreement, this Board may issue an Order for additional penalties, including but not limited to suspension of LICENSEE's license, additional CE requirements, additional home inspection report submissions to the Board, and an extended term of probation.
10. This written document contains the entire agreement between the Board and LICENSEE. There are no other oral or written agreements of any kind that alter or add to this agreement.
11. LICENSEE wishes to resolve this matter by consent and agrees that the Board staff and counsel may discuss this Consent Agreement with the Board *ex parte*, whether or not the Board accepts this Consent Agreement as written. LICENSEE understands and agrees that

this Consent Agreement is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board meeting.

12. LICENSEE enters into this Consent Agreement freely and voluntarily and with knowledge of his right to have an administrative hearing on this matter.
13. This Agreement does not in any way affect the Board's disciplinary power in regards to any future complaints or investigations involving LICENSEE.
14. LICENSEE understands that he may consult with an attorney prior to entering into this Consent Agreement.
15. The parties have read and understand this Consent Agreement and agree to abide by the terms and conditions stated herein.
16. The Board retains jurisdiction over the parties to this Consent Agreement.

I CONSENT TO THE ABOVE:

LICENSEE

Date: _____

This the _____ day of _____, 20XX

Chairman
North Carolina Home Inspector Licensure Board