

**TEXAS REAL ESTATE INSPECTOR COMMITTEE MEETING MINUTES**

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

Monday, April 26, 2010 at 11:00 a.m.

CALL TO ORDER

1. Call to order. Meeting called to order at 11:09 by chairman Larry Foster. Other committee members in attendance were Ray Armendariz, Fred Willcox, Brad Phillips, Jill Frankel, Curtis Carr, and Brian Murphy.

MINUTES

2. Minutes of the February 22, 2009 meeting. The minutes were distributed to all members. Mr. Phillips made a motion to accept without changes, which was seconded by Mr. Carr. Motion carried.

REPORTS

3. Standards and Enforcement Services Division report, including an update regarding the number and types of opened and closed complaint cases. Kerri Galvin, Director of Standards and Enforcement Services (SES), handed out reports regarding open and closed inspector complaints. The report reflected a downward trend in complaints from the first quarter of fiscal year 2010 (September-November 2009) to the second quarter (December 2009-February 2010), possibly due to the holidays and the overall slowdown in real estate transactions. SES closed more complaint cases than they opened and issued three advisory letters. The majority of closed cases are from fiscal year 2009.
4. Education and Licensing Services Division report, including an update regarding number of licensed inspectors and examination passage rates. Gwen Jackson, Director of Education and Licensing Services, reported that the total number of inspectors is currently 3539, a six percent decrease in the past year. Chairman Foster pointed out that this figure has been roughly level for approximately nine months. There was discussion regarding the effect of the insurance requirement, enacted in 2007, and the recent economic conditions. Ms. Jackson further reported that the examination pass rate is below 50%. The statute regarding education providers' minimum exam passage rate requires a school's passage rate for first-time examinees to be at least 55%.
5. Subcommittee reports and questions from Committee members regarding reports from the:
 - a. Standards of Practice subcommittee, including an update regarding the development of a commentary on the standards and possible changes to the standards of practice. Mr. Murphy, chairman of the subcommittee, reported that the subcommittee has held two

meetings to work on improvements to the Standards. He stated that the subcommittee was working through the Standards from the beginning and would be recommending some changes but estimated that six more meetings, over three to five months, would be required to finalize the subcommittee's recommendations. He stated that much of the work involved "wordsmithing" and gave the example that the subcommittee would be recommending changing "improper site drainage" to "site drainage that is causing adverse structural performance or water penetration."

- 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. Mr. Phillips, who reviews inspector complaints as they are opened, reported that the majority of the complaints involve structural, electrical, and mechanical problems and that some involved rule violations as well. He concluded that most of the issues he observed appeared to be related to education.
- c. Education subcommittee, including an update regarding the approval of continuing education courses offered by proprietary schools and trade associations. The education subcommittee had not met since the last Committee meeting.

PUBLIC COMMENTS

6. General comments from visitors. Jim Olk, building official for the City of Farmers Branch, spoke on behalf of the Building Officials Association of Texas regarding concern about the requirement that TREC-licensed inspectors report certain issues as "deficiencies" when they are actually acceptable under code. He stated that the Standards of Practice render all residences constructed more than a few years ago "deficient." He suggested an ad hoc committee to identify and address such conflicts between the Standards of Practice and code requirements.

PENDING BUSINESS

7. Discussion and possible action regarding the proposed commentary to the Standards of Practice. Mr. Murphy stated that the commentary was on hold during the review of the Standards. There was some discussion of Mr. Olk's concerns. Mr. Murphy stated that the subcommittee would welcome input. Chairman Foster acknowledged that Mr. Olk's concerns have been an issue since the beginning of the Standards and that this is in part because of inconsistent requirements in different areas; he said that the Committee strives to be uniform throughout the state in order to let all consumers know when safer devices, methods, etc. are available. Mr. Willcox reiterated that inspectors are trying to alert the public of potential safety issues, even if they may be "grandfathered" by code, and that the objectives of building officials and pre-sale inspectors are different. Mr. Phillips stated that the inspection report form makes clear that a "deficiency" is not necessarily a code violation. TREC-licensed inspector Scott Emerson spoke regarding TREC's duty to protect the public and asked if the public is being protected by the current Standards.
8. Discussion and possible action to recommend amendments to:
 - a. 22 TAC §535.212, Education and Experience Requirements for an Inspector License. TREC Administrator Doug Oldmixon stated that the strategic plan would be before the

Commission at their May meeting and that the Committee is welcome to help shape the plan. Issues the Committee may want to consider include whether the professional liability insurance requirement produces enhanced consumer protection, given the existence of the recovery fund. He also raised the question of whether the recovery fund's limit for recovery should be raised; such a recommendation could be accompanied by a recommendation to reduce the insurance requirement. He stated that research would be needed to determine the proper amounts. Mr. Willcox stated that the Committee had previously voted to recommend raising the recovery fund limits. There was discussion regarding changes to subsection (a)(4). It was determined that a full committee meeting would be scheduled to receive input regarding the examination passage rate issue.

- b. 22 TAC §535.213, Schools and Courses of Study in Real Estate Inspection. There was no discussion or action on this item.
 - c. 22 TAC §535.214, Examinations, including discussion and possible action to change the minimum passing score on the professional inspector exam to 75%. Mr. Oldmixon stated that the agency was about to post on the website the exam passage rates for first time exam takers for all proprietary schools. He stated that the pass rate for inspectors is well below the required minimum of 55% and that if the minimum passing score is not reduced, virtually no education provider would qualify to continue. Mr. Phillips made a motion not to recommend lowering the minimum passing score, which Ms. Frankel seconded. Motion carried.
 - d. 22 TAC §535.218, Continuing Education
9. Discussion and possible action to recommend amendments to 22 TAC §535.211, Professional Liability Insurance, or Any Other Insurance That Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102. No discussion or action.
 10. Discussion and possible action to recommend amendments to 22 TAC §535.221, Advertisements. Mr. Murphy moved to recommend the draft that would eliminate the requirement to include a license number on all advertisements; this motion died for lack of a second. Mr. Willcox then moved to recommend the draft that retained the license number requirement. That motion was seconded by Mr. Phillips and passed.
 11. Discussion and possible action to recommend amendments to 22 TAC §535.231(a) regarding Plumbing Systems. No discussion or action.
 12. Discussion and possible action to recommend amendments to 22 TAC §535.223, Standard Inspection Report Forms, including revisions to report forms REI 7A-1 and REI 7-2. No discussion or action.
 13. Discussion and possible action to provide guidance to staff in responding to inquiries regarding inspection and reporting requirements for:
 - a. plumbing fixtures with limited amounts water pooling
 - b. exhaust ventilation
 - c. the absence of a fireplace damper clamp
 - d. the absence of weep holes along the bottom course of brick and above steel lintels

- e. double-tapped neutral wires
- f. evidence of a previous fire in an attic
- g. tape on a Type B vent
- h. headroom clearance of stairs
- i. transite pipe
- j. water heaters with a combined drain line for the drain pan and temperature and pressure relief drain
- k. gas lines made of various materials
- l. fire separation between a house, garage, and attic space(s)
- m. reused gas line connectors
- n. dishwashers that are hard-wired into the electrical system
- o. reporting type of foundation
- p. the performance of foundations
- q. retaining walls related to foundation performance
- r. gas lines in the crawl space
- s. powered attic ventilators
- t. number of layers of roof covering materials
- u. fire-rated doors
- v. connection of the electrical system to a grounding electrode system
- w. testing smoke alarms using canned smoke
- x. testing gas lines
- y. reporting the absence of arc fault circuit interrupters (AFCIs)
- z. inspection and accessibility of gas connections to appliances

Mr. Willcox moved to table the questions until the completion of the commentary; Mr. Armendariz seconded the motion, which passed after discussion about working with staff to respond to inquiries when feasible.

NEW BUSINESS

14. Discussion and possible action to make a recommendation to the Texas Real Estate Commission regarding appointment of public members. After discussion of Linda Robicheaux's qualifications, the Committee determined that she was disqualified because it appeared that she held a California mortgage broker license and voted to recommend Nancy Schriedel and Alex Montgomery.

15. Discussion regarding amendments to 22 TAC 535.208 to implement administrative changes to the processing of education evaluations and applications. TREC Deputy General Counsel Devon Bijansky stated that, due to system and process changes incident to implementation of the new licensing database, the education evaluation and license application processes would be combined into a single step.

16. Discussion and possible action to recommend a penalty matrix for enforcement cases against inspectors. Mr. Willcox stressed the importance of uniformity. Chairman Foster referred the item to the enforcement sub-committee for further development.

17. Discussion regarding the formation of a coalition of inspector associations and possible action regarding polling and/or other means of communicating with the industry regarding inspection issues. Mr. Oldmixon gave an update regarding the March 22 and April 15 meetings

among inspector association leadership and other interested parties. He addressed the need for a unified group to make recommendations to the Committee and suggested that the coalition could aid in filtering requests for interpretation.

FUTURE MEETINGS AND ADJOURNMENT

18. Request for new business agenda items. Mr. Willcox requested an agenda item to discuss options for dealing with inspectors with mental problems.

19. Scheduling of future meetings. A Committee meeting was scheduled for June 7th at 9 a.m. to discuss education issues.

20. Adjourn. Chairman Foster adjourned the meeting at 3:25 p.m.