

**MINUTES FOR TEXAS REAL ESTATE COMMISSION (TREC)
INSPECTOR ADVISORY COMMITTEE MEETING**
Conference Room 235, TREC Headquarters Office
1101 Camino La Costa, Austin, Texas

Friday, February 13, 2009, at 9:00 a.m.

1. Call to order Texas Real Estate Inspector Advisory Committee meeting. The meeting was called to order at 9:24. Committee members Fred Wilcox, Brad Phillips, Larry Foster, Jill Frankel, Brian Murphy, Curtis Carr, Mary Wheeler, and Ray Armendariz were in attendance. Staff members Devon Bijansky and Robert Meisel were also present.
2. Minutes of October 10, 2008 meeting. Postponed to next meeting.
3. TREC Enforcement report, including update regarding number and types of opened and closed complaint cases. Annual summary of open and closed complaints. Closed 125 opened 128 in FY 2008. Expect more complaints, but staff changes should enable them to be handled more quickly. Of 125 complaints 16 insufficient evidence. Brad Phillips requested clarification for MCD category (moral character determination). The category of Non-RE License Act complaints refers to complaints against licensees but about conduct that is beyond the agency's jurisdiction. Some of the codes do not neatly match the inspector realm because they were adapted from real estate agents and brokers. Brad Phillips noted that about 70 of the 125 complaints can be called typical inspector complaints. Robert Meisel will go back to original codes and e-mail the committee an explanation. Brian noted there were no recovery fund payments made in FY 2008; however, some recovery fund application cases may have been filed during that time and may still be paid in the future. Larry Foster said that there is a report on the web page detailing payments from the fund.
4. Subcommittee reports from the:
 - a. Standards of Practice subcommittee, including update regarding development of commentary on the standards. Fred Wilcox presented 535.223, when is new report form required to be used. Although the current language of the rule does not make this clear, the form for should only be required for substantially completed construction, although the term "substantially complete" may be confusing in some instances. Need specific exemption language that TREC form is not needed for anything but preoccupancy inspection. The subcommittee noted that the report form needed to be corrected to state 535.227-535.233, instead of 535.227-535.231. This may need to be corrected through rulemaking. Counsel is exploring whether it is possible to revise without rulemaking. A draft of the commentary will be distributed to all committee members, with the hope that it will be reviewed before the next meeting. The full committee will review it at a later date. Sub-committee wants to post and adopt in parts. Larry Foster praised the use of pictures and encouraged adding more. Mr. Foster expressed a desire to distribute the draft to the public for input early on. Ms. Bijansky said it can be posted on TREC website and said that she will research what can be done to disseminate it. There was discussion about whether TREC is the appropriate party to make the commentary. Mr. Foster believes it would help with getting uniform inspections. Mr. Murphy reminded attendees that the commentary is not intended to be a "how to inspect" document.
 - b. Enforcement subcommittee, including update regarding volume and types of complaints being filed and possible opportunities to enhance education requirements to address areas that are lacking. Brad Phillips presented. The Committee met recently and reviewed all inspector complaints filed within the last several months. Sixty cases have been reviewed. Structural issues seem to lead to the most complaints. The review also revealed a lot of form/reporting violations. Lack of training seemed to be the main reason for valid complaints.
 - c. Education subcommittee, including update regarding approval of continuing education courses offered by proprietary schools and trade associations. This subcommittee did not have anything new to report but planned to meet soon. Mr. Armendariz said that he wanted information about recent exam pass rates in light of the new Standards of Practice. Ms. Bijansky said that she had asked PSI to remove questions related to the old standards, and she was working on scheduling an exam review/question writing session. The Committee was in agreement that questions need to be written for the new standards.

5. General comments from visitors. There were no comments from the public.
6. Discussion regarding 22 TAC §535.223, Standard Inspection Report Form. The Committee discussed many of the issues related to the form in the subcommittee report section of the meeting. The ERC who approached the Committee at its last meeting had submitted a written request to reinstate the exception to the form requirement for relocation inspections. Brad Phillips moved to decline to recommend an exception for relocation companies. Fred seconded the motion.
7. Discussion regarding 22 TAC §§535.227-.231, Standards of Practice. This item was discussed within the subcommittee reports section.
8. Discussion and possible action to abolish Standards of Practice subcommittee. Because this subcommittee is still actively working on the Commentary, no action was taken.
9. Discussion and possible action to recommend amendments to pre-licensing and continuing education requirements for inspectors, including discussion of experiential learning, online learning, and continuing education offered by proprietary schools and trade associations. Mr. Willcox questioned why there is no requirement for pre-approval for continuing education courses offered by trade associations and suggested that a rule change may be appropriate. The issue was delegated to the Education subcommittee. Mr. Foster commented that requiring trade associations to obtain pre-approval of courses would complicate these courses, which are often taught by volunteers who may have to cancel and be replaced at the last minute. Approving continuing education credit after the fact, rather than before the course is offered, allows trade associations to make last-minute changes and provide quality education, even if not by the instructor the association had originally intended. Mr. Willcox also raised the issue of Committee members being permitted to teach courses for credit. Several members commented about the size of the inspector pool and the fact that there may not be enough qualified teachers without allowing Committee members to teach, or else the Commission may have trouble finding qualified inspectors to serve on the Committee if they are not permitted to teach.
10. Legislative update. Devon Bijansky presented a summary of bills potentially effecting inspectors.
11. Discussion and possible action to recommend proposal of an enforcement matrix for inspectors based on type and seriousness of violations. Mr. Phillips stated that staff would be working with the Education subcommittee to prepare a matrix.
12. Discussion regarding Texas Occupations Code Section 1101.204 regarding complaint investigation and disposition. Mr. Phillips expressed concern that complaints may be filed by someone other than the inspector's buyer client.
13. Discussion and possible action regarding Subchapter H, Texas Occupations Code, regarding real estate inspection recovery fund. The Committee understands that the Commission may not advocate for any legislative change but wants to be prepared for any questions the Commission may receive or any new laws that may come out of the current legislative session. Members have heard that the professional liability insurance requirement may be abolished in this session and that this may be accompanied by an increase in the recovery fund limits. There was discussion about the impact of raising the limits from \$12,500/\$30,000 to \$25,000/\$50,000. It was anticipated that the \$450,000 minimum in the fund would also be increased to accommodate more, and larger, claims. Mr. Murphy had several questions about the amount of judgments underlying recent recovery fund payments. It was pointed out that larger judgments against inspectors may not currently be presented to the fund for payment because of the low limits.
14. Discussion and possible action to recommend proposal of rules relating to phase construction inspections. Mr. Foster suggested creating phase construction standards of practice, mirroring the TRCC rules pointing to building codes, and will explore this idea further.
15. Discussion and possible action to recommend amendments to 22 TAC §535.220(e)(7) regarding disclosure of inspection results to parties other than the inspector's client. No action was taken.

16. Discussion regarding update to inspector examination in light of new Standards of Practice and scheduling of examination review with PSI. Members agreed that it was time to schedule an exam review session, and it was suggested that the Committee may want to get out of the exam writing business altogether by considering the National Home Inspection Exam, which could still include a Texas module, although that exam has a much higher target pass rate.

17. Election of officers. Fred Wilcox moved to reelect the same officers. Brad Phillips seconded it. Motion carried.

18. Discussion and possible action to recommend a rule prohibiting the Committee chair from serving as chair of a subcommittee. Because Robert's Rules already prohibits this, no action was taken.

FUTURE MEETINGS AND ADJOURNMENT

19. Request for new business agenda items. No items.

20. Scheduling of future meetings. The next meeting would be scheduled once the subcommittees could determine their schedules.

21. Chairman Foster adjourned the meeting at 1:43 p.m.