

Senate Bill No. 258

CHAPTER 338

An act to add Chapter 9.3 (commencing with Section 7195) to Division 3 of the Business and Professions Code, relating to home inspectors.

[Approved by Governor August 17, 1996. Filed with
Secretary of State August 19, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 258, O'Connell. Home inspectors.

Existing law does not regulate persons who perform home inspections for a fee.

This bill would define terms related to paid home inspections, establish a standard of care for home inspectors, and prohibit certain inspections in which the inspector or the inspector's employer, as specified, has a financial interest. The bill would also provide that contractual provisions seeking to waive the statutory duty of care or limit the liability of a home inspector to the cost of the home inspection report are contrary to public policy and invalid. The bill would provide that the time for commencement of a legal action for breach of duty arising from a home inspection report shall not exceed 4 years from the date of the inspection.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this act to assure that consumers of home inspection services can rely upon the competence of home inspectors. It is the intent of the Legislature that, in ascertaining the degree of care that would be exercised by a reasonably prudent home inspector pursuant to Section 7196 of the Business and Professions Code, the court may consider the standards of practice and code of ethics of the California Real Estate Inspection Association, the American Society of Home Inspectors, or other nationally recognized professional home inspection associations.

SEC. 2. Chapter 9.3 (commencing with Section 7195) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 9.3. HOME INSPECTORS

7195. For purposes of this chapter, the following definitions apply:

(a) "Home inspection" is a noninvasive, physical examination, performed for a fee in connection with a transfer, as defined in



subdivision (e), of real property, of the mechanical, electrical, or plumbing systems or the structural and essential components of a residential dwelling of one to four units designed to identify material defects in those systems, structures and components. “Home inspection” also includes any consultation regarding the property that is represented to be a home inspection or any confusingly similar term.

(b) A “material defect” is a condition that significantly affects the value, desirability, habitability, or safety of the dwelling. Style or aesthetics shall not be considered in determining whether a system, structure, or component is defective.

(c) A “home inspection report” is a written report prepared for a fee and issued after a home inspection. The report clearly describes and identifies the inspected systems, structures, or components of the dwelling, any material defects identified, and any recommendations regarding the conditions observed or recommendations for evaluation by appropriate persons.

(d) A “home inspector” is any individual who performs a home inspection.

(e) “Transfer” is a transfer by sale, exchange, installment land sale contract, as defined in Section 2985 of the Civil Code, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

7196. It is the duty of a home inspector who is not licensed as a general contractor, structural pest control operator, or architect, or registered as a professional engineer to conduct a home inspection with the degree of care that a reasonably prudent home inspector would exercise.

7196.1. (a) Nothing in this chapter shall be construed to allow home inspectors who are not registered engineers to perform any analysis of the systems, components, or structural integrity of a dwelling that would constitute the practice of civil, electrical, or mechanical engineering, or to exempt a home inspector from Chapter 3 (commencing with Section 5500), Chapter 7 (commencing with Section 6700), Chapter 9 (commencing with Section 7000), or Chapter 14 (commencing with Section 8500) of Division 3.

(b) This chapter does not apply to a registered engineer, licensed land surveyor, or licensed architect acting pursuant to his or her professional registration or license, nor does it affect the obligations of a real estate licensee or transferor under Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 3 of Division 2 of, or Article 2 (commencing with Section 2079) of Chapter 3 of Title 6 of Part 4 of Division 3 of, the Civil Code.



7197. It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

(a) To perform or offer to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector's company, has prepared a home inspection report in the past 12 months.

(b) Inspect for a fee any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property.

(c) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or agent, for the referral of any business to the inspector or the inspection company.

(d) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.

(e) A home protection company that is affiliated with or that retains the home inspector does not violate this section if it performs repairs pursuant to claims made under the home protection contract.

7198. Contractual provisions that purport to waive the duty owed pursuant to Section 7196, or limit the liability of the home inspector to the cost of the home inspection report, are contrary to public policy and invalid.

7199. The time for commencement of a legal action for breach of duty arising from a home inspection report shall not exceed four years from the date of the inspection.

