THIS PROPOSED CODE OF ETHICS HAS BEEN REVIEWED BY THE HOME INSPECTION COUNCIL AND APPROVED FOR RELEASE TO THE PUBLIC FOR COMMENT

An Amendment to 19 NYCRR part 197 is adopted to read as follows:

SUBPART 197-4 CODE OF ETHICS FOR HOME INSPECTORS

Section 197-4.1 Introduction

1. It is essential that home inspectors exhibit the highest standards of honesty and integrity in furtherance of the honor of the home inspection profession. A thorough home inspection has a direct and vital impact on the quality of life for all home buyers. Accordingly, home inspectors shall provide home inspection services in an honest, impartial and fair manner and shall strive at all times to protect, preserve and further the health, safety and welfare of the public. In performing home inspection services, home inspectors shall adhere to the highest principles of ethical conduct.

2. This Code of Ethics reflect the current ethical standards for home inspectors. It is the department's intention that this document be a living document and that changes and updates to this Code be made as deemed necesssary by the department. It is the obligation of the home inspector to ensure compliance with this Code of Ethics, the Standards of Practice and Article 12B of the Real Property Law.

3. The Secretary may refuse to grant or may suspend or revoke a home inspector license, and may impose a civil penalty not to exceed one thousand dollars per

violation, upon proof to the satisfaction of the secretary that the holder thereof has violated any of the standards set forth in this Code of Ethics, the Standards of Practice or of Article 12-B of the Real Property Law.

Section 197.4.2 Fundamental Rules

1. Home inspectors, in the fulfillment of their professional duties, shall:

   (a) Hold paramount and strive at all times to protect, preserve and further the health, safety and welfare of the public;

   (b) Perform home inspection services in a competent manner;

   (c) Issue written reports and make statements in the context of their home inspection duties in an objective and truthful manner. Home inspectors shall not make false or misleading statements or omit material facts from their reports or in the context of their professional activities;

   (d) Adhere to the fiduciary duties owed each client, except as otherwise provided in this section;

(e) Not engage in fraud, deceipt or misrepresentation;

(f) Conduct themselves honorable, responsibly, ethically and in compliance with the provisions of Article 12-B of the Real Property Law and the rules and regulations promulgated thereunder so as to enhance the honor, reputation and integrity of the profession.

2. Home Inspectors shall be required to cooperate with investigations by the Department of State. Each applicant or licensee shall be obligated, on request of the Secretary of State, to supply such information as may be required concerning his, her or its business, business practices or business methods, or proposed business practices or methods.

Section 197.4.3 Ethical Rules of Practice

1. Home inspectors shall fully adhere to and comply with the provisions of Article 12-B of the Real Property Law and all regulations promulated thereunder.

2. Written Contracts

(a) Prior to performing a home inspection, home inspectors shall provide a client with a written contract that clearly and fully describes the scope of service to be provided and the cost associated with that service. All said contracts shall contain the following which shall be in type size of not less than six point:

"Home inspectors are licensed by the NYS Department of State. Home Inspectors may only report on readily accessible and observed conditions as outlined in the standards of practice. Home inspectors are not permitted to make any statements or comments concerning the adequacy or soundness of the home, its structure or systems and are not permitted to provide engineering or architectural services."

(b) Home inspectors shall only perform services which have been duly authorized by the client.

3. Non-Disclosure

(a) Home inspectors shall not disclose any facts, data or information pertaining to a home inspection report without the prior consent of the client or the client's representative. If, however; immediate threats to the health or safety of an occupants or potential occupant are observed during the course of the inspection, the home inspector may disclose those findings without obtaining prior consent of the client or the client's representative.

4. Unlicensed and Unlawful Activity

(a) Home inspectors shall not permit another to use of their name or license so as

to engage in unlicensed or unpermitted activity. Home inspectors shall not associate themselves with any business venture that they believe to be fraudulent or dishonest.

(b) Home inspectors shall not engage in, aid or abet the unlicensed and/or unlawful practices of home inspection, engineering or architecture;

(c) Home inspectors who have knowledge of, or a reasonable belief that a provision of Article 12-B of the Real Property Law, or the regulations promulgated thereunder has been violated, shall report the alleged violation to the Department of State or other appropriate authority and shall cooperate with the Department and/or authority in furnishing such information and/or assistance as may be required.

(d) Home inspectors shall not engage in unlawful and/or unethical conduct. In the event that a client insists upon a home inspector engaging in said conduct, the home inspector shall immediately withdraw from the assignment.

(e) Any home inspection firm, its employees or any individual inspector shall not install, repair, replace or upgrade for compensation any system or components in any house that they have inspected for a period of not less than 5 years from the date of the inspection.

5. Competence

(a) Home inspectors shall not provide home inspection services beyond the scope permitted by law or regulation and shall not accept or perform services which the home inspector knows or has reason to know that he or she is not competent to perform.

(b) Home inspectors shall not delegate responsibility to another when the home inspector delegating such responsibility knows or has reason to know that such person is not qualified by traning, experience or licensure to perform said task.

6. Written Reports

(a) Home inspectors shall be objective and truthful in rendering reports and in making other statements in the context of their professional duties. Home inspection reports shall include all relevant and pertinent information and shall include the date when said report is made.

(b) Home inspectors shall refrain from willfully making a false report or false or misleading statements in the context of a home inspeciton report.

7. Conflicts of Interest

(a) Home inspectors shall avoid conflicts of interest or activities that compromise their professional objectivity, or have the potential of creating an appearance that their professional objectivity has been compromised. Prior to accepting any home inspection assignment, home inspectors shall disclose all known or potential conflicts of interest that could influence or appear to influence the home inspector's judgment or the quality of the home inspector's services.

(b) Home inspectors shall not accept compensation, financial or otherwise, from more than one party for serviceson the same project or for services pertaining to the same project unless the circumstances are fully disclosed and agreed upon by all involved and interested parties.

(c) Home inspectors shall not solicit or accept financial or other consideration, directly or indirectly from persons other than the home inspector's client.

(d) Home inspectors shall not solicit or accept an assignment or contract from a governmental body on which a principal or officer of the home inspector's office or organization serves as a member.

(e) Home inspectors shall not offer, give, solicit or receive, either directly or indirectly, any contribution to influence the award of a contract by a public authority and shall avoid activities which could reasonably be contrued by the public as having the effect or intent of influencing the award of a contract by a public authority.

(f) Home inspectors shall not directly or indirectly compensate, in any way, real estate brokers, real estate salespersons, real estate brokerage companies, lending institutions or any other party or parties that expect to have a financial interest in closing the transaction, for future referrals of inspections or for inclusion on a list of recommended inspectors or preferred providers or any such similar arrangement.

(g) Nothing herein shall prohibit a home inspector from advertising his or her services or for the purpose of recruiting employees and personnel provided that all such advertisements shall not be misleading or deceptive. Home inspectors shall not advertise home inspection services as an engineer unless said home inspector is authorized to provide engineering services by an appropriate licensing authority.

(h) Home inspectors shall not be influenced in their professional duties by conflicting interests.

(i) Home inspectors shall not accept financial or other consideration, such as material or equipment, from suppliers for suggesting the use of, or promoting a specific product in the course of performing a home inspection.

(j) Home inspectors shall not accept commissions, fees or other consideration directly or indirectly from contractors or other persons or entitites dealing with clients or employers of the home inspector in connection with work for which the inspector is responsible for, or has reported upon.

8. Fraud, Mispresentation and Dishonesty

(a) Home inspectors shall conduct themselves in the context of their home inspection activities with honesty and integrity and are prohibited from engaging in fraud, mispresentation or dishonesty.

(b) Home inspectors shall not falsify or misrepresent their experience, education or qualifications or permit any such misrepresentation by their employees or associates.

(c) Home inspectors shall avoid conduct or practices which deceive or mislead the public.

(d) Home inspectors shall not solicit employment by misleading, false or dishonest methods.

9. Self-Promotion and Advertising

(a) Home inspectors shall not advertise in a false, misleading or deceptive manner. Home inspectors shall not advertise home inspection services as an engineer or under the heading of engineers or engineering in any form of print or electronic media unless the individual and or firm is authorized to provide engineering services by the New York State Education Department.

(b) Home inspectors shall refrain from making any claim relating to the quality and effectiveness of services or productswhich cannot be substantiated by the home inspector.

(c) All advertisements placed or authorized by a home inspector that set forth prices charged for services, shall clearly set forth any additional charges for services related to the home inspection and shall clearly indicate the period of time for which any advertised prices shall remain in effect.

(d) Home inspectors placing or authorizing advertisements shall maintain or

cause to be maintained an exact copy of each advertisement for a period of one year following the advertisement's last publication. This copy shall be made available for inspeciton, upon demand, by the Department or an authorized representative of the Department.

10. Fees

(a) Home inspectors are prohibited from sharing any portion of the fee collected for home inspection services to any person other than: another licensed home inspector, employee or associate of the home inspector including a legally authorized trainee practicing under the direct supervision of the home inspector