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

Monday, July 21, 2008, at 9:00 a.m.

Item 1, call to order TEXAS REAL ESTATE INSPECTOR ADVISORY COMMITTEE meeting. The meeting was called to order at 9:05. Mr. Burgess and Mr. Amandarez were absent. There absences were excused by motion. A break was taken at 10:30 a.m. The meeting resumed at 10:45. Another break was taken at 11:45. The meeting resumed at 1:39 p.m.

Item 2, minutes of June 16, 2008 meeting. The minutes were accepted by motion.

Item 3, reports from TREC staff. Robert Meisel, staff attorney, gave the enforcement report. He reported on open and closed inspector complaints. See attached report. There was discussion about LLC licenses, which can be maintained or dropped but once expired cannot be re-issued. Fred Willcox asked the child support column. Devon Bijansky explained that the attorney general's office reports to TREC for inspectors in arrears.

Item 4, general comments from visitors. There were no public comments at this time, but Chairman Foster told the audience that the public was welcome to comment during the discussion of specific agenda items.

Item 5, discussion and possible action to recommend amendments to 22 TAC §§535.227-535.231 concerning Standards of Practice for inspectors. The Committee continued reviewing comments submitted during the formal comment period as well as the comments that were submitted after the June 16 meeting. Changes were made to the standards as deemed appropriate. A commenter suggested that the standards require reporting of outdoor cooking equipment too close to the structure as a deficiency. Fred Willcox stated that all manufacturers have different recommendations and that, therefore, it would be too onerous a requirement. The Committee agreed. The next comment had to do with getting the report to client in a reasonable time and whether this is an arbitrary standard. The consensus was to leave it. This commenter also was concerned that the standards prohibited doing more than the minimum. The consensus was that they are minimum standards and more can be done. The next comment had to do with the electrical inspections, which the consensus was are adequately covered. The next comment had to do with smoke detector requirements being overly burdensome. In light of changes made at the June 16 meeting, the consensus was to add a specific limitation regarding interconnectivity of units. The next comment had to do with plumbing. The consensus was there was no need to make changes. Another commenter wanted to be guided to specific reference materials for all inspectors to use in inspections. Consensus was this is already available and it is not appropriate for the agency to mandate use of specific materials.

Multiple commenters addressed water pressure, which was discussed at length at the June 16 meeting and a requirement was added to report water pressure and denote as deficient if beyond 40-80 psi. Brian Murphy said this is difficult to measure because gauges are often inaccurate. Rodney George shared a scenario in which the bathroom farthest from the main has weak flow. The plumbers say nothing can be done. Many older homes were designed for 8 psi. Fred Willcox said that water pressure devices have tremendous variance and there is variance throughout the house. Larry is more concerned about high pressure than low pressure. Fred Willcox

recommends it being a “report only” item (not “report as deficient”. Mark Eberwine said functional flow tests for past fifteen years have been largely based on judgment. The home warranty companies are denying claims stating the psi is too great. New homes can be required to have prv’s if above 80 psi according to Mark Eberwine. Joe Gonzalez said people are not concerned about the low end, but the high end is important. It is important to put people on notice. Mike Cothron, Houston, proposed more of an education issue for the consumer due to variables of time of day. Fred Willcox said there is too much variance in meters, and time of day of testing. Brian is concerned about low water pressure from water wells. Larry wants to report psi outside 40-80 range. Consensus was to report static water pressure and indicate as deficient if outside 40-80 psi range.

A commenter stated that checking for proper fastener location on roofing can damage shingles. However, there is a need to check if the shingles are fastened to the roof deck. The Committee decided to change the requirement to address deficiencies in fastening roof covering materials as determined by a random sampling. Arc faults were revisited but left unchanged. Rodney George is concerned about child proof plugs. No changes were made. A commenter disagreed with checking bonding or grounding of appliances, which is in the current standards and the Committee decided will remain in this draft.

A commenter was concerned that the standards are too specific, but did not give any specific examples.

Some commenters indicated that they believe the new standards will increase inspection times; however, most of the examples they give of “new” time-consuming requirements are already in the current standards, and the Committee believes that all true additions will add significant value to the consumer.

Fred Willcox mentioned that the word “judgment” has been taken from the report, but it remains in the standards. Brian Murphy reminded him that this was done because you do not document a judgment but you document an opinion. Devon Bijansky was not concerned about the different terms. Jill Frankel suggested switching judgment to opinion. The Committee decided to change the definition of deficiency to replace “opinion” with “judgment.”

Items 6 and 7, discussion and possible action to recommend 22 TAC §535.222 concerning inspection reports and amendments to 22 TAC §535.223 concerning standard inspection report form. An inspector commented against the requirement that inspectors deliver reports to the client in a reasonable time. The Committee disagreed. This commenter also wanted to know why inspectors do not need to explain opinions. Fred said that this is a choice of how to report and is not appropriate for the rules to mandate. There was also a question about phase inspections; the Committee believes the form is clear that it does not need to be used when inspecting in progress construction for a builder. For a final inspection of new construction for the buyer, the TREC form must be used.

A commenter suggested that 535.223 specifically allow an inspection contract to be added to the form (like cover pages). Robert Meisel reminded the Committee that the inspection report form says at the bottom that it is a promulgated form, which could lead consumers to believe that the contract is promulgated by TREC, and does not want a consumer to think the TREC form imposes contractual limitations. Devon Bijansky said that a contract and a notice, such as an inspection report, serve two different purposes, and it is confusing to combine the two into a single document. Mark Eberwine agreed that the footer from the TREC form on contract would be confusing. Mike Cothron said that his contract precludes certain items (for example, a sprinkler system could be excluded by contract) and it is useful to have the language repeated in the report for the client’s

information. Devon Bijansky said that as long as the contract itself is executed separately from the report form, it is acceptable to restate the terms in the “Additional Information” section of the contract. The Committee agreed that this was appropriate and that no change to the rule was necessary.

A commenter suggested requiring reporting of capacity of water heaters. The committee decided to add this as a line item in the report. Rodney George asked about deleting the line item for method of inspecting the crawl space for inspections that do not have crawl spaces. Larry expressed concern about allowing inspectors to delete text that does not apply to the specific property being inspected because of a concern for standardization. The Committee decided to remove this line item from the form (although the reporting requirement remains). Rodney George asked if comments and additional information can be added before the “comments” heading. Enforcement would like it after comments to prevent confusion as to what is standard text, and a reading of 535.223 supported this interpretation.

The Committee’s consensus after reviewing comments on septic systems was to leave the standards and that part of the text as it was.

Brian Murphy requested that language be added to the standard text on the form indicating that the inspector does not prioritize the importance of deficiencies. The Committee agreed that priority is personal, dependent on family situation and other factors, and inspectors cannot determine which deficiencies are most important for a given person, so language was added to this effect. John Cahill’s comments were wordsmithed and some were added. Mike Cothron suggested adding a note that there are problems with improper repairs and inspector should not be responsible. The Committee decided to leave the relevant language as it was.

There was a question about the limitation stating that the inspector is not required to exhaustively examine all outlets. Some inspectors may read that to mean that they only have to inspect a random sample of outlets. Larry wants to report as deficient all failing accessible outlets, which requires inspecting/testing all accessible outlets. Fred moved to strike the specific limitation.

Item 8, discussion and possible action to recommend amendments to form OP-I, Texas Real Estate Consumer Notice Concerning Hazards or Repairs. Devon Bijansky presented a draft. There was a desire to recommend making AFCIs a separate item (like GFCIs), which passed. The language was made to match the standards. The word “hazards” in the title was changed to “deficiencies” to match the standards.

It was moved to send the revised 535.227-.233, 535.222, and 535.222 to the Commission for proposal, and to recommend approval of the OP-I form, which was unanimous.

Item 9, request for new business agenda items. The following new items were identified for the next meeting: subcommittee meetings, creation of an enforcement matrix for disciplinary action, rules regarding online classes, hands-on education, and continuing education.

The next meeting was scheduled for October 10-11.

The meeting was adjourned at approximately 3:40 p.m.