

**TEXAS REAL ESTATE INSPECTOR COMMITTEE
MEETING AGENDA**

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

Friday, June 24, 2011 at 9:00 a.m.

CALL TO ORDER AND MINUTES

1. Call to order
2. Discussion and possible action to excuse absences
3. Discussion and possible action to recognize former Texas Real Estate Commission chair John Eckstrum
4. Minutes of the April 1, 2011 meeting

REPORTS

5. Administrator's report, including an update regarding agency activities, legislation, and questions from Committee members regarding the report
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
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
8. Staff and Support Services Division report, including an update regarding the Texas Real Estate Inspector Recovery Fund
9. 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

10. General comments from visitors

PENDING BUSINESS

11. Discussion and possible action to recommend adoption of new 22 TAC §535.219, Schedule of Administrative Penalties
12. 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

NEW BUSINESS

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 make recommendations to the Texas Real Estate Commission regarding revisions to the Standards of Practice, 22 TAC §§535.227-.233
15. Discussion and possible action to make recommendations to the Texas Real Estate Commission regarding revisions to 22 TAC §535.223, Standard Inspection Report Form, including possible action to recommend the repeal of Form REI 7A-1 and update Form REI 7-2
16. Discussion and possible action to recommend that the Commission appoint a task force to research requirements related to mandatory professional liability insurance for inspectors
17. Discussion and possible action to recommend that the Commission appoint a task force to research the timing of real estate inspections within real estate transactions
18. Discussion and possible action to recommend that the Commission appoint a task force to research legislative requirements and deadlines for the 2013 legislative session
19. Discussion and possible action to plan a public forum to obtain input from inspector licensees about whether the current Standards of Practice sufficiently address inspections in rural areas

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 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 10:12 am

Committee members present

Fred Willcox
Brian Murphy
Curtis Carr
Brad Phillips
Steven Rinehart
Greg Eakin
Jill Frankel (by phone)

2. Discussion and possible action to excuse absences – absence of Nancy Carroll excused
3. Minutes of the February 25, 2011 meeting

Motion to except Brad Phillips / Seconded by Curtis Carr. No Discussion / Passed Unanimously.

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

Douglas Oldmixon General Staff Report.

- TREC has upgraded and repaired some of the technology problem.
- TREC is on track to move to the Steven F. Austin building in downtown Austin in July.
- Shared the inspector licensing numbers with the committee. There are approximately 3459 licensees in all categories.
- Legislative: TREC is tracking six bills at this time.
 - General housekeeping bill has passed the House.
 - Appraiser cleanup bill has passed the House and Senate Bill is pending.
 - Discussed the HB 1680 / SB 1000 – Self-directed, semi-independent status for TREC.

- Discussed HB 937 / SB 379 – Repeal of the mandatory requirement of E & O insurance. The bill is currently held up in Committee.
 - There was some discussion on a possible replacement for the bill if it were to move forward.
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
 - Brian reported that the Standards of Practice subcommittee has not met to date. The SoP subcommittee will meet within the next two weeks.
 - b. Commentary subcommittee, including an update regarding the development of a commentary on the standards of practice
 - Jill Frankel stated the subcommittee has met and they are ready to submit the commentary to the full committee in an upcoming agenda item.
 - 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
 - TREC staff attorney Sharon Harris gave a report on specific complaints currently being handled by TREC.
 - Brad Phillips reported that there have been some items added to the penalty matrix.
 - d. Education subcommittee, including an update regarding the approval of continuing education courses offered by proprietary schools and trade associations
 - Curtis Carr gave a report that the Education subcommittee had a brief meeting this morning and discussed the National Home Inspector Exam and the newly required SoP / Legal and Ethics course.

PUBLIC COMMENTS

6. General comments from visitors
No Comments were made by the general public.

PENDING BUSINESS

7. Discussion and possible action to make a recommendation to the Commission regarding the National Home Inspector Examination
- Don Lovering gave a presentation on behalf of the National Home Inspector Examination (NHIE).
 - Steven Rinehart stated he had an opportunity to take the NHIE and he felt that it was a pretty good exam.
 - Greg Eakin asked Don Lovering to expound on the ability to have a Texas module of the NHIE.
 - There was discussion on the possibility of having two different grading levels for the inspector and professional inspector exams.

- Brad Phillips requested first time pass rate and second time pass rate from other states. Don Lovering shared some of those numbers.
 - Fred Willcox took the exam and feels that the NHIE was a pretty good exam and does not have a problem changing over.
 - Gwen Jackson stated that as TREC Education Director, her only concern is that TREC can confirm that staff is able to make sure that all test questions have specific source / reference material.
 - Tadas Dabsys from PSI discussed different considerations to keep in mind if TREC switched from an in-house exam content to NHIE content.
 - There was discussion on having two modules as part of the NHIE. A 200-question NHIE and a second 50-75-question Texas module for a total of 250-275 test questions.
 - Brad Phillips made a motion to change over to start using the NHIE as the inspector examination provider. Curtis Carr seconded the motion. Don Lovering and Tadas Dabsys fielded several questions during the discussion of the motion. Devon Bijansky and Loretta DeHay gave some legal advice on the change over recommendation.
 - There was a vote made and passed unanimously.
8. Discussion and possible action to recommend amendments to 22 TAC §535.219, Schedule of Administrative Penalties
- Kerri Galvin TREC Staff reported on the administrative penalties and had a recommended change to the penalty matrix before sending it to the Commission.
 - Michael Moran spoke on behalf of TPREIA, stating that he believes the penalty matrix is very confusing and difficult for the industry to understand.
 - Devon Bijansky spoke to give some clarity on the draft copy that has been circulating in the industry circles.
 - Brad Phillips made a motion to expect the administrative penalties as amended as recommended by Kerri Galvin and send it to the Commission to svvr[y and to send it to be posted on the Texas Register. . Curtis Carr seconded. The motion passed unanimously
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
- Douglas Oldmixon opened discussion on the commentary. He discussed that the commentary has developed into a document that TREC legal staff will not be able to enforce.
 - Jill Frankel stated that the Commentary subcommittee met and believes that the commentary is as complete as it can be at this time and is ready to be reviewed by the general inspection industry and general public and is ready to be posted to the TREC website as voted on in the February meeting.
 - Devon Bijansky spoke and reiterated Douglas Oldmixon's earlier statements.
 - Loretta DeHay spoke to clarify some of the legalities of the way the commentary is currently written.
 - The general consensus of the Committee is that the commentary is ready to be posted to the TREC website and directed TREC staff to have the commentary posted and all feedback be returned back to the Education subcommittee.
10. Discussion and possible action regarding requests for interpretation about:

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.

- a. reporting requirements for fences and decks
 - Discussed and response approved.
 - b. gas line materials
 - Discussed and response approved.
 - c. number of layers of roof covering materials
 - Discussed and response approved.
11. Discussion and possible action regarding TREC legislative items related to inspector issues
- Douglas Oldmixon made himself available to take question on TREC Legislative matters.
 - SB 379 was discussed again. The same subject matters as agenda item 4.
 - Steven Rinehart made a motion to add items to a substitute Bill 379 to help move inspector related cleanup items to the existing Bill 379. Seconded by Curtis Carr.
 - Gerald Jamail #8561 – Spoke in opposition to required E & O.

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
- Kerri Galvin, Director of Enforcement, spoke regarding the way the complaint responses have been consolidated and how to prepare them to be posted to the TREC website. It was agreed that a document would be created and posted to the TREC website once a quarter.
13. Discussion and possible action regarding awarding continuing education credit for assisting in teaching courses
- Fred Willcox spoke on the possibility of creating a new rule that will allow for an individual to receiving continuing education credit for teaching a educational course or educational field training course.
 - Devon Bijansky stated that a rule already exists and that would fit into the concept of the agenda item.
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
- Brad Phillips made a motion to allow staff to create an education outline for the SoP/Legal/Ethics 2 hours legal / 2 hours ethics and 2 hours SoP. Seconded by Steven Rinehart. After some discussion, the motion passed unanimously

FUTURE MEETINGS AND ADJOURNMENT

15. Request for new business agenda items
- a. Brian – Address the earnest money contract Paragraph 7.
16. Scheduling of future meetings
June 24, 2011 at 9 am
17. Adjourned

535.219 Schedule of Administrative Penalties

The Texas Real Estate Commission (TREC) proposes §535.219, Schedule of Administrative Penalties. The new rule establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with Section 1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Subchapter O, Chapter 1101 (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. The rule was developed by the Texas Real Estate Inspector Committee's enforcement subcommittee and endorsed by the Committee.

Devon V. Bijansky, Deputy General Counsel, has determined that, for each year of the first five years that the rule is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule, nor is there any anticipated impact on local or state employment.

Ms. Bijansky has also determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule will be the consistent, fair and efficient administration of contested cases based upon objective standards and that there is no probable economic cost to persons required to comply with the rule, as persons against whom administrative penalties will be imposed in accordance with this matrix would already be subject to administrative penalties under Section 1102.403 of the Texas Occupations Code. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the rule.

Comments on the proposed rule may be submitted to Devon V. Bijansky, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of Chapter 1102 to ensure compliance with the provisions of the chapter.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code, or article is affected by the proposed rule.

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 or instead of 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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on May 2, 2011.

Devon V. Bijansky
Deputy General Counsel
Texas Real Estate Commission

Sent: Thursday, May 26, 2011 12:51 PM
To: loretta.dehay@trec.state.tx.us
Subject: Penalty matrix

I am opposed to the implementation of this matrix as I feel the penalties are disproportioned to the violations. Since we now are forced to carry E&O insurance the consumer has an avenue of restitution. The establishment of a matrix solution should be to determine education needs of the inspectors and not disciplinary. Your agency is systematically assuming an adversarial role against anyone licensed in this State. Consumer protection is necessary but this is to extreme.

Luis Alvarez
License #4939

The attached file is the TPREIA Survey results concerning the TREC Penalty Matrix. We wanted to share this with you. Response was good and comments excellent.

Best Regards,

Paul W. Roebuck, Sr.

Paul W. Roebuck, Sr. MTI, CPI, ACI

Founding President

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President 2008-2010

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Constant Contact Survey Results

Survey Name: June Matrix Penalty Survey
 Response Status: Partial & Completed
 Filter: None
 Jun 17, 2011 8:11:10 AM

1. Are you aware of the TREC's Penalty Matrix?

	Number of Response(s)	Response Ratio
Yes	119	70.4%
No	15	8.8%
No Responses	35	20.7%
Total	169	100%

27 Comment(s)

2. Have you reviewed TREC's Penalty Matrix?532.219 Schedule of Administrative Penalties

	Number of Response(s)	Response Ratio
Yes	90	53.2%
No	37	21.8%
Other	7	4.1%
No Responses	35	20.7%
Total	169	100%

3. How concerned are you with the Penalty Matrix?

	Number of Response(s)	Response Ratio
Very concerned	86	50.8%
Somewhat concerned	31	18.3%
Neutral	7	4.1%
Somewhat unconcerned	4	2.3%
Very unconcerned	6	3.5%
No Responses	35	20.7%
Total	169	100%

25 Comment(s)

4. How interested are you in following the approval or changes in the penalty matrix? Select all that apply.

	Number of Response(s)	Response Ratio
When it affects my business.	96	72.1%
When it affects my wallet.	78	58.6%
When it changes in any way	81	60.9%
When actual meetings occur on this topic.	56	42.1%
When TPREA provides update information on this issue.	58	43.6%
Other	6	4.5%
Total	133	100%

7 Comment(s)

5. Which of the following factors would you like to see changed? Select all that apply.

	Number of Response(s)	Response Ratio
Make penalties fines reasonable and fair.	96	71.6%
Make penalty fines better fit the violation.	96	71.6%
Create a peer review board with hearings prior to a fine being assessed.	99	73.8%
Flexibility in the amounts of the penalty fines.	70	52.2%
Have a statute of limitations and a lower cap on the penalty fines.	101	75.3%
Have a letter of reprimand prior to issuing a fine amount.	98	73.1%
Allow a continued education class on violation matter instead of a fine.	95	70.8%
Limit fines or penalties to the cost of the inspection fee.	95	70.8%
Eliminate daily fines.	108	80.5%
Eliminate double fines.	109	81.3%
Make lines applicable only to the area of a complaint. Not the entire report.	112	83.5%
Eliminate fine if a correction of the violation is made by the Inspector.	96	71.6%
Make a peer review board that is rotating and not made up of IAC Members.	86	64.1%
Inspectors should not receive fines based on a sellers complaint.	101	75.3%
Other	9	6.7%
Total	134	100%

18 Comment(s)

6. What do you think would be a justified cause for the TREC to impose a fine on an Inspector? Select all that applies.

	Number of Response(s)	Response Ratio
Not reporting on a required TREC Standard of Practice item.	83	62.4%
Not using the required TREC report form.	92	68.1%
Performing inspections when not having an active TREC Inspectors License.	123	92.4%
Not maintaining the required E&O insurance while license is active or notify	90	67.6%
Not providing the client a written report within 3-days of the inspection.	77	57.8%
Inspector not performing an inspection based on the TREC SoP.	92	69.1%
Failure to report a change of address.	43	32.3%
Failure to notify consumer of recovery fund.	33	24.8%
Failure to provide information requested for a renewal license.	52	39.0%
Violations of standards of conduct.	93	69.9%
Advertising violations.	54	40.6%
Negligent or incompetent inspection.	106	79.6%
Failure to provide a written inspection report w/required information.	84	63.1%
Failure to provide information or make good on a bad check.	61	45.8%
Failure to provide properly supervise sponsored inspector.	71	53.3%
Standard of practice violations.	86	64.6%
Agreement for specific report, dishonesty.	91	68.4%
Making repairs on property that you have inspected.	92	69.1%
Procuring an Inspectors license by fraud.	114	85.7%
Inspecting under contingent arrangement, impermissible referral fees, repairs	94	70.6%
Other	9	6.7%
Total	133	100%

16 Comment(s)

Subject : TREC Proposed Penalty Matrix**To** : devon bijansky <devon.bijansky@trec.state.tx.us>**Cc** : fred@willcoxinspections.com

After reviewing the proposed Penalty Matrix for inspectors, I don't know whether to laugh or cry. I understand the need and desire for clarity, but the author(s) of the proposed penalty amounts is either extremely out of touch with the average inspector's ethical standards and fee schedule or just trying to see if we are paying attention. Most inspectors could easily be put out of business by even the lowest penalty amount, if assessed for each violation per day. And most inspectors try to comply with all of the administrative rules and our Standards of Practice while doing the best job possible for our clients, and any mistakes made will most likely be honest mistakes. These new proposed penalties seem to be based on some outrageous assumptions that inspectors try to get by with breaking rules and need to be taught a lesson or put out of business when a 'rule' is broken, or that we all have thousands of dollars to spare. If we forget to include our license number in email signatures (how much \$ per violation?) or check the wrong box on a report we shouldn't be viewed as a criminal.

We are expected to abide by ethical standards in this industry, and we do. We spend time in hot attics, crawl under houses, walk on roofs, check dangerous electrical equipment, lie on floors, and any number of other things for our clients; all while juggling the buyer's questions/expectations, the owner's property, the realtor, and trying to gather information from any number of sources/documents. This profession isn't for those trying to bypass rules or shortcut. No inspector can find every deficiency in every home. I think inspectors deserve more respect and consideration in these proposed rules. So why the high minimum penalty? Why not start at \$0 for an honest mistake. Why not have a limit to the 'per violation' or 'per day'. I don't think discouraging an honest mistake by putting someone out of business, or even making an example of someone, is good policy.

Steve Jolly
Texas Professional Inspections
TREC #7002
texpro@me.com

Subject : Penalty Matrix

To : loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>

Cc : andrea@tarei.com

As a working Professional Inspector I am offended by the proposed penalty matrix the Texas Real Estate Commission is considering to be implemented for licensed Real Estate Inspectors in Texas.

In proportion to any income which might be realized by an inspector, the proposed penalties are onerous. It is absurd to think that not only is an inspector potentially in an adversarial position with any client which might decide to lodge a complaint, warranted or not, but that the agency overseeing the inspector will be an adversary also.

I would urge the Texas Real Estate Commission to review the recommendations as put forth by TAREI concerning the penalty matrix, and to support and nurture the inspection industry in the state.

--

Kenneth Pitts
TK Environmental Services, LLC
5603 N CR 1600
Shallowater, TX 79363
Cell -- 806-620-0316
Fax --- 806-832-4950
kandtpitts@valornet.com

Subject : Matrix

To : devon bijansky <devon.bijansky@trec.state.tx.us>

Cc : andrea@tarei.com

Please evaluate the recommendations from TARIE for the Matrix for an already over regulated and burdened profession for the purpose of "making" money for TREC.

Thanks,

James Willyard

J.W.'s Inspection ServicTREC Profession 2413

Subject : (22 TAC 535.191 and 22 TAC 535.219

To : devon bijansky <devon.bijansky@trec.state.tx.us>

This so-called penalty matrix is a direct attack on what is left of the real estate inspection profession. Outrageous financial penalties, combined with nitpicking details, with no concern for justice or reality, provide no benefit to consumers and serious harm to inspectors. Stop meddling with a system that works.

Stephen Ruback

832-489-1071

Professional Real Estate Inspector

License #6030

Helping people avoid UGLY surprises

RICH Club member 8758

Real Estate Inspection Instructor

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Home Energy Inspections

Find out how you can save \$\$\$ on your energy costs
and what you can do first for your best value.

website: <http://www.sruback.com>

Dear Devon Bijansky and Loretta DeHay,

I have reviewed the proposed penalty matrix and am inclined to agree with TAREI. TREC already has the authority to impose penalties as stated in text below.

I have been an instructor, teaching the Real Estate Inspector program since 2004. When I first started teaching, Inspectors had to have 188 hours of training, then it went to 448 total hours (These are hours without any experience). Then we went and required inspectors to have insurance, now were going to give outrageous fines.

We usually had around 20 students registered to take the classes, Now we are lucky to have 6 to 8 students registered in the classes. It seems that over the years, it is getting harder and harder to obtain a Professional Inspector License. I tell every body I run into (when the need arises) that they need to hire an inspector when they purchase a home or build one for that matter, because I highly believe every house should be inspected.

I have a Professional Inspector License which is currently on inactive status because I can not afford the insurance. Even before I went on inactive status, I only inspected new construction, because there are too many uncertainties with existing homes and I was afraid I might miss something and then I would be treated as if I did it on purpose. We are only human and we are going to make mistakes. If it is a repeat offender, then I say "Hammer Them".

Right now I am trying to decide weather I even want to keep my license. If the state keeps making changes, then I will let it go. I currently hold certifications with several state agencies, and I have never seen this many changes with any of them.

I hope you reconsider these changes. Thanks for your time.

The Penalty Matrix, has multiple flaws. **(TAREI Solutions are in bold)**

The lower limit for the range of fines in the current version of the proposed PM is something other than \$0.00. **By Rule, TREC staff should have it clearly stated in the PM that there can be, at the discretion of TREC staff or Commission, no disciplinary taken and any range of fines implemented from \$0 to the maximum allowable.**

The upper limit of the range of fines is onerous for first time violators. It is the consensus, by everyone, that there is not one solitary Inspector who will discover every defect in a home, much less every defect in every home inspected. **By Rule, the upper limit of the PM range of fines should be reduced by 90% of the current proposed limits. Repeat offenders can be fined by multiples of the maximum fine range.**

The range of fines, relative to the average inspection fee, is onerous. The Real Estate Sales Community (Brokers & Agents) enjoy a much higher per-transaction income, yet their range of fines, when compared to that of the proposed PM for Inspectors, is skewed. **By Rule, the range of fines, relative to a per-transaction income, should be adjusted to be consistent with that of Brokers and Agents. (Le \$6,000.00 commission versus a \$300.00 inspection fee = a 20 to 1 ratio) A 90% reduction in the current proposed limit of fines for Inspectors is more than appropriate.**

The performance of the Inspector, his/her value to the consumer has not been considered with the current proposed PM. For example, as the result of a Home Inspection, the Inspector discovers and reports deficiencies, comments, and suggests further inspections that result in the discovery of \$200,000.00 in defects in the home. The Inspector's client moves forward with the purchase of the house. After purchasing the house, the Inspector's client decides that purchasing the house wasn't such a smart idea after all. This homebuyer then files a complaint that the Inspector 'missed' a leaking dishwasher, missing insulation, and a section of decayed/rotted wood (total cost \$2,000). The value of the defects discovered by the Inspector exceeded the 'missed' items by a ratio of 1000 to 1. **By Rule, the range of fines in the PM should be governed by the value of the Inspection Report findings relative to the value of the items 'missed' or unreported by the Inspector. For example, if the value of the discovered and reported deficiencies exceeds three (3) times the value of the verified unreported deficiencies complained of by the Inspector's client or any other complainant, there are to be no fines or other punitive measures taken by TREC against the Inspector. If the value of the Inspection findings exceeds that of unreported/'missed' items by 2 to 1, the maximum allowable fine would be 67% of the maximum PM fine schedule.**

The monies collected as a result of the fines imposed on Inspectors, Brokers, and Agents is funneled into the bank accounts controlled by TREC and/or the Texas General Fund.

The consumer, the complainant, receives none of the monies for their efforts. **By Rule, any fines collected as a result of the current TREC disciplinary system or that of the proposed PM, should be re-directed to the consumer/complainant. In the alternative, by Rule, TREC should be required to post on the TREC website and any related literature or electronic transmissions, that clearly states: Any Fines/monies collected pursuant to Disciplinary Action taken by TREC as a result of Consumer Complaints against Inspectors, is paid directly to TREC. The monies are then utilized at the discretion of TREC or the Texas General Fund. You, the complainant, will receive no monies as the result of your complaint.**

William Gerber (Inactive # 7295)

"In GOD We Trust"

To TREC staff,

The following in bold, is a suggested revision to the penalty matrix, for which I firmly believe should happen, if TREC is going to have this PM established for a tool for penalizing Professional Real Estate Inspectors. I am not a member of TAREI, but I do hold a common belief along with TAREI that the current verbiage is unfair and skewed toward Inspectors. I have worked in residential and commercial construction for over 30 years. There have been many changes with codes, construction methods, and the overall perceived view of the construction industry not only from the contractor side, but by the general public. We as Professional Inspectors are held to a higher standard, not just because of our expertise in construction and methods, but because we hold and are expected to have higher moral and ethical standards. This I believe to be the common thread for all Professional Inspectors, and I am greatly appreciative of having the opportunity to comment on this proposed preliminary draft. I have held my Professional Real Estate Inspectors license since November of 2004, and work very diligently not just through CEU's, but by keeping up with the latest standards and construction methods. I feel privileged to actually be working as a Project Superintendent in the construction industry, so I am not one whose background is of another field, and I am proud to be able to make my small contribution to our industry. I ask you to use discernment and best judgment when considering what you are proposing, and listen fairly to all that have comments about this subject. I appreciate your efforts and thank you for this opportunity to comment.

Michael M. Digel
Professional Real Estate Inspector
Inside N' Out
TREC #7729

The lower limit for the range of fines in the current version of the proposed PM is something other than \$0.00. **By Rule, TREC staff should have it clearly stated in the PM that there can be, at the discretion of TREC staff or Commission, no disciplinary taken and any range of fines implemented from \$0 to the maximum allowable.**

The upper limit of the range of fines is onerous for first time violators. It is the consensus, by everyone, that there is not one solitary Inspector who will discover every defect in a home, much less every defect in every home inspected. **By Rule, the upper limit of the PM range of fines should be reduced by 90% of the current proposed limits. Repeat offenders can be fined by multiples of the maximum fine range.**

The range of fines, relative to the average inspection fee, is onerous. The Real Estate Sales Community (Brokers & Agents) enjoy a much higher per-transaction income, yet their range of fines, when compared to that of the proposed PM for Inspectors, is skewed. **By Rule, the range of fines, relative to a per-transaction income, should be adjusted to be consistent with that of Brokers and Agents. (I.e \$6,000.00 commission versus a \$300.00 inspection fee = a 20 to 1 ratio) A 90% reduction in the current proposed limit of fines for Inspectors is more than appropriate.**

The performance of the Inspector, his/her value to the consumer has not been considered with the current proposed PM. For example, as the result of a Home Inspection, the Inspector discovers and reports deficiencies, comments, and suggests further inspections that result in the discovery of \$200,000.00 in defects in the home. The Inspector's client moves forward with the purchase of the house. After purchasing the house, the Inspector's client decides that purchasing the house wasn't such a smart idea after all. This homebuyer then files a complaint that the Inspector 'missed' a leaking dishwasher, missing insulation, and a section of decayed/rotted wood (total cost \$2,000). The value of the defects discovered by the Inspector exceeded the 'missed' items by a ratio of 1000 to 1. **By Rule, the range of fines in the PM should be governed by the value of the Inspection Report findings relative to the value of the items 'missed' or unreported by the Inspector. For example, if the value of the discovered and reported deficiencies exceeds three (3) times the value of the verified unreported deficiencies complained of by the Inspector's client or any other complainant, there are to be no fines or other punitive measures taken by TREC against the Inspector. If the value of the Inspection findings exceeds that of unreported/'missed' items by 2 to 1, the maximum allowable fine would be 67% of the maximum PM fine schedule.**

The monies collected as a result of the fines imposed on Inspectors, Brokers, and Agents is funneled into the bank accounts controlled by TREC and/or the Texas General Fund.

The consumer, the complainant, receives none of the monies for their efforts **By Rule, any fines collected as a result of the current TREC disciplinary system or that of the proposed PM, should be re-directed to the consumer/complainant. In the alternative, by Rule, TREC should be required to post on the TREC website and any related literature or electronic transmissions, that clearly states:**

Any Fines/monies collected pursuant to Disciplinary Action taken by TREC as a result of Consumer Complaints against Inspectors, is paid directly to TREC. The monies are then utilized at the discretion of TREC or the Texas General Fund. You, the complainant, will receive no monies as the result of your complaint.

Thank you,
Mike Digel
T.I. Proj. Superintendent
D.E. Harvey Builders
Weatherford
2000 St. James Place
Houston, Texas 77056
713.550.1381- Phone
281.830.6873- Cell
www.harveybuilders.com

Subject : Penalty Matrix

To : loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>

Cc : andrea@tarei.com

why the sudden rush to exterminate Real Estate Inspectors? This PM will surely cause Inspectors to discontinue service, (this Inspector included) , and drive up the cost of an inspection. You should be working with the Inspectors .not against us! With the economy in the mess it's in has reduced the inspections by 50% or more. The fines are not justified as proposed. I urge you to reconsider the proposal,and discontinue the bill.

Robert L. Duncan Sr, License #5970
Duncan Inspection Service
2045 FM 1784
Pleasanton, Texas 78064
830-281-3519 cell 830-570-7403

Subject : Request for comments regarding the proposed penalty matrix for Inspectors

To : loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>

Cc : escanlan@psinspection.com, info@psinspection.com

Re: New proposed penalty matrix and Texas Register TRD-201101725 & TRD-201101726

I would like to provide the following opinions and comments regarding the subject above. I am completely opposed to the current forced, and rigid, penalty matrix as it applies to the licensed Inspectors in Texas. The following points are my reasons for this disagreement.

1. The current SOP is in a state of disarray, is excessively high level in nature without specifics for guidance, and lacks sufficient detail to make many decisions without the benefit of fact to deem an Inspector in violation of their duties. This leaves to many instances that penalties can be assessed based solely on a person(s) opinions rather than fact and specific written requirements. This can also lead to a disparity in the leveling of penalties depending on who at TREC handles which incident.
2. There is currently nothing within the laws that now prevents TREC from probating, suspending, or revoking an Inspectors license regardless of what the infraction is. TREC may now even issue letters of warning and reprimand that can be placed in an Inspector's records. All of these are considerably more damaging to an Inspector than a dollar amount assessed. There is no reason for a penalty matrix as the current system functions now without issues.
3. The penalty dollar amounts are extreme and do not fit any of the infractions that can easily be compiled with regards to just one inspection. The dollar amount of the penalties are well out of line with any current inspection fee pricing scheme that is currently accepted by consumers. The penalty amounts are also well out of line with the actual potential infractions. For example an Inspector that fails to report one missing window screen can be penalized from \$500 - \$3000 for a screen that costs as little as \$50. Under those same penalty conditions, and the same inspection, if the Inspector misses one 24" X 12" piece of vertical insulation another penalty of \$500 - \$3000 can be assessed for a piece of insulation costing less than \$20. As a minimum that Inspector will be forced to pay a fine of \$1000 - \$6000 for less than \$100 of missed items on an inspection they might only have charged \$250 for.
4. The penalties are mandated regardless of any other extenuating circumstances, and the penalties do not have a \$0 amount as a minimum as a safeguard against unfairly penalizing an Inspector. Using the previous inspection example (item 3 above) if the Inspector noted tens of thousands of dollars in issues on the inspection then there is **NO** leeway under the penalty matrix for a simple slap of the hand. Instead if TREC performs their job without discrimination, and evenly for all Inspectors, then that Inspector will effectively be forced out of business for not noting less than \$100 worth of trivial items.
5. The penalty matrix is no substitute for properly enforcing current rules and laws! As noted in item number 2 above TREC has at its discretion the power to effectively shut down an Inspector who is violating the rules and laws. A penalty matrix does nothing but severely, and unfairly, punishing a good, honest and ethical Inspector. The dishonest, unethical Inspectors will continue to operate whether they are caught and penalized or not! A severe penalty matrix is not an answer or solution to any current problems with Inspectors. Minor problems can be better handled with letters of reprimand and/or potentially requiring additional training. Continual gross violations should be handled with revocation of licenses as that is the sign of a dishonest and unethical Inspector!
6. The penalty matrix has no provisions for refusing review and action by TREC in the event the incident is the result of a complaint by, or related to, a consumer's complaint or inspection. Texas Inspectors are already forced to maintain Errors & Omissions insurance which covers many, if not all, of the violations in the penalty matrix. A consumer can file an E&O claim and TREC can impose a penalty based on this matrix. No E&O policy that I am aware of will pay for administrative fines levied by the licensing agency. The purpose of the forced E&O was touted as protection for the consumer. A penalty matrix only severely punishes the Inspector for no gain to the consumer except to fill State coffers. Every E&O claim already places the Inspector in danger of losing their license if they lose their E&O, expend the E&O limits, and are unable to obtain additional E&O coverage as a result.
7. The penalty matrix will do nothing to help protect consumers. It will in fact have a complete opposite effect. The potential is always there for inspection fees to increase as a result of the added liability potential. More realistically what will happen are Inspectors no longer providing exceptional service and only providing the bare minimums required by the rules and laws. Inspection reports will grow with the huge number of required disclaimers. Inspection agreements will change and be more carefully crafted to the consumers detriment. Since the penalty matrix only penalizes the Inspector for not calling out items

then I would not be surprised to see more items called out regardless of their validity or not.

8. The penalty matrix has apparently been crafted and potentially advocated by the Inspector Advisory Committee (IAC). This is the same group of Inspectors who are now at this very moment violating the rules and laws governing Inspectors as well as other State licensing laws. That in itself makes this penalty matrix a farce and subject to question if it is exercised.

I would certainly hope that TREC will consider removing the Inspectors from this penalty matrix at least until such time as it can be properly crafted to serve a useful purpose if needed. This penalty matrix, with regards to the Inspector community, **IS NOT** a feather in TREC's cap. It is the complete opposite and only opens up TREC to further scrutiny if the occasion arises. I am 100% pro consumer protection, and 100% for eliminating dishonest and unethical Inspectors. However this penalty matrix is not even a realistic or viable part of that goal!

Sincerely

Emmanuel J. Scanlan

PS Inspection & Property Services LLC

www.psinspection.com

214-418-4366 (cell)

TREC License # 7593

International Code Council, Residential Combination Inspector #5247015-R5 (Electrical, Mechanical, Plumbing and Building)

Certified Infrared Thermographer (ASNT-TC1A Standards)

Texas Department Of Insurance, VIP Inspector # 08507061016

HUD/FHA/VA Fee Inspector #M801

Hayman Residential Engineering Services, Field Technician

CMC Energy - Certified Energy Auditor

Knowledge is power, but sharing knowledge brings peace!!

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Subject : Inspector Penalty Matrix

To : loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>

Cc : andrea@tarei.com

I find the proposed penalty matrix to be a complete contradiction of the preliminary language of the promulgated introduction language of the standardized report. How can one reasonably tell clients that an inspection should not be considered a guarantee of no defects on one hand, while itemizing specific penalties for "missed items" on the other? Are there so many onerous complaints about inspector quality that such a structure is even needed?

If such a matrix must be put in place, I support the TAREI modifications fully. The proposed matrix is completely out of proportion to the typical inspection fees. It serves no one to artificially cause fees to go up to simply cover potential penalties.

Respectfully,

Kevin Weiss
TREC License # 7108
Professional Inspector / President
Absolute Inspections, LLC
972-463-0887
www.AbsoluteInspections.net

Friends or Family need an inspection? Learn more about Absolute Inspections' Referral Reward Program.
<http://www.absoluteinspections.net/Home-Inspection-Referral-Reward-Program.php>

Let's get LinkedIn! <http://www.linkedin.com/in/kevinrweiss>

Become a fan of Absolute Inspections, LLC on Facebook
<http://www.facebook.com/?ref=home#!/pages/Absolute-Inspections-LLC/110625102293154?ref=nf>

Standards of Practice/Legal/Ethics Update

Length of Course: 6 hours

1. Standards of Practice Update (2 hours)
 - a. Section 535.227-.232 of the TREC Rules
 - b. Frequently Asked Questions regarding inspection standards
 - c. Other relevant Standards of Practice issues

2. Legal Update (2 hours)
 - a. Chapter 1102
 - b. commission rules related to inspectors
 - c. agency enforcement action relating to inspectors
 - d. related case law

3. Ethics Update (2 hours)
 - a. Section 535.220 of the TREC Rules
 - b. other relevant ethics issues