



TREC Advisor

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty, right-of-way services and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity across Texas.

INSIDE THIS ISSUE: BPOs and CMAs are Not Appraisals (page 1) From the Administrator (page 2) Proposed Rules for May Commission Meeting (page 3) TREC Enforcement Actions (page 4) Employee Updates (page 4)

BROKER PRICE OPINIONS AND COMPARATIVE MARKET ANALYSES ARE NOT APPRAISALS

A real estate license holder is obligated to provide a broker price opinion (BPO) or a comparative market analysis (CMA) on a property when negotiating a listing. Rule §535.16(c). If negotiating a listing is an integral activity of your business, where do you start? If you follow Rule 535.17 (addressing BPOs and CMAs), you'll know what your document must include according to the rules.

Broker Price Opinion and a Comparative Market Analysis

First, let's clarify that a BPO or CMA is not an appraisal. A real estate license holder may not perform an appraisal of, or provide an opinion of value for, real property unless the license holder is licensed or certified (as an appraiser) under the Texas Occupations Code. Rule 535.17(a). A BPO or CMA differs from an appraisal and is not intended to serve the same purpose as an appraisal. A BPO or CMA is prepared by a real estate agent using the agent's special knowledge and experience of the real estate market to provide a property owner with information to assist the property owner in determining a listing price.

A license holder must include required language in every BPO and CMA and it must be reproduced verbatim as it appears in Rules 535.17(b) and (c):

"THIS IS A BROKER PRICE OPINION OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL OR OPINION OF VALUE. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. "

A salesperson may prepare, sign, and present a BPO or CMA for her sponsoring broker, however, the salesperson must submit the BPO or CMA in the broker's name and the broker is responsible for it. Rule 535.17(d).

Tip -- Excuse the obvious, but even though you include the required disclaimer language, don't title your document "Appraisal."

There is one additional situation in which a license holder is required to provide a BPO or CMA. When a license holder offers to purchase a property for the license holder's own account as a result of contact made while acting as an agent. A license holder may prepare a BPO or CMA in other situations, but is only required to do so in the situations described above. Rule 535.16(c).

Finally, don't forget: a BPO or CMA is a document that needs to be retained for four years in your files like any other transaction document. Rule 535.2(h)(7).

Now that Spring is in full bloom, it's again time to take stock of our position and plan for the next steps. The 84th Legislature is considering our requested bill and we thank those license holders who took the time to come to Austin and visit with their Senators and Representatives to let them know you support our requests. We truly appreciate that extra effort. Not all agencies enjoy the cooperative relationship we have with the professional associations of our license holders. We work hard to clearly justify and explain the rationale for each provision of a law or rule that we administer or propose, and make every effort to limit our recommendations to those with direct impact on consumer protection of Texas residents. Rebuilding the public's confidence in the professionalism of our license holders is a primary and legitimate goal we all share.

Everyone understands that completing CE classes is a requirement of renewing your license. Our online access tool now warns you if you are trying to renew a license and our records do not show your required CE having been completed. That gives license holders a final reminder and the option to 1) take the missing CE before completing a renewal or 2) purchase the 60 day extension for \$200. If you have not completed your CE before you renew, purchasing the extension is the only other available alternative.

I recently received a comment to my last column that questioned my inclusion of the following statement: "...the Legislature is in session, and our attention turns to working cooperatively with our stakeholders groups to both advance and protect the interests of license holders." The commenter was concerned that the real estate license law is primarily about protecting the people of Texas, not protecting or advancing the interests of license holders...and he is right. The Commission works

closely with the Texas Association of Realtors to ensure that the measures we seek actually enhance consumer protections in a manner consistent with the legitimate expectations of the law and the marketplace. In other words, as our mission statement makes clear, we balance the requirements of Texans who expect



Douglas E. Oldmixon

us to ensure competent and ethical real estate service providers with the need to ensure there is a sufficient supply of such providers available to serve the needs of that same public. In addition, as most professionals understand, what is best for their clients is ultimately also best for the service provider who is a fiduciary. In this way, what we seek advances the interests of consumers – the citizens of this great state – and also of the professionals who serve those clients.

Our next regularly scheduled meeting is on Monday May 4th. If you are in town, please stop by to see your Commission at work. We promise we'll continue do our part to assist you in serving Texans with the highest standards in the real estate profession. Our appreciation goes out for your continued support and thank you for your commitment to professionalism. Aim high!

IMPORTANT DATES TO REMEMBER

TREC Commission Meeting—May 4

Broker Lawyer Committee Meeting—May 22

ESAC Committee Meeting—June 17

Check the TREC website regularly for postings of all of our upcoming meetings.

Proposed Rules

The following amendments or new rules were proposed at the February 9, 2015, meeting of the Commission and are up for adoption at the May 4, 2015 meeting. You can see the full text of these rules on the "Proposed Rules" section of the TREC Website. The time period to receive written comments on the proposed rules has passed. However, comments may be made in person at the meeting.

§539.81, Funded Reserve. These amendments are a re-proposal following receipt of input from a stakeholder which resulted in substantive changes to the original proposal. The proposed amendments specify certain minimum reserve criteria for captive insurance companies to make sure that Texas consumers continue to have the protection the legislature mandated when the statute requiring a funded reserve was put in place.

§543.4, Forms. The proposed amendments update and clarify the use and content of the forms necessary to register, amend or renew a timeshare plan.

§535.401, Required Notices. The proposed amendments update and clarify the form Easement and Right-of-Way Agents are required to give a consumer prior to the

consumer entering into a transaction concerning an easement or right-of-way.

§535.223, Standard Inspection Report Form. The proposed amendments are recommended by the Texas Real Estate Inspector Advisory Committee (TREIC) to notify consumers regarding potential hazards with improper bonding of corrugated stainless steel tubing (CSST) or other metal gas tubing by adding language to the "Consumer Notice Concerning Hazards or Deficiencies" section, and to adopt by reference changes to the standard inspection form, Property Inspection Report Form REI 7-5, approved by the Commission for use in reporting inspection results.

§535.2, Broker Responsibility. The proposed amendments insert the obligation to notify the Commission when a broker delegates responsibility to another license holder for more than six months. This provision was inadvertently dropped from another section during the reorganization and clarification of Chapter 535.

CE DEFERRAL FEE REMINDER

The CE Deferral Fee is now due at the time of your renewal.

Effective January 1, 2015 the \$200 fee is charged at the time you renew if your TREC record does not show completion of all required CE. Payment of the fee gives you a 60 day extension from your expiration date to complete your CE.

To avoid paying this fee, take your CE well in advance of your expiration date to allow time for your education provider to submit your CE credits to TREC.

TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions taken in March. To read the full report and get access to all of the enforcement actions taken by the Commission, please go to the TREC website and click on, "Complaints, and Consumer Info" and then [click "Disciplinary Actions"](#).

TREC Employee Updates



Mike Sample-Diehl *Education and Licensing Services*

Mike joined TREC in April 2015 as an Education Specialist I in the Education and Licensing Services Division. Mike previously worked for the Texas Department of Public Safety and at Sul Ross State University. Mike has worked in retail, law enforcement and transportation, and is excited to now dive into the world of real estate. Mike spends most of his free time hiking and bike riding and working on model train layouts. He also enjoys people asking him about his west Texas accent.



Melissa Waters *Education and Licensing Services*

Melissa was hired as an Education Specialist in the Education and Licensing Services Division in April 2015. Prior to joining TREC, Melissa worked for the 1st Cavalry Division as the Family Readiness Program Coordinator. She has over 10 years of experience working in various programs for the Department of Defense as a government service employee and government contractor. Melissa graduated with her MBA and BS in Interdisciplinary Studies from Liberty University. She enjoys being crafty and designing cakes in her spare time and most of all spending time with her family. Melissa lives in Temple with her active duty Army husband, Brent, and three kiddos, Lexy, Tori, and Ryan. She is excited to be a part of the TREC team!



Carol Fichera *Education and Licensing Services*

Carol joined TREC on April 13, 2015, as a Licensing Specialist in the ELS Division. She has over 10 years of Administrative Assistance experience, the most recent being with the University of North Texas, with the Department of Mathematics. Carol is excited to be with TREC and being a member of the ELS team.

TALCB Bulletin



TALCB was created by an act of the Texas Legislature in 1991 to license, certify and regulate real estate appraisers in Texas under state and federal laws. In 2011, TALCB's jurisdiction was expanded to register and regulate appraisal management companies.

INSIDE THIS ISSUE: Statistical Analysis, USPAP and the Appraiser (page 1) From the Commissioner (page 2) Proposed Rule Actions for the May 15 Board Meeting (page 4) TALCB Enforcement Actions (page 4)

Statistical Analysis, USPAP and the Appraiser

Abstract: More and more appraisers are exploring the use of statistical analysis in their appraisal practice. The purpose of this article is to identify the related USPAP responsibilities of the appraiser.

Statistical analysis is not as new to the appraisal profession as many might imagine. Over 80 years ago, regression analysis was used to estimate the value of agricultural land for mortgage lending purposes. Since that time statistical analysis has been one of the many tools in the appraiser's toolkit. However, the wide use of statistical analysis, particularly regression analysis, has been stymied by: a lack of sufficient relevant data; the appraiser's inability to process this data in a timely manner or meaningful fashion; and insufficient training to facilitate proper interpretation and application of the results.

Today, these roadblocks have been removed. We see MLS systems can provide large amounts of data to appraisers. Education providers are offering training in the use of statistics in the appraisal process. Additionally, a number of software programs are available to assist appraisers in applying statistical methods (primarily regression analysis) in support of their value conclusions. The result of these recent developments is, more and more, appraisers are looking to regression analysis, or other statistical methodology, to play a role in their appraisal practice.

Uniform Standards of Professional Appraisal Practice

What are the USPAP obligations an appraiser faces by employing statistical analysis in their appraisal practice?

The obvious and primary consideration must be the COMPETENCY RULE.

The COMPETENCY RULE states: "An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to perform the assignment; or (3) decline or withdraw from the assignment. In all cases, the appraiser must perform competently when completing the assignment." (Source: 2014-15 Edition of USPAP, COMPETENCY RULE).

The Comment to the COMPETENCY RULE states: "Competency may apply to factors such as, but not limited to, an appraiser's familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method [emphasis added]." (Source: 2014-15 Edition of USPAP, COMPETENCY RULE).

In other words, if appraisers wants to use an analytical method such as statistical analysis, they must do so competently. If they cannot do so competently, appraisers must either refrain from using statistical analysis (if the scope of work would still produce a credible result) or decline the assignment (if lack of statistical analysis makes the assignment results not credible or such analysis is a client assignment condition).

Continued on page 3.

Spring has clearly come to Central Texas, with bluebonnets and many other wildflowers in full bloom across the countryside. Easter has passed and Mother's Day is right around the corner. It's time to take stock of our progress and look ahead.

Since the last meeting of the Board, the agency published the 2015 Appraiser Fee Survey results. Nearly 25% of all appraisers and 30% of our registered AMCs provided 2013-14 data to update the prior survey that had published 2011-12 data on fees paid by AMCs and lenders and received by Texas appraisers for certain appraisal reports. The initial survey was the first of its kind in the nation; coordinated by the Real Estate Center at Texas A&M University and the Hobby Center at University of Houston. The current survey asked the same questions as the initial survey and publishes both sets of answers for comparison. Under the Dodd-Frank Act, creditors and their agents must pay "customary and reasonable" fees to appraisers. Creditors and others are allowed to refer to "... objective third-party information, such as government agency fee schedules, academic studies and independent private sector surveys" as credible evidence of what is "customary and reasonable". Creditors are not allowed to refer to the fees paid by AMCs for such evidence. In addition, appraiser expertise, experience and assignment complexity should be taken into account. The Board provides the Texas survey to allow both creditors and appraisers to have data relevant to this requirement. We trust you will find it useful.

Working with the stakeholders at the Foundation Appraiser Coalition of Texas (FACT), we are seeking enhancements to the appraiser license act, including clarifications surrounding complaint processing and the confidential nature of certain allegations until final disposition of the matter - after which the established facts, an analysis of the applicable law and any disciplinary penalties would be available for public disclosure. This would protect appraisers from the unintended consequences of unproven allegations and the potential for abuse of the Board's investigative processes to gain an unfair advantage in a civil lawsuit. Other topics are also included in the filed bill, which has passed the Senate and has been referred to the House for action. We'll keep you informed of its progress in the session.

If the bill is passed successfully, we look forward to working with appraisers and other stakeholders to ensure the rules needed to implement the updated laws are written with the input of many and fully consistent with our charge to ensure sufficient competent and ethical providers are available to meet the needs of



Douglas E. Oldmixon

consumers across Texas. Again, we will welcome your input during this process.

On April 21, several Federal Agencies adopted a long-awaited set of proposed federal rules setting guidance to the states for minimum regulation of AMCs. The rules will become effective 60 days after publication in the Federal Register and states will have 36 months to come into full compliance with these new standards. Upon initial review, we will need to update a few provisions of Texas' AMC laws and rules to achieve compliance. We look forward to working with our stakeholders to develop well-considered recommendations in each area requiring an update.

Our new TALCB website has been launched. I hope you will find it much more intuitive and easier to use, easier to update and also more attractive. Additional tools are being worked on that will assist with license status and renewal, finding other appraisers or AMCs, and tracking education and discipline. We welcome your feedback on how it works and whether it meets your needs.

The Board will next meet on Friday May 15 at 10AM at its headquarters in Austin. We welcome your attendance if possible. Know that you may also view the meeting in real time on our internet website where we web-stream it live each quarter. Thanks for your interest and concern for the regulation of this vital industry. We look forward to continuing to earn your trust as an effective agency. Aim high!

Continued from page 1.

But what other, specific issues related to regression analysis should appraisers consider? Advisory Opinion 18 (AO-18) offers guidance related to an appraiser's use of an automated valuation model (AVM) for an individual property. While not addressing the specific issue of regression or statistical analysis per se, this guidance may be restated to apply to statistical analysis or usage of other appraisal methods or techniques.

Under What Conditions May an Appraisal Method or Technique Be Used?

While AO-18 goes to great length and detail in examining various USPAP compliance issues, the core might be boiled down by paraphrasing one portion.

There are five critical questions to which an appraiser should be able to answer "yes" before deciding to use any appraisal methods or technique in an appraisal or appraisal review assignment:

- 1) Does the appraiser have a basic understanding of how the method/technique works?
- 2) Can the appraiser use the method/technique properly?
- 3) Is the method/technique and the data it uses appropriate given the intended use of assignment results?
- 4) Is the method/technique's output credible?
- 5) Is the method/technique's output sufficiently reliable for use in the assignment?

Unless an appraiser can answer "yes" to all five questions he/she should reevaluate using that technique or methodology. Although this test can be used for any methods or technique, it is definitely applicable for decisions about using regression analysis or other statistical methods.

Another way to test your competency might be to ask yourself: "If I was required to explain to a client why I used this method and the relevance of it, would I be able to do so?" If you hesitate in being able to confidently answer that question, query whether any part of your hesitancy is due to a lack of competence.

Other USPAP Guidance

Other than Advisory Opinion 18 described above, The Appraisal Foundation's Appraisal Standards Board has not offered specific guidance for the use of regression analysis or other statistical methods in an individual appraisal. However, it is reasonable to believe as this issue evolves the Appraisal Standards Board will develop Q&As (or other guidance) to assist appraisers.

Ways to Gain Competency

There are traditional and new resources available to the appraiser on regression analysis or the broader topic of statistical analysis. In a recent Internet search for "real estate appraisal regression analysis," there were 738,000 hits! A similar search on YouTube identified 290 regression analysis videos. As previously mentioned, a number of courses are available covering statistical analysis as applied to appraising. Some are provided on-line, while others are offered in a classroom setting. If you prefer a book on real estate regression analysis, Amazon lists 127,009 books on general statistical analysis, with 31 focused on real estate regression analysis. You may wish to take advantage of these resources to expand your understanding and to gain competency.

So, if you are considering using statistical analysis in your appraisal practice; do your homework, and don't rush in blindly. Before you incorporate that new software program into your appraisal practice, be sure to consider your obligations under USPAP. As with all things appraisal, the ultimate responsibility rests with . . . you.

Rules Actions from the February 20th Meeting of the Board

The Board will consider the following actions regarding rules at its meeting on May 15, 2015. You may review the full text of all actions on the Rules and Laws section of the TALCB website.

RULES FOR ADOPTION

The Board will consider adopting amendments to the following rules at its meeting on May 15, 2015. If adopted, these amendments will become effective in June 2015.

22 TAC §153.24. Complaint Processing

The proposed amendments to this rule correct a typographical error to align the rule with the Board's statutory authority.

RULES FOR PROPOSAL

The Board may also propose amendments to its rules at the Board meeting on May 15, 2015. You may review the text of any proposed amendments once the agenda and meeting materials are posted on the Board's website.

TALCB Enforcement Actions

The Texas Appraiser Licensing and Certification Board publishes their enforcement actions regularly on the new TALCB website. To read the reports please go to the [TALCB website and click](#) on, public and disciplinary actions.

IMPORTANT DATES TO REMEMBER

TALCB Education Committee Meeting—May 7

TALCB Board Meeting—May 15

Check the TALCB website regularly for postings of all of our upcoming meetings.

Inspector Insight



The Texas Real Estate Inspector Committee is as an advisory committee to the Texas Real Estate Commission on matters pertaining to the licensing and regulation of real estate inspectors. The Committee recommends rules and policies that ensure inspections meet high professional standards and enhance consumer protection.

Inside this Issue: From the Commissioner (page 1) Bonding of the Gas Supply System FAQ's (page 2)

From the Administrator

It's almost May and activity has remained steady around the agency. The 84th Legislative session is more than half over. So far, no bills specifically directed at inspectors have been filed or advanced. The Inspector Committee has held several meetings this year to consider comments received on pending rules and to deal with the CSST issue that continues to raise concerns among consumer advocates and others.

Some have asked the Inspector Committee to go beyond its statutory authority and simply declare CSST as a hazardous product. The Commission simply does not have this authority and the Committee is well aware of this limit. Many products found in homes have risks associated with their design, use or proper installation. The Standards of Practice which guide the work of inspectors in Texas seeks to balance the risk of harm with a reasonable degree of discoverability and the specific expertise required of inspectors. An inspector is not required to be an expert electrician, plumber, HVAC technician or engineer. He or she is required to be able to seek out, examine and report specific functional aspects and areas of risk. Many also make suggestions to their clients to seek out the appropriate expert to do a complete analysis of the suspected defect or potential hazard. This is an appropriate recognition of the inspector's limited role.

The Committee is making a recommendation to the Commission to amend the preamble to the standard report form to add text related to the potential hazards of CSST and similar gas distribution lines if not properly bonded. If interested, look at the

materials online that are posted for the next Commission meeting. Of course, if approved for adoption in May, there will be an appropriate lead time given to ensure adequate education regarding the matter is conducted. You may already know that some other states have taken legislative action to require specific

notices or imposed certain new duties on inspectors. The notice proposed in Texas does not require any additional actions by inspectors, but its mere inclusion may prompt a discussion with a client on the use of and risks associated with CSST. Some inspectors already include such educational materials with their current reports. Others may wish to consider doing so.

You are always invited to attend Inspector Committee meetings or those of any of its the subcommittees. Agendas and materials are posted on our website at least a full week ahead, so watch there for details. Most meetings also allow interested folks to call in to the meeting and listen on a conference call line.

Thanks for all you do to ensure the Committee and Commission remain true to their charge to protect and serve the people of Texas.



Douglas E. Oldmixon

BONDING OF THE GAS SUPPLY SYSTEM - WHAT IS THE INSPECTOR'S DUTY UNDER THE STANDARDS OF PRACTICE?

Q: Do the Standards of Practice (SOPs) require an inspector to check the bonding of a gas supply system?

A: YES. Section 535.229 of the SOPs (22 TAC 535.227-535.332) requires an inspector to report as deficient any "deficiencies in bonding and grounding." Before the most recent revision of the SOPs adopted by the Commission in May of 2013, Section 535.229 specified that an inspector was required to report as deficient "appliances and metal pipes that are not bonded or grounded." The change in language was not intended as a substantive change regarding what is required of the inspector. Rather, the change was made to eliminate redundancies in the language concerning bonding and grounding throughout the SOPs.

Q: Does this requirement include Corrugated Stainless Steel Tubing (CSST)?

A: YES. This requirement applies to *ALL* metal pipes, including CSST, which is just one of the materials that may be used in a gas supply or distribution system.

Q: Do the SOPs require an inspector to determine if CSST is present?

A: NO. The SOPs don't require an inspector to determine if CSST is present in a home.

However, if CSST is noted during an inspection, the inspector is required to determine if CSST is bonded, subject to any limitations in the SOPs. This determination does not prevent an inspector from specifically reporting the presence of CSST or referring a client to additional information regarding the product.

Q: Do the SOPs require an inspector to determine if CSST is properly bonded?

A: NO. The inspector is only required to determine if the gas supply system is bonded and not whether it's "properly" bonded. The determination as to whether a gas supply system is properly bonded should be left to a person with the required expertise to do so, such as a licensed master electrician.

Q: Does the recent addition to the preamble of the Inspection Report Form, which lists the lack of bonding of the gas supply system as a hazard, place any additional burdens on the inspector?

A: NO. An inspector is required by the SOPs to report the lack of bonding of the gas supply system, regardless of any language in the preamble of the inspection report form. The added language in the preamble of the report enhances consumer protection by providing the consumer with notice regarding the potential hazard caused by lack of bonding.

IMPORTANT DATES TO REMEMBER

TREIC SOP Committee Meeting—June 8 and June 22

TREIC Committee Meeting—June 22

Check the [TREC website](#) regularly for postings of all of our upcoming meetings.