



**TEXAS REAL ESTATE INSPECTOR COMMITTEE  
MEETING AGENDA**

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

**Friday, April 1, 2011 at 10:00 a.m.**

CALL TO ORDER AND MINUTES

1. Call to order
2. Discussion and possible action to excuse absences
3. Minutes of the February 25, 2011 meeting

REPORTS

4. Administrator's report, including an update regarding agency activities, legislation, licensing, education, enforcement, recovery fund, technology issues, and questions from Committee members regarding the report
5. Subcommittee reports and questions from Committee members regarding reports from the:
  - a. Standards of Practice subcommittee, including an update regarding possible changes to the standards of practice
  - b. Commentary subcommittee, including an update regarding the development of a commentary on the standards of practice
  - c. 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
  - d. Education subcommittee, including an update regarding the approval of continuing education courses offered by proprietary schools and trade associations

PUBLIC COMMENTS

6. General comments from visitors

## PENDING BUSINESS

7. Discussion and possible action to make a recommendation to the Commission regarding the National Home Inspector Examination
8. Discussion and possible action to recommend amendments to 22 TAC §535.219, Schedule of Administrative Penalties
9. Discussion and possible action to request that a draft of the "commentary" materials be posted on the inspector page of the agency website for public input
10. Discussion and possible action regarding requests for interpretation about:
  - a. reporting requirements for fences and decks
  - b. gas line materials
  - c. number of layers of roof covering materials
11. Discussion and possible action regarding TREC legislative items related to inspector issues

## NEW BUSINESS

12. Discussion and possible action to request that an article regarding common inspection complaints and reporting errors be posted on the inspector page of the agency website
13. Discussion and possible action regarding awarding continuing education credit for assisting in teaching courses
14. Discussion and possible action to make recommendations to the Commission regarding curriculum guidelines for the new 6-hour Standards of Practice/Legal Update/Ethics course

## FUTURE MEETINGS AND ADJOURNMENT

15. Request for new business agenda items
16. Scheduling of future meetings
17. Adjourn

**TEXAS REAL ESTATE INSPECTOR COMMITTEE  
MEETING MINUTES**

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

**Friday, February 25, 2010 at 10:00 a.m.**

**CALL TO ORDER AND MINUTES**

1. Call to order; Brian Murphy called to order at 10:06 am. Guests: Jonanthan Lang, Mark Walker, Michael Moran, Mike Cothran, Larry Foster, Bill Deitrich, Joe Gonzales, Fred Buck, Mike Boyette. Staff: Loretta Dehay, Christine, Sharon Harris, Kyle, Devon Bijansky, Douglas Oldmixon. Committee present: Brad Phillips, Fred Wilcox, Brian Murphy, Curtis Carr, Steven Reinhart, Greg Akin and Nancy Carroll.
2. Minutes of the July 21, 2010 meeting; Fred moved to accept and Brad seconded. No discussion. Motion passed unanimously.

**ELECTION OF OFFICERS AND SUBCOMMITTEE APPOINTMENTS**

3. Election of chair, vice-chair, and secretary. New appointees welcomed Steven Reinhart, Greg Akin, Nancy Carroll. Brad moved Fred Wilcox as Chair, Jill seconded. Motion passed unanimously. Brian Murphy nominated as vice chairperson by Curtis, seconded by Brad passed unanimously. Jill secretary by Brad seconded Fred, passed unanimously. Introduction of committee and staff. Presentation of gavel to Larry Foster, certificates to Ray Amendarez and Linda Robecheaux.
4. Appointment of subcommittees. SOP committee: Brian Murphy to be chairperson, Curtis Carr to chair education. Proposal to have education awards. Commentary Jill Frankel to chair Curtis Carr and Fred Wilcox members. Enforcement to be chaired by Brad Phillips, Jill Frankel and Fred Willcox to serve. Greg Akins to serve on education. Nancy Carroll to serve on Standards of Practice. Steven Reinhart to serve on SOP.

**REPORTS**

5. Douglas Oldmixon TREC appropriation baseline so far has not been cut. Planning for move downtown to Steven F. Austin building after July 4th holiday. Struggling with technology because of limited access to website. Last night a second T1 line was installed. This seems to be helping. Resources are available to increase to 4 T1 lines. Steven F. Austin building has a fiber optics system that has more capabilities than 4 T1 lines.

6. 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. Sharon Harris reported. Open and closed complaints FY 2010 closed more than received. Versa impeded full data gathering.
7. 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. Douglas Oldmixon reported 2096 professional inspectors 771 inactive. 92 3real estate inspectors 21 inactive 60 apprentice inspectors 15 inactive. 055 inspectors down 370 from August. 148 exams for professional inspectors September through January 132 individuals tested. 37 passed on the first try 28% for professional real estate 9 tried 4 passed on first try that is 44%. Total examinations 44% passing rate includes subsequent takers. Are schools still in jeopardy for recertification in jeopardy? The answer is yes. Four years back from date of previous renewal. Recovery Fund 638,000 dollars are in it. Reserved 4266 for next days to make payments. Brian why is e & o not covering this. Complaint may be started before e and o requirement of beyond the amount of e and o. Legislature can take money for the general fund if there is over 600,000.
8. 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. Commentary has met and has draft for public comments.
  - 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. Met and came up with a penalty matrix.
  - c. Education subcommittee, including an update regarding the approval of continuing education courses offered by proprietary schools and trade associations. Education has not met due to change in computer systems.
  - d. The chairman read responsibilities of committee members.

#### PUBLIC COMMENTS

9. General comments from visitors. Break After resumption Devon Bijansky clarified some items with the open meetings act.

#### PENDING BUSINESS

10. Discussion and possible action to provide responses to requests from the public regarding:
  - a. Requirement to report approximate depth of insulation. Staff's proposed answer was liked by all.
  - b. Reporting requirements regarding corrugated stainless steel tubing (CSST). Brian moves not to accept the current response because CCST is still legal to use. Brian moves Fred Buck says it may be covered under plumbing. Deleted second sentence first part "However...and".

- c. Reporting requirements for fences and decks. Joe Gonzales balcony does not have supports, while a deck does. Brian wants clarification on this question. Motion for part 1 passed. Motion for part 2 Brian wants questioner to clarify the question passed. Nancy seconded.

## NEW BUSINESS

11. Discussion and possible action to adopt a code of conduct for Committee members. Douglas Oldmixon. Examples to be brought at a future date.

12. Discussion and possible action to recommend amendments to 22 TAC §535.223, Standard Inspection Report Form. Referred to SOP committee

13. Discussion and possible action to recommend new 22 TAC §535.219, Schedule of Administrative Penalties. Ms. Harris presented draft of schedule of administrative penalties. Brad moved Brian seconded that it be sent to commission for posting for rule making. Mike Cothran wants this to be more specific. Ms. Bijansky explained that staff could not impose this without going to SOA. Motion passed.

14. Discussion and possible action to make recommendations to the Commission regarding Property Condition: Access, Inspections, and Utilities paragraph of TREC contract forms. Brian Murphy reported. Start discussion recommending changes for realtors. Seller shall have existing utilities turned on for inspections. Currently there are a lot of vacant homes without utilities. If seller fails to have utilities on or access available to house, seller to reimburse the buyer and pay any reasonable fees up to price of initial inspection. Referred it to Brian's sub-committee.

15. 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. Curtis commentary open forum but very little participation. Wants industry to look and comment. Brian this was done with SOP. Mike Moran regarding comments have learned from commentary. Public not likely to read it or understand it. Devon Bijansky clarifying Mr. Oldmixon's comments feedback less helpful since do not know whether this will be a rule or education materials. Trade associations members have offered to take it to their members. Brad motion for TREC to provide link and provide to associations, Nancy seconded. Mike Cothran suggestions ask feedback go to TREC. Is there a need for the commentary, if there is a need does this fulfill the need, what changes would you want to see to this document. Does this fit in the rules, sop, enforcement, education? Motion amended to include the above. Motion carried.

16. Discussion and possible action regarding TREC legislative items related to inspector issues. Drafting at legislative council for clean up bill. Looking for sponsors. Nichols and Harliss have agreed and filed repeal mandatory e/o. Compromise may involve recovery fund.

17. 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

18. Discussion and possible action on items considered in executive session Motion to approve changes to exam items TXH1000687 and TXH1000688 as were discussed in Executive Session.

19. 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. Fred Buck serves on National Board. Recommendation that all committee members take the test and have this on the next agenda.

20. Discussion and possible action to make a recommendation to the Commission regarding TREC's ownership of the inspector exam item bank. Acknowledged exam questions being used in CT and SC. Staff's position is there is no harm if questions are used. Mike Moran feels questions are best kept just for Texas. Brad moved to let them use the 50 currently in use but no more Steve seconded motion passed.

#### FUTURE MEETINGS AND ADJOURNMENT

21. Request for new business agenda items Brian wants education to address 6 hours of legal and ethics needed to maintain license. Bijansky does not take effect until September. Education sub-committee should make an outline. So providers know they are on the right track.

22. Scheduling of future meetings April 1.

23. Adjourn 4:30

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 violations)
- (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) §1102.101;** (unlicensed activity -- apprentice)
- (2) §1102.102;** (unlicensed activity – real estate inspector)
- (3) §1102.103;** (unlicensed activity – professional inspector)
- (4) §1102.302;** (agreement for specific report; dishonesty)
- (5) §1102.303;** (acting as inspector and undisclosed principal/broker or salesperson)
- (6) §1102.304;** (repairs on inspected property)
- (7) 22 TAC §535.208(f);** (procuring a license by fraud)
- (8) 22 TAC §535.211;** (failure to maintain insurance while license is active)
- (9) 22 TAC §535.215;** (inspecting while license is on inactive status)
- (10) 22 TAC §535.220(e)(1),(3)-(7); and** (inspecting under contingent arrangements, impermissible referral fees, repairs within 12 months)
- (11) 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.**

## Agenda item 10

### **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?

(Clarification of question: Imagine your desk surface is 5 feet by 3 feet. On the floor is a wood deck that is 5 feet by 3 feet. It is not secured. Pick it up and lay it flat upon on your desk. The deck is now simply resting upon your desks surface. It is not attached.)

### Draft response

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.

### **Gas line materials**

We are in receipt of your inquiry regarding the following provisions of the Standards of Practice for inspectors, 22 TAC §535.233:

(7) Gas supply systems. The inspector shall:

(B) report as deficient:

- (ii) deficiencies in the condition and type of gas piping, fittings, and valves

You asked:

1. Is the presence of copper gas line material deficient?
2. Is the inspector required to research codes and ordinances?
3. What type(s) of materials would be considered deficient regarding gas lines? Examples would be helpful. Examples might be: PVC, CPVC, clear plastic tubing, PEX pipe, polybutylene.

First, it is important to keep in mind that gas supply systems are an optional inspection item. Pursuant to Section 535.227(b)(3)(C)(i), inspectors are not required to determine utility sources. Accordingly, they are not required to research codes and ordinances related to this issue. As copper gas line material is only a concern in areas where there may be corrosive additives in the gas supply, the presence of copper gas line material is not required to be reported as deficient. Note, however, that inspectors are not prohibited from exceeding this minimum standard.

### **Number of layers of roof covering materials**

We are in receipt of your inquiry regarding the following provision of the Standards of Practice for inspectors, 22 TAC §535.228:

- (e) Roof covering materials. The inspector shall:

(3) report as Deficient:

(A) a roof covering that is not appropriate for the slope of the roof;

...

(f) Specific limitations for roof covering. The inspector is not required to:

(3) determine the number of layers of roof covering material;

You asked:

If the inspector is not required to determine the number of layers of roofing material, how then shall he fulfill the requirement to determine if the roof covering is not appropriate for the slope of the roof?

We do not understand your question, as the number of layers of roofing does not bear on the appropriateness of the roofing in light of the slope of the roof.

## 2011 Legislative Update

Each of the following bills has a hyperlink to information about the bill, including the text, on the Texas Legislature website.

[HB 1680](#) by Geren; [SB 1000](#) by Eltife et al – Provides for self-directed, semi-independent (SDSI) status for TREC

*No action taken in Committee 3/15/11; Considered in public hearing 3/22/11*  
TREC, TALCB

[HB 937](#) by Harless; [SB 379](#) by Nichols – Repeals the requirement that inspectors have professional liability (errors and omissions) insurance to obtain or renew a license

*Referred to LAP 2/24/11; Referred to Business and Commerce 2/2/11*  
TREC, IC

For more information regarding the 82<sup>nd</sup> Regular Session of the Texas Legislature and other pending legislation, the Texas Legislature's website is [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

**TITLE 22**            **EXAMINING BOARDS**  
**PART 23**            **TEXAS REAL ESTATE COMMISSION**  
**CHAPTER 535**       **GENERAL PROVISIONS**  
**SUBCHAPTER R**      **REAL ESTATE INSPECTORS**  
**RULE §535.218**      **Continuing Education**

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- (a) Effective September 1, 2011, continuing education for renewal of a real estate inspector or professional inspector license must include six hours of Texas Standards of Practice/Legal/Ethics Update.
- (b) Except as provided by this section, real estate inspection courses submitted by professional inspectors or real estate inspectors to satisfy the requirements of §1102.205 of Chapter 1102 for continuing education must qualify for core inspection credit under §535.212 of this title (relating to Education and Experience Requirements for a License).
- (c) In addition to the core real estate inspection courses defined in §1102.001(5) of Chapter 1102 and §535.212 of this title, the commission also will accept a course related to wood-destroying insects, radon, asbestos, lead, or other hazardous substances to satisfy continuing education requirements.
- (d) Courses submitted for continuing education credit must be successfully completed during the term of the current license. The commission may not grant continuing education credit twice for the same course taken by a licensee within a 2-year period.
- (e) Other than for correspondence courses or courses offered by alternative delivery methods, such as by computer, completion of a final examination is not required for a licensee to obtain continuing education credit for a course.
- (f) A professional inspector or real estate inspector who fails to renew a license that is subject to continuing education requirements and who files an application for renewal within one year after the previous license has expired must provide evidence satisfactory to the commission that the applicant has completed any continuing education that would have been required for timely renewal of the previous license. Continuing education courses submitted toward renewal of a license must have been completed during the license period.
- (g) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status but must satisfy continuing education requirements before returning to active status.
- (h) Providers may request continuing education credit be given to instructors of core real estate inspection courses subject to the following guidelines.
- (1) The instructors may receive credit for only those portions of the course which they teach.
  - (2) The instructors may receive full course credit by attending all of the remainder of the course.
- (i) The commission will not grant partial credit to an inspector who attends a portion of a course.
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**Source Note:** The provisions of this §535.218 adopted to be effective February 11, 1992, 17 TexReg 680; amended to be effective December 21, 1993, 18 TexReg 9103; amended to be effective September 15, 1994, 19 TexReg 6915; amended to be effective January 1, 2001, 25 TexReg 11653; amended to be effective June 27, 2002, 27 TexReg 5521; amended to be effective May 11, 2004, 29 TexReg 4487; amended to be effective December 29, 2005, 30 TexReg 8693; amended to be effective January 1, 2011, 35 TexReg 11693