

**TEXAS REAL ESTATE INSPECTOR COMMITTEE
MEETING AGENDA**

Conference Room 235a, TREC Headquarters Office
1101 Camino La Costa, Austin, Texas

Friday, February 25, 2011 at 10:00 a.m.

CALL TO ORDER AND MINUTES

1. Call to order
2. Minutes of the July 21, 2010 meeting

ELECTION OF OFFICERS AND SUBCOMMITTEE APPOINTMENTS

3. Election of chair, vice-chair, and secretary
4. Appointment of subcommittees

REPORTS

5. Standards and Enforcement Services Division report, including an update regarding the number and types of opened and closed complaint cases and questions from Committee members regarding the report
6. Education and Licensing Services Division report, including an update regarding the number of licensed inspectors and examination passage rates and questions from Committee members regarding the report
7. Subcommittee reports and questions from Committee members regarding reports from the:
 - a. Standards of Practice/Commentary subcommittee, including an update regarding the development of a commentary on the standards and possible changes to the standards of practice
 - b. Enforcement subcommittee, including an update regarding the volume and types of complaints being filed and possible opportunities to enhance education requirements to address areas that are lacking
 - c. Education subcommittee, including an update regarding the approval of continuing education courses offered by proprietary schools and trade associations

PUBLIC COMMENTS

8. General comments from visitors

PENDING BUSINESS

9. Discussion and possible action to provide responses to requests from the public regarding:
- a. Requirement to report approximate depth of insulation
 - b. Reporting requirements regarding corrugated stainless steel tubing (CSST)
 - c. Reporting requirements for fences and decks

NEW BUSINESS

10. Discussion and possible action to adopt a code of conduct for Committee members
11. Discussion and possible action to recommend amendments to 22 TAC §535.223, Standard Inspection Report Form
12. Discussion and possible action to recommend new 22 TAC §535.219, Schedule of Administrative Penalties
13. Discussion and possible action to make recommendations to the Commission regarding Property Condition: Access, Inspections, and Utilities paragraph of TREC contract forms
14. Discussion and possible action to request that a final draft of the "commentary" materials be posted on the inspector page of the TREC website for public input
15. Discussion and possible action regarding TREC legislative items related to inspector issues
16. Executive session to deliberate regarding test items for the inspector examination under Texas Government Code §551.088, and, if necessary, to receive legal advice from TREC's legal counsel on posted agenda items under §551.071
17. Discussion and possible action on items considered in executive session
18. Discussion and possible action to recommend amendments to 22 TAC §535.210(a)(7), the licensing examination fee, and discussion regarding the National Home Inspector Examination
19. Discussion and possible action to make a recommendation to the Commission regarding TREC's ownership of the inspector exam item bank

FUTURE MEETINGS AND ADJOURNMENT

20. Request for new business agenda items
21. Scheduling of future meetings
22. Adjourn

In accordance with the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons desiring to attend this open meeting should be submitted by that person to the Commission.

**TEXAS REAL ESTATE INSPECTOR COMMITTEE
MEETING MINUTES**

Conference Room 235a, TREC Headquarters Office
1101 Camino La Costa, Austin, Texas

Wednesday, July 21, 2010 at 12:00 p.m.

CALL TO ORDER AND MINUTES

1. Call to order. 12:07. Larry, Fred, Brad, Jill, Nancy, Ray, Curtis and Brian via phone. Doug, Loretta, Devon, Betsy, and Gwen. Mike Cothran, J.D. Fuller, John Ogletton, Mike Boyette, Clay Collins, Greg Genser, Fred Buck, Steve Medina, Don Harvey and Roy Carter. Sympathy for Linda Robishaw. She lost a family member and cannot attend this or the previous meeting.

Minutes of the July 12, 2010 meeting. Brad motion Fred seconded previous minutes. It passed.

PUBLIC COMMENTS

2. General comments from visitors held because all are encouraged to participate in discussion.

PENDING BUSINESS

3. Discussion and possible action to recommend the repeal of 22 TAC §535.214, Examinations. Larry wanted to know how many inspectors would be affected. Fred sub-committee had a different proposal than staffs'. Larry many inspectors will not go beyond apprenticeship. Larry why would not business owner know what his/her helper needs. Brad moved to leave existing apprentice rules as they are and Fred seconded. Two nays. The motion carried.
4. Discussion and possible action to recommend new rules:
 - a. 22 TAC §535.201, Definitions. Fred moves to accept as presented by staff. Brad seconds. It passed unanimously.
 - b. 22 TAC §535.209, Examinations. Staff recommends lowering the pass rate as in the past. Brad moves to leave it alone. Ray seconds. Motion carried one vote against it.
 - c. 22 TAC §535.214, Providers of Real Estate Inspection Courses. Fred moves to put education committee and others' proposal forward with minor changes from typing for real estate inspector. Add materials from enforcement cases of the previous-year. Brad seconds. Passed unanimously. Professional Inspector will have same as real estate inspector additional hours will be elective. Fred moved Brad seconded motion passed unanimously. Fred moves to accept staff proposal for two-year approval for courses from effective date before updates. Brad seconds the motion. Motion passed unanimously.

5. Discussion and possible action to recommend amendments to:
 - a. 22 TAC §535.206, The Texas Real Estate Inspector Committee. Should we have six-year terms? Staff recommends two-year terms. Difficult to get people to serve six-year terms. Brad moves to leave it at six-year terms. Fred seconded. Motion carried unanimously.
 - b. 22 TAC §535.212, Education and Experience Requirements for an Inspector License. Copy from realtor side. Devon will prepare for next meeting. Section 4 who can provide education propose shall get pre-approval. Education sub-committee will make recommendations about courses submitted for pre-approval.
 - c. 22 TAC §535.213, Schools and Courses of Study in Real Estate Inspection
 - d. 22 TAC §535.215, Inactive Inspector Status
 - e. 22 TAC §535.216, Renewal of License or Registration. Staff wants it electronically. Jill moved to accept staffs' recommendation and Fred seconded it. Passed unanimously.
 - f. 22 TAC §535.218, Continuing Education
 - g. 22 TAC §535.221, Advertisements
 - h. 22 TAC §535.222, Inspection Reports Proposal b1 name license will add all who participate. Brad moved for this with clean up by Devon. Fred seconded the motion. Motion passed unanimously. Promptly deliver report in 3 days unless otherwise specified. Brad moved Fred seconded. Passed unanimously.
 - i. 22 TAC §535.226, Sponsorship of Apprentice Inspectors and Real Estate Inspectors.

NEW BUSINESS

6. Discussion and possible action regarding TREC legislative items related to inspector issues. Add 16 hours pre-license education for apprentices. Brad moves not to require. Ray seconded. Motion carried one nay. Technical clean up change or to and for SOP legal ethics education. Change 8 to 10 hours for SOP education. Jill moved to accept changes Fred seconded for changes to 109. Motion passed unanimously. Change 6-12 months for application for license to be open need to get computers aligned. This will also change retest options for those who fail initially. Brad moves to accept staff recommendations on this Fred seconded. Motion passed unanimously. Jill accept staff proposal on payments. Fred accepted. Passed unanimously. Professional liability and recovery fund changes. Jill made motion to repeal e and o with varying payments to the recovery fund based on maintaining e and o. Insurance must be available if no repeal. Brad and Fred seconded. Motion passed unanimously.
7. Discussion and possible action to make recommendation to the Commission regarding use of the National Home Inspector Examination. October exam review who should be at item writing.

FUTURE MEETINGS AND ADJOURNMENT

8. Request for new business agenda items. Clarification 18 from April 26. Inspectors with mental problems. Energy maintenance audit and repair. One year to do other services from inspection ethics should be reviewed.
9. Scheduling of future meetings
10. Adjourn

Agenda Item 3:

Election of chair, vice-chair, and secretary

Summary:

Texas Administrative Code, Title 22, Part 23, Chapter 535, Subchapter R §535.206

(e) At a regular meeting in February of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

Motion:

MOVED, that _____ be chair,
that _____ be vice chair
and that _____ be secretary.

a.

Insulation depth

You asked:

1. What level of precision is expected for the “approximation” of average insulation depth?
2. Would TREC consider all of these examples to be acceptable reporting methods to meet the SOP requirements?
 - a) About 6 inches
 - b) Approximately 4 to 8 inches
 - c) Varies from 4 to 10 inches
 - d) 8-10 inches
 - e) 4 ½ to 12 ½ inches

Section 535.228(g)(1)(B) requires inspectors to report “the presence of an approximate average depth of attic insulation and thickness of vertical insulation, when visible.” We are unable to prescribe a certain “level of precision” that would satisfy this requirement; any of the examples you presented would satisfy the requirement to report the depth of insulation, as long as they accurately reflect the conditions.

Please note that this response applies only to the specific facts contained in the question and does not add to or change the minimum standards of practice for real estate inspections. We encourage you to review the standards of practice often for relevant updates. You can find the Standards of Practice on the agency website at <http://www.trec.state.tx.us/pdf/rules/TRECRules.pdf> (beginning at Section 535.227 of the TREC Rules).

b.

Corrugated stainless steel tubing

You asked:

- Is a TREC inspector required to report the presence of CSST as a deficiency?
Is the TREC inspector required to inform the client of the CSST litigation history?
Is the TREC inspector required to advise the client of the potential dangers inherent in the use of this product?

The mere presence of corrugated stainless steel tubing (CSST) is not, in itself, required to be reported as a deficiency, nor are inspectors required to notify the client of the litigation history or the risks associated with CSST. However, it would be prudent to make one’s client aware of such issues, and if the inspector observes any adverse conditions with regard to the materials, etc., that must, of course, be reported in accordance with the Standards of Practice.

Please note that this response applies only to the specific facts contained in the question and does not add to or change the minimum standards of practice for real estate inspections. We encourage you to review the standards of practice often for relevant updates. You can find the Standards of Practice on the agency website at <http://www.trec.state.tx.us/pdf/rules/TRECRules.pdf> (beginning at Section 535.227 of the TREC Rules).

c.

Fences and decks

You asked:

1. Is the inspector required to inspect fences that are attached to the structure?

2. Is a deck that simply rests upon a balcony considered detached and not required for inspection?

Section 535.227(b)(3) states the following general limitation: “The inspector is not required to: (A) inspect:(iii) detached structures, decks, docks, fences, or waterfront structures or equipment.” Section 535.228(s)(1) requires the inspection of “balconies, attached carports, and attached porches and abutting porches, decks, and balconies that are used for ingress and egress.”

1. Fences are not required to be inspected, even if attached to the structure. However, if a fence is attached to the structure, and the attachment point is deficient (such as an unsealed bolt that has allowed water penetration into the structure), that would be required to be reported.

2. A deck that “rests upon a balcony” may not be secured to the balcony or the structure, but it is not “detached,” so it would be required to be inspected.

Please note that this response applies only to the specific facts contained in the question and does not add to or change the minimum standards of practice for real estate inspections. We encourage you to review the standards of practice often for relevant updates. You can find the Standards of Practice on the agency website at <http://www.trec.state.tx.us/pdf/rules/TRECRules.pdf> (beginning at Section 535.227 of the TREC Rules).

TITLE 22

EXAMINING BOARDS

PART 23

TEXAS REAL ESTATE COMMISSION

CHAPTER 535

GENERAL PROVISIONS

SUBCHAPTER R

REAL ESTATE INSPECTORS

RULE §535.223

Standard Inspection Report Form

The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7A-1, approved by the Commission in 2008, and Property Inspection Report Form REI 7-2, approved by the Commission in 2009, for use in reporting inspection results. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property shall be reported on Form REI 7A-1 or Form REI 7-2 adopted by the Commission ("the standard form").

(2) Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section, the inspector shall reproduce the text of the standard form verbatim and the spacing, length of blanks, borders, and placement of text on the page must appear to be identical to that in the printed version of the standard form.

(3) An inspector may make the following changes to the standard form:

(A) the inspector may delete the line for name, license number, and signature of the sponsoring inspector if the inspection was performed solely by a professional inspector;

(B) the inspector may change the typeface, provided that fonts are no smaller than those used in the printed version of the standard form;

(C) the inspector may use legal sized (8-1/2" by 14") paper;

(D) the inspector may add a cover page to the report form;

(E) the inspector may add footers to each page of the report except the first page and may add headers to each page of the report;

(F) the inspector may place the property identification and page number at either the top or bottom of the page;

(G) the inspector may add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(H) the inspector may list other items in the appropriate section of the form and additional captions, letters, and check boxes for those items;

(I) the inspector may delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(J) the inspector may delete Subsection L., Other, of Section I., Structural Systems;

(K) the inspector may allocate such space in the "Additional Information Provided by the Inspector" section and in each of the spaces provided for comments for each inspected item as the inspector deems necessary or may attach additional pages of comments to the report; and

(L) if necessary to report the inspection of a part, component, or system not contained

in the standard form, or space provided on the form is inadequate for a complete reporting of the inspection, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the Commission.

(4) The inspector shall renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, and/or deficient and shall explain the findings in the appropriate space on the form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client; or
(B) inspections performed for or required by a lender or governmental agency;
(C) inspections for which federal or state law requires use of a different report; or
(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

(E) inspections of a single system or component of a property performed for a buyer or seller and the buyer or seller requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a buyer or seller in accordance with the buyer or seller's requirements. The report is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the buyer or seller does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

Source Note: The provisions of this §535.223 adopted to be effective February 1, 2009, 33 TexReg 9241; amended to be effective September 13, 2009, 34 TexReg 6338

535.219 Schedule of Administrative Penalties

(a) The commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 of the Texas Occupations Code in addition to assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration the criteria listed in §1101.702(b) of the Texas Occupations Code.

(c) An administrative penalty range of \$100-\$1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.118; *failure to report change of address*
- (2) §1102.364; *failure to notify consumers of recovery fund*
- (3) 22 TAC §535.216(d); *failure to provide information requested for a renewal*
- (4) 22 TAC §535.220(a)-(d); *standards of conduct*
- (5) 22 TAC §535.221; and *advertising violations*
- (6) 22 TAC §535.223; *form violations*

(d) An administrative penalty range of \$500-\$3,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.301; *negligent or incompetent inspection*
- (2) 22 TAC §535.222; *failure to provide a written inspection report w/ required info*
- (3) 22 TAC §535.224(b)(1)-(3); *failure to provide info or make good on bad check*
- (4) 22 TAC §535.226(d)-(e); and *failure to properly supervise sponsored inspector*
- (5) 22 TAC §535.227-.233. *Standards of Practice violations*

(e) An administrative penalty of \$1,000-\$5,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.302; *agreement for specific report; dishonesty*
- (2) §1102.303; *acting as inspector and undisclosed principal/broker or salesperson*
- (3) §1102.304; *repairs on inspected property*
- (4) 22 TAC §535.208(f); *procuring a license by fraud*
- (5) 22 TAC §535.211; *failure to maintain insurance while license is active*
- (6) 22 TAC §535.215; *inspecting while license is on inactive status*
- (7) 22 TAC §535.220(e)(1),(3)-(7); and *inspecting under contingent arrangements, impermissible referral fees, repairs within 12 months*
- (8) 22 TAC §535.224(b)(4)-(5). *failure to maintain insurance while license is active or notify commission of cancellation or nonrenewal*

(f) The commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Texas Occupations Code, if a person has a history of previous violations.