



HOUSE BILL No. 4109

February 2, 1993, Introduced by Reps. DeLange, Oxender, Gernaat, Shugars, Middaugh, Gnodtke and Dalman and referred to the Committee on Consumers.

A bill to define and prescribe certain disclosures and standards in contracts involving home inspection services; and to provide for the rights and remedies for certain persons for violation of this act under certain circumstances.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "home inspection services act".

3 Sec. 3. As used in this act:

4 (a) "Client" means the person on whose behalf a home inspec-
5 tor is acting.

6 (b) "Electrical system" means the total system in a resi-
7 dence which facilitates the flow of electricity beginning with
8 the main panel and extending to the subpanels and including
9 branch circuits, and directly wired electrical and lighting
10 fixtures.

1 (c) "Foundation" means 1 or more of the following upon which
2 a residence is placed:

3 (i) Slab.

4 (ii) Crawl space.

5 (iii) Basement.

6 (iv) Piers.

7 (d) "Heating and air conditioning system" means a separate
8 or combined system used to distribute or radiate heat or cool air
9 throughout all or part of a residence. The radiation or distri-
10 bution of heat may be accomplished by means of a central heat
11 source or thermostatically controlled heat sources in 1 or more
12 rooms of a residence. Air conditioning does not include a unit
13 mounted in a wall or a window unless the unit utilizes ducts to
14 distribute the air.

15 (e) "Home inspector" means a person engaged in, or offering
16 to engage in, the business of providing home inspection services
17 but does not include any of the following:

18 (i) A person acting on behalf of a local, state, or federal
19 governmental unit or agency conducting an inspection or investi-
20 gation concerning compliance with either or both of the
21 following:

22 (A) Health or safety laws or regulations.

23 (B) Construction or building laws or regulations.

24 (ii) A person licensed, registered, or certified under 1 or
25 more of the following while conducting an inspection that is rea-
26 sonably related to a task or prospective task within the scope of
27 licensure, registration, or certification:

1 (A) Article 20 of the occupational code, Act No. 299 of the
2 Public Acts of 1980, being sections 339.2001 to 339.2014 of the
3 Michigan Compiled Laws.

4 (B) Article 26 of Act No. 299 of the Public Acts of 1980,
5 being sections 339.2601 to 339.2637 of the Michigan Compiled
6 Laws.

7 (C) Act No. 222 of the Public Acts of 1901, being sections
8 338.951 to 338.965 of the Michigan Compiled Laws.

9 (D) Act No. 266 of the Public Acts of 1929, being sections
10 338.901 to 338.917 of the Michigan Compiled Laws.

11 (E) The electrical administrative act, Act No. 217 of the
12 Public Acts of 1956, being sections 338.881 to 338.892 of the
13 Michigan Compiled Laws.

14 (F) The Forbes mechanical contractors act, Act No. 192 of
15 the Public Acts of 1984, being sections 338.971 to 338.988 of the
16 Michigan Compiled Laws.

17 (f) "Home inspection services" means services provided to a
18 client, for consideration, which are designed to identify and
19 disclose the functional condition of the major systems of a resi-
20 dence at the time of the inspection. Home inspection services
21 does not include an inspection designed only to disclose any of
22 the following:

23 (i) Compliance with local, state, or federal building or
24 construction laws or regulations.

25 (ii) Compliance with local, state, or federal health and
26 safety laws or regulations.

1 (iii) The presence or absence of pests, termites, or other
2 vermin.

3 (g) "Major deficiency" means a defect in 1 or more major
4 systems that causes the reasonable likelihood of harm to the
5 safety of the occupants so as to require their evacuation of the
6 residence for more than 3 days.

7 (h) "Major system" means any 1 of the following:

8 (i) Electrical system.

9 (ii) Heating and air conditioning system.

10 (iii) Plumbing system.

11 (iv) Structure and foundation system.

12 (i) "Person" means an individual, partnership, corporation,
13 or other legal entity.

14 (j) "Plumbing system" means that system regulating the
15 inward and outward flow of water and sewage in a residence and
16 includes, but is not limited to, water heaters, water softeners,
17 fixtures, faucets, valves, and pipes. Plumbing does not include
18 wells, septic systems, or sump pumps unless included in writing
19 in the contract for home inspection services.

20 (k) "Residence" means a building used primarily for family
21 living quarters and designed for occupation of not more than 4
22 families in separate living quarters.

23 (l) "Structure" means the walls, windows, doors, and roof on
24 the exterior of a residence and the walls, ceilings, floors, win-
25 dows, and doors on the interior of a residence.

26 Sec. 5. (1) A person providing or offering to provide home
27 inspection services shall comply with this act.

1 (2) A home inspector who enters into a contract for home
2 inspection services that is not in conformance with this act
3 shall be subject to the penalties imposed under this act.

4 (3) A home inspector shall inspect those major systems of a
5 residence that are the subject of a contract for home inspection
6 services only to the extent that those major systems are readily
7 accessible and visible to the home inspector.

8 (4) A home inspector shall not release a home inspection
9 report without prior written approval from the client until 6
10 months after the date of the home inspection report.

11 (5) A home inspector who inspects a residence shall not
12 repair or offer to repair a major deficiency discovered by an
13 inspection of that residence by that home inspector.

14 Sec. 7. (1) The home inspector shall disclose whether he or
15 she, an employee or agent, or an immediate family member has an
16 ownership interest in the residence being inspected.

17 (2) A home inspector shall disclose whether he or she, an
18 employee or agent, or an immediate family member is a member of a
19 board of directors of, or an officer of, an entity which has an
20 ownership interest in the residence being inspected.

21 (3) A home inspector shall furnish to the client a document
22 entitled "disclosure statement" which shall be presented at the
23 time the report of home inspection services is conveyed to the
24 client and shall contain, at a minimum, all of the following:

25 (a) The scope of the home inspection services with a
26 detailed description of the major systems to be inspected, the
27 type of major deficiencies the home inspection is designed to

1 reveal, and items that are excluded from coverage under the
2 contract of home inspection services.

3 (b) A statement that the home inspector shall not release a
4 home inspection report without prior written approval from the
5 client until 6 months after the date of the home inspection
6 report.

7 (c) A statement that a home inspector inspecting a particu-
8 lar residence shall not repair or offer to repair a major defi-
9 ciency discovered as a result of an inspection of that residence
10 by that home inspector.

11 Sec. 9. (1) A contract for home inspection services shall
12 be in writing, executed by the home inspector and either the
13 client or the client's agent, and in conformance with
14 section 11. A copy of the executed contract for home inspection
15 services shall be provided to the client at the time of its
16 execution.

17 (2) All terms of the contract for home inspection services
18 shall be contained in the written contract except that conditions
19 affecting the home inspector's ability to conduct a home inspec-
20 tion may be noted in a separate document attached to the
21 contract. Any changes or modifications of the terms of the con-
22 tract for home inspection services shall be reduced to writing.

23 (3) Unless otherwise indicated in writing, the purchaser of
24 a residence being inspected is considered the client in the case
25 of a home inspection conducted as part of a sale of the
26 residence.

1 Sec. 11. At a minimum, the following shall be contained in
2 a contract for home inspection services:

3 (a) Any disclaimers including, but not limited to, the
4 absence of any warranties as to the adequacy of future per-
5 formance of a major system and the fact that the home inspection
6 is considered a valid assessment of the condition of the resi-
7 dence only as of the date the home inspection was conducted.

8 (b) Any exclusion of latent defects not reasonably apparent
9 by visual inspection unless otherwise provided in the contract.

10 (c) Any exclusion of any major system not operable at the
11 time of the conduct of the home inspection.

12 (d) A description of the home inspection services to be
13 provided.

14 Sec. 13. (1) After performing home inspection services, a
15 home inspector shall provide to the client a report containing
16 the results of the home inspection. The home inspector may list
17 in the report any conditions affecting or limiting the ability of
18 the home inspector to provide home inspection services pursuant
19 to the contract.

20 (2) The home inspector shall indicate in the report the fact
21 that the home inspection is considered a valid assessment of the
22 condition of the residence only as of the date the home inspec-
23 tion was conducted.

24 (3) A home inspector shall retain a copy of the contract for
25 home inspection services and the home inspection report for at
26 least 3 years after the date of the report.

1 Sec. 15. A contract for home inspection services that is
2 not in compliance with this act is voidable at the option of the
3 client.

4 Sec. 17. (1) In an action for civil damages regarding home
5 inspection services brought against a home inspector, a person or
6 entity not in privity of contract with the home inspector may
7 recover civil damages resulting from an act, omission, decision,
8 or other conduct in connection with the performance of home
9 inspection services by a home inspector where the act, omission,
10 decision, or other conduct constitutes fraud or intentional
11 misrepresentation.

12 (2) In a case not involving fraud or intentional misrepre-
13 sentation as described in subsection (1), a person or entity not
14 in privity of contract with the home inspector may recover civil
15 damages resulting from an act, omission, decision, or other con-
16 duct in connection with the performance of home inspection serv-
17 ices by the home inspector only where all the following circum-
18 stances exist:

19 (a) The home inspector knew that the information developed
20 through the performance of home inspection services was intended
21 for use by a person or entity not in privity of contract with the
22 home inspector.

23 (b) The home inspector intended that the information devel-
24 oped through the performance of home inspection services would
25 influence a transaction which is the subject of the action for
26 civil damages.

1 (c) The person or entity not in privity of contract with the
2 home inspector actually relied upon the information developed
3 through the performance of the home inspection services.