

# Inspector Legal and Ethics

Edition 1.0

September 2017



Texas Real Estate Commission



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# Foreword

In cooperation with the Real Estate Center at Texas A&M University, the Texas Real Estate Commission developed this inspector legal and ethics curriculum with the assistance of a content writing group using information from publications, presentations and general research. The information is believed to be reliable, but it cannot be guaranteed insofar as it is applied to any particular individual or situation. Laws and rules discussed in the textbook have been excerpted, summarized or abbreviated. For a complete understanding and discussion, consult a full version of any pertinent law. Information in this textbook can change periodically and is presented with the understanding that the authors and instructors are not engaged in rendering legal, accounting or other professional advice. The services of a competent professional with suitable expertise should be sought.

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# Chapter 1

## Statutory and Rule Updates



It is every license holder's responsibility to know and operate under the current laws and rules applicable to their license. There are two primary laws that govern the conduct of real inspectors in Texas. These two laws are found in Chapters 1101-1102 of the Texas Occupations Code (TOC). In addition, the Texas Real Estate Commission (TREC) may adopt new rules or amend existing rules applicable to real estate inspectors.

### Statutory Changes to Texas Real Estate License Act (Chapter 1101, TOC)

Chapter 1101 (TOC) gives TREC authority to

- \* administer Chapters 1101-1102,
- \* adopt and enforce rules necessary to administer those chapters, and
- \* establish standards of conduct and ethics for all persons licensed under Chapters 1101-1102.

The 84th Texas Legislature last amended Chapter 1101 in 2015 by enacting SB 699 that included changes to

- \* allow TREC to suspend or revoke a license if the license holder pleads guilty to, or is convicted of, a felony or a criminal offense involving fraud;
- \* require inspector license holders to notify TREC within 30 days after any guilty plea or conviction is final; and
- \* allow TREC to suspend or revoke a license if the license holder fails to notify as required above.

### Statutory Changes to Texas Real Estate Inspector Act (Chapter 1102, TOC)

Chapter 1102, Texas Occupations Code, gives TREC authority to license and regulate real estate inspectors in Texas.

The 83rd Texas Legislature last amended Chapter 1102 in 2013 by enacting HB 2911 that included changes to

- \* require each inspector to undergo fingerprinting and a criminal history check,
- \* adopt a late renewal provision for inspectors,
- \* grant applicants a year to complete the application process,
- \* clarify that an inspector seeking to reinstate a license must complete the current continuing education requirements before reinstatement,
- \* require some hands-on training before an inspector may begin actual field inspections, and
- \* allow TREC to accept a bond as an alternative to E&O coverage for the licensing of inspectors.

### TREC Rules Publication

The rules applicable to real estate inspectors in Texas are detailed in Chapter 535, Subchapter R, of Title 22 of the Texas Administrative Code (TAC). TREC publishes all proposed amendments and adopted rule changes in the Texas Register. TREC also notifies license holders of proposed and adopted rule changes eight times each year through the *Inspector Insight*, TREC's electronic newsletter for real estate inspectors. Recently adopted or proposed rules are included on the TREC website.

[www.trec.texas.gov/formslawscontracts/rules\\_codes/Rule.asp](http://www.trec.texas.gov/formslawscontracts/rules_codes/Rule.asp)

## TREC Rule Changes Since January 2014

### Examinations - §535.209

Effective January 1, 2016

An applicant is no longer eligible to take the inspector examination until the applicant provides evidence to TREC that all education and experience requirements have been met.

### Fees - §535.210

Effective February 29, 2016

The contribution to the Real Estate Inspection Recovery Fund was reduced from \$100 to \$10, and the fee for the inspector licensing exam was reduced from \$230 to \$220.

### Renewal of License - §535.216

Effective January 1, 2016

New provisions for license renewals were added for active duty military members, spouses of active duty military members, and veterans.

### Professional Conduct and Ethics - §535.220

Effective January 1, 2016

Inspectors must display the mandatory consumer notice adopted by TREC in a readily noticeable location in each place of business the inspector maintains and provide a link to the notice in at least 10-point font labeled "Texas Real Estate Commission Consumer Notice," in a readily noticeable place on the home page of the inspector's business website.

### Standard Inspection Report Form - §535.223

Effective September 1, 2015

The revisions to the Standard Inspection Report Form (REI 7-5) add language to the "Consumer Notice Concerning Hazards or Deficiencies" section to notify consumers regarding potential hazards with improper bonding of corrugated stainless steel tubing (CSST) or other metal gas tubing.

### Education and Experience Requirements for a License - §535.212

Effective May 24, 2014

Changes include the following:

- \* revise the options through which an applicant may satisfy the field work component of the substitute experience requirement,
- \* define the term "interactive experience training module,"
- \* add more course delivery methods to satisfy each training option, and

- \* reduce the required hours under one option to lower costs and promote hands-on training.

### Continuing Education - §535.218

#### *Number of Continuing Education Hours taken in One Subject Area*

Effective January 1, 2015

The number of hours a license holder may take in any subject area for continuing education credit was increased from 12 to 16.

A course approval form for the Texas Standards of Practice/Legal/Ethics Update course was adopted by reference and, after the effective date, government entities and certain nationally recognized building organizations do not have to be a TREC-approved provider for license holders to receive continuing education credit for approved courses offered by those entities.

#### *Continuing Education Credit for Courses taken Outside Texas*

Effective December 7, 2016

Inspectors may receive continuing education elective credit for an education course taken outside of Texas to satisfy continuing education requirements of another country, territory or state if the following requirements are met:

- \* inspector is licensed in Texas as a real estate or professional inspector and held an active inspector license in another country, territory or state at the time the course was taken;
- \* course was approved for continuing education credit for an inspector license by another country, territory or state at the time the course was taken;
- \* inspector can demonstrate successful completion of the course by providing a course completion certificate, letter from the course provider, or other evidence satisfactory to TREC;
- \* subject matter of the course was predominately devoted to a subject acceptable for continuing education credit for a real estate or professional inspector licensed in Texas; and
- \* inspector files a Continuing Education Credit Request for an Out-of-State Course with TREC.

#### *Continuing Education Credit for Attending a Texas Real Estate Inspector Committee Meeting*

Effective December 7, 2016

A real estate or professional inspector licensed in Texas may receive up to four hours of continuing education elective credit per license period for in-person attendance at the February meeting of the Texas Real Estate Inspector Committee.

# Chapter 2

## Standards of Practice

Section 1102.058 of the Occupations Code requires the Texas Real Estate Inspector Committee (Inspector Committee) to develop rules relating to standards of practice for real estate inspection. TREC Rules §§535.227-233 establish the minimum Standards of Practice (SOPs) applicable to all real estate inspectors licensed in Texas when performing a real estate inspection for a prospective buyer or seller.

### TREC Rule 535.227(a) Scope

#### When Do the SOPs Apply?

The SOPs apply to an inspection conducted by a real estate inspector licensed in Texas for a prospective buyer or seller of real property on a one-to-four family unit that is substantially completed. In other words, the SOPs apply only when an inspection is being performed on a property that is the subject of a real estate transaction.

#### When Are the SOPs Not Applicable?

In general, the SOPs do not apply to systems or components not listed within the SOPs. The SOPs do not apply to cosmetic or aesthetic conditions, including wear and tear from ordinary use. A real estate inspection is a limited visual survey and basic performance evaluation of the systems and components of a building using normal controls that provides information regarding the general condition of a residence at the time of inspection. It is not intended to be a comprehensive investigation or exploratory probe to determine the cause or effect of deficiencies noted by the inspector.

While the SOPs establish minimum requirements, nothing prohibits an inspector from providing a higher level of inspection performance than required by the SOPs or from inspecting components and systems in addition to those specifically listed under the SOPs.

### DISCUSSION

Do you perform anything in your current practice that you consider a higher level of inspection than what the SOPs require?



### TREC Rule 535.227(f) Departure Provision

This section of the SOPs authorizes an inspector to forgo inspecting a component or system required by the SOPs under certain circumstances. These circumstances include

- \* inspector and the inspector's client agree that the item is not to be inspected;
- \* inspector is not qualified to inspect the item;
- \* item to be inspected is a common element of a multifamily development and is not in physical contact with the unit being inspected; and
- \* inspector determines, using reasonable judgment, that
  - » conditions exist that prevent the inspection of an item;
  - » conditions or materials are hazardous to the health or safety of the inspector; or
  - » the actions of the inspector could cause damage to the property.

## DISCUSSION

1. When is an inspector not qualified to inspect an item?
2. What are some examples of common elements of a multi-family development that inspectors are not required to inspect?
3. Which conditions or hazards might prevent an inspector from inspecting an item?

*Best Practice: the inspector should verify which portions of a multi-family unit are common elements that the unit is responsible for versus elements that the client is responsible for.*

### Watch Your Step!

Inspector Carol Careful determines that the walking surface in a section of the attic might not be adequate to proceed any further without risking damage to the property or risking injury. Carol is not required to proceed into that section of the attic. Her report must state the reason she did not inspect that section of the attic.

If an inspector intends to forgo inspecting a component or system required by the SOPs based on the circumstances listed above, the inspector is required to

- \* notify the client at the earliest practical opportunity that the component or system will not be inspected; and
- \* make the appropriate notation on the Standard Inspection Report Form and state the reason(s) it was not inspected.

If an inspector routinely forgoes inspecting a particular component or system required by the SOPs, and the inspector has reason to believe that property to be inspected includes that component or system, the inspector is required to provide notice that the component or system will not be inspected the first time the inspector makes contact with the client or prospective client.

### TREC Rules §§535.222-223 Inspection Reports and Standard Inspection Report Form

TREC requires inspectors to prepare a written report for their clients noting observed deficiencies and other items required to be reported by the SOPs (§535.222(a)). To ensure consistency in reporting, TREC has adopted a Standard Inspection Report Form (REI 7-5) that all licensed inspectors in Texas are required to use (§535.223).

While there is some leeway in how an inspector presents report form information to the client, TREC rules require the report to be in the prescribed format (§535.223) and require specific information in the report to include (§535.222 (b):

- \* name and license number of each inspector who participated in performing the inspection;
- \* if applicable, the names and license numbers of any supervising real estate inspector and/or sponsoring professional inspectors;
- \* address or other unique description of the property on each page of the report; and
- \* client's name.

Unless otherwise agreed to in writing by the client, an inspector must deliver the written report to the client within three days after completing the inspection.

### Important Reminders

- \* All license holders must register their business names with TREC.
- \* All license holders must use the current inspection form promulgated by TREC. Allowed modifications of the form are extremely limited.
- \* A summary is not a substitute for the promulgated inspection form. The inspection form must have all deficiencies listed and commented on. Listing "see summary" in the comments does not meet the Standards of Practice.

# Chapter 3

## Duties and Responsibilities



### Competency

Inspectors must prove a minimum level of competence for Texas licensure by

- \* completing qualifying educational courses,
- \* completing the appropriate amount of experience (by either completing a required number of inspections or the required number of substitute experience hours), and
- \* passing the national and state licensing exams.

Licensed inspectors must continue to demonstrate professional competency before they are eligible for renewal of a license, which is accomplished by completion of required continuing education hours.

In addition to the licensing requirements, inspectors must adhere to the minimum standards of competency established by the TREC Standards of Practice (§§535.227-535.2337).

### Case Study 1

#### The Rain Commenter

An inspector performed an inspection for a buyer of a property. In the Grading & Drainage section of the Inspection Report, the inspector commented on issues with the downspout to the right of the garage door. He noted there was a misaligned downspout at the southwest corner of the home. The inspector further noted in the southwest corner of the home that the soil sloped toward the home, creating a possibility for standing water during rain events. When raining, water would pool up against the foundation. The inspector commented on each of these items in the inspection report, but he did not mark any item as deficient.

## Case Study 2

### Proofreader Needed!

An inspector performed an inspection for a buyer of a property. The report revealed several issues dealing with how the inspector filled out the check boxes in the client's report including failure to

- \* date the report on the first page;
- \* mark Subsection H., Windows, under Section I. Structural Systems, as inspected and deficient pursuant to the comments made on the report;
- \* mark Subsection B., Cooling Equipment, under Section III. Heating, Ventilation and Air Conditioning Systems, as inspected and deficient pursuant to the comments made on the report;
- \* mark Subsection C., Duct Systems, Chases and Vents, under Section III. Heating, Ventilation and Air Conditioning Systems, as inspected;
- \* mark Subsection A., Plumbing Supply, Distribution Systems and Fixtures, under Section IV. Plumbing Systems, as inspected and deficient pursuant to the comments made on the report;

- \* mark Subsection H., Dryer Exhaust System, under Section V. Appliance, as deficient pursuant to the photo and comment that showed the vent needed to be cleaned and that the exhaust vent itself was damaged and in need of a flapper screen.

Additionally, when the inspector inspected the foundation, the inspector failed to render a written opinion as to the foundation performance in the comment section of Subsection A. Foundation, under Section I. Structural Systems, of the report. Further, the inspector failed to timely notify TREC of the use of a business name.

### DISCUSSION

1. How do you ensure your reports are accurate and complete?
2. Do you have someone else proofread your reports?

## Duties of a Sponsoring Inspector

One way to become a real estate inspector is to find a sponsoring inspector and serve under the sponsor as an apprentice inspector. Only a licensed Professional Real Estate Inspector may serve as a sponsor in Texas. The law imposes many duties on sponsoring real estate inspectors. These duties may be found in Rule 535.226 of the Texas Administrative Code, Title 22, Part 23, Chapter 535, subchapter R, which states:

- (a) An apprentice inspector or real estate inspector may be sponsored by only one licensed professional inspector.
- (b) A change in sponsorship shall be reported to the Commission immediately. If the sponsorship has ended because the professional inspector has terminated the sponsorship, the professional inspector shall immediately so notify the apprentice or real estate inspector in writing. If the sponsorship has ended because the apprentice inspector or real estate inspector has left the sponsorship, the apprentice inspector or real estate inspector shall immediately so notify the professional inspector in writing.
- (c) An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the

Commission has been notified of the change and any required fee has been submitted. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title.

- (d) A licensed professional inspector is responsible for the conduct of a sponsored apprentice inspector. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by:
  - (1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector to accompany the apprentice; and
  - (2) reviewing any written inspection report prepared by the apprentice inspector for compliance with the provisions of the standards of practice adopted by the Commission.
- (e) A licensed professional inspector is responsible for the conduct of a sponsored real estate inspector. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector. At a minimum a professional inspector shall provide indirect supervision of the real estate inspector by:

- (1) communicating with the real estate inspector on a regular basis about the inspections being performed by the real estate inspector; and
  - (2) reviewing on a regular basis written inspection reports prepared by the real estate inspector for compliance with the provisions of the standards of practice adopted by the Commission.
- (f) A sponsoring professional inspector may delegate the supervision of an apprentice inspector or real estate inspector to another professional inspector who is qualified to sponsor, but the sponsor remains responsible for the conduct of the sponsored inspector.

## Sponsoring Inspector's Purpose

A sponsoring real estate inspector serves several purposes in the industry. A sponsor provides one path for a person to become a licensed Real Estate Inspector or Professional Inspector. An applicant may pursue this path if an existing licensed Professional Inspector agrees to sponsor them. Serving as a sponsoring inspector also allows a Professional Real Estate Inspector to expand their inspection business to be a multi-inspector company. Becoming a sponsor allows Professional Real Estate Inspectors to have assistance, especially when inspecting larger homes.

Professional Real Estate Inspectors may sponsor both apprentice inspectors and licensed real estate inspectors; however, the level of required supervision is different for each. Professional inspectors must provide direct supervision for apprentices and indirect supervision for real estate inspectors.

### **Direct Supervision**

Direct supervision requires the sponsoring professional inspector to be present on site when an apprentice conducts an inspection. If a professional inspector cannot be present on site, he or she must arrange for another licensed Real Estate Inspector to be present with the apprentice during the inspection. The rules allow a sponsoring Professional Inspector to delegate supervision of an apprentice to another inspector qualified to be a sponsor, but the sponsoring Professional Inspector remains responsible for the conduct of the persons he sponsors. Direct supervision also requires a professional inspector sponsor to review any inspection reports prepared by an apprentice to make sure that the apprentice is following the Texas Standards of Practice for real estate inspection.

### **Indirect Supervision**

In contrast, indirect supervision does not require a sponsoring inspector to be present on site when a licensed Real Estate Inspector conducts a real estate

inspection. The sponsoring inspector must still communicate regularly with the Real Estate Inspector and review that inspector's reports on a regular basis.

## DISCUSSION

1. What are some best practices for professional inspectors when providing direct supervision to apprentices versus indirect supervision of real estate inspectors?
2. Would you be willing to supervise someone who practices in a different geographic region of the state?

## Consumer Information

### Consumer Protection Notice (TREC No. CN 1-2)

#### *New Consumer Notice Requirements*

Inspectors must provide notice to consumers and service recipients regarding the ability to file a complaint with TREC and the availability of the Inspector Recovery Fund. TREC has combined both notices into one Consumer Protection Notice (TREC No. CN 1-2). As of February 1, 2016, TREC rules require inspectors to post the notice in a readily noticeable location in each place of business maintained by the inspector (§535.220). If an inspector has a business website, he or she is also required to post a link to the notice on that website. The link must be in a readily noticeable place on the home page of the website and must be labeled "Texas Real Estate Commission Consumer Protection Notice" in at least a 10-point font.

The purpose of the required notice is to provide consumers important information in a readily accessible way. Section 1102.364 (TOC) also allows additional methods to provide the required notice to consumers about the Inspector Recovery Fund if an inspector does not have a place of business or a business website.

#### **No place of business? No website?**

The inspector must provide the notice by one of three additional methods allowed under section Texas Occupations Code §1102.364. These include

- \* on a written contract for the inspector's services;
- \* on a brochure that the inspector distributes; or
- \* in a bill or receipt for the inspector's services.

## Texas Real Estate Consumer Notice Concerning Hazards or Deficiencies (TREC OP-I)

The OP-I is an optional form inspectors may use to provide additional information to a client. TREC considers the potential for injury or property loss from the hazards addressed in the Standards of Practice to be significant enough to warrant this notice.

### Advertising

There are a number of different ways that inspectors can advertise their business and services, and there are a number of different target markets inspectors can focus on to achieve the highest impact for their advertising dollar; however, guidelines must be followed by inspectors when they advertise their services to others. TREC Rules §535.221 details guidelines for inspector advertising. Advertisements include all communications created or caused to be created by a licensed inspector for the purpose of inducing or attempting to induce a member of the public to use the services of the inspect. These include but are not limited to the following types of communication when disseminated for this purpose:

- \* inspection reports,
- \* business cards,
- \* invoices,
- \* signs,
- \* brochures,
- \* email,
- \* the Internet,
- \* electronic transmissions,
- \* text messages,
- \* purchased telephone directory display, and
- \* advertising by newspaper, radio and television.

An advertisement for a Professional Real Estate Inspector must include

- \* the license holder's name or assumed business name, and
- \* license number.

An advertisement for a real estate or apprentice inspector must include

- \* license holder's name or assumed business name,
- \* license number,
- \* name or assumed name of the sponsor, and
- \* statement indicating the person is sponsored by a professional inspector.

## What's Wrong With These Ads?

Frank N. Spector is a Professional Inspector.

Frank's Home Inspections  
555-279-0000  
www.frankinspections.com  
Licensed by Tx Real Estate Commission

Chuck Innatruk is a Real Estate Inspector.

AAA Inspections  
555-636-0101  
5985 Grove Ln. Timbuck Two, TX 77777

Susie Small is a Professional Inspector in Small Town, TX. She owns Susie's Pro Home Inspections.

Call Susie for your home inspection needs!  
555-212-2121

### Company Name - DBA

An inspector who conducts business using a DBA or company name must register that name with TREC. An inspector must report any changes to a DBA, company name, or contact information to TREC within 30 days.

### Website Advertising

An inspector's website must display the license number of each inspector whose name appears on the website. License number(s) must at least be on a single prominent page, such as an About Us page. For social networking purposes, it is sufficient for the inspector's license number to be on the main or profile page.

### Compensation

Inspectors are prohibited by TREC rule from receiving a "fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's consent" (§535.220).

These practices are discussed more fully in Chapter 4.

# Chapter 4

## Ethics



Inspectors must have “integrity beyond that of a person involved in ordinary commerce.” An inspector must conduct his business with a high standard of professionalism, while maintaining independence from any outside influence. An inspector must be objective and fair while performing inspections in a real estate transaction. Each inspector should strive to uphold the integrity of the home inspection profession in the eyes of the inspector’s clients and the public. Inspectors should place the interests of their clients before their own personal interest at all times and always seek to improve their knowledge of the inspection industry. The inspector’s role as a consumer protector helps protect the public against fraud, misrepresentation or unethical practices in the field of real estate inspections and real estate transactions. Another goal of inspectors is to help the public understand the need and value for home inspections.

### Responsibility to the Client

When inspecting a property, an inspector’s primary obligation is to the client. As previously discussed, inspectors are also required by rule to provide certain notices to their clients and explain any limitations regarding how the inspector conducts his or her inspection. Certain guidelines regarding the inspector-client relationship have also been established by TREC rule, such as:

- \* When an inspector accepts a job, the inspector has a duty to protect and promote the interest of

the client, and should do so above the interests of the inspector.

- \* An inspector is prohibited from disclosing inspection results or client information without prior approval from the client.
- \* The inspector should always attempt to increase his or her knowledge regarding new developments in the inspection industry.
- \* Because the client is likely less knowledgeable and experienced with regard to the systems being inspected, the inspector is entrusted with the client’s confidence that the inspector will truthfully report the condition of the property and the properties systems.
- \* The inspector should act in a manner that ensures independence from outside influences or interests that could compromise or influence how and what the inspector reports to the client regarding the property and its systems.

### DISCUSSION

While not specifically required by rule, there are best practices that an inspector can use that will enhance the inspector-client relationship. What are some of these?

## Case Study 3

### The Phantom Inspection

An inspector performed an inspection for the buyer of a property. The inspector used the REI 7-3 Inspection Form, which was not the current inspection form adopted by TREC. During the final walk-through, the buyer noticed multiple problems that were not mentioned in the inspection report. The buyer believed the inspection was poorly done and hired a different inspector to perform a second inspection.

The second inspection revealed that multiple deficiencies were missed by the first inspector. Based on the second inspection, the buyer chose not to purchase the property. The first inspector failed to report

- \* deficiencies in the foundation – a perimeter beam wall was cracked (larger than  $\frac{3}{4}$  of an inch);
- \* deficiencies in the roof covering material – several shingles were damaged and lifting, and there was visible deflection or sagging in the surface of the roof covering;
- \* evidence of repairs to roof coverings, vent penetration, and flashing details – a vent penetration had been abandoned and sealed/flashed in a temporary manner;
- \* deficiencies in exterior stairways – a visual inspection revealed that cinder blocks were being used as an exterior stairway from the rear entrance, which is unsafe;
- \* deficiencies in the condition and performance of doors and hardware – an interior bedroom door was damaged with a hole near the bottom, a bedroom door was missing, the front door and back door did not seal properly, and daylight was visible through the door frame when closed; the front door was binding against the frame and was slightly out of square, strike plates were missing from the front door for the deadbolt and door latch; the door frame and threshold showed water damage and rot;
- \* location of water meter, location of homeowners' main water supply shutoff valve, and static water pressure;
- \* deficiencies in the water heater – a visual inspection revealed that the pan drain system did not terminate over a waste receptor or to the exterior of the building above the ground surface, and the vent pipe had insufficient clearance from combustibles and constituted a fire hazard; deficiencies in the thermostat accuracy of a gas range – a subsequent inspection revealed that when the gas range was set at a temperature of 350° F, the actual temperature was 400° F, which was not within the acceptable 25-degree variance.

## Case Study 4

### The Fair Weather Roof

An inspector performed an inspection for the buyer of a property. The inspector used a business name and did not notify TREC within 30 days after he began using that name in his business. The inspector used the REI 7-3 Inspection Form. At the time of the inspection, this was not the current inspection form adopted by TREC. The inspector inspected the roof from the roof drip edge atop his ladder. He reported that he felt unsafe to get on the roof and that the roof was made out of tile roofing material. The buyer moved into the property, and

after heavy rainfall, the roof began leaking in several locations along the peak of the roof. A roofing contractor inspected the roof and discovered several visible cracks along with evidence of recent repairs. The buyer's insurance denied the claim stating that the damage was pre-existing as indicated by the repairs made to the roof by the previous owner. Photographs showed that portions of the roof along the ridges had been recently repaired with fresh mortar. The inspector failed to report evidence of repairs to roof coverings.

## Case Study 5

### All Cracked Up!

An inspector performed an inspection for a buyer of a property. The inspector

- \* did not have current professional liability insurance at the time of the inspection, nor did he notify TREC within 10 days of the liability insurance's expiration;
- \* failed to note as deficient the lack of arc-fault circuit interrupting devices during the inspection;
- \* commented that the foundation was not deficient and was only showing minor movement and that cracks in kitchen, fireplace, interior and exterior walls in various locations of the home were caused by foundation settlement and not a deficient structural system.

## Responsibility to Other Parties

### Access to Property for Person other than the Inspector.

An inspector's primary obligation is to the inspector's client. But, when the inspector's client is not the property owner, the inspector must also be mindful of his or her duties to the owner. Sometimes, a buyer or buyer's agent will need a third party to come by the property and weigh in on something that is outside the scope of the real estate inspection. For example, a pest control company may need to inspect for termite damage, a home security company may need access to provide an estimate for services, or a contractor may need access to the property to provide the buyer an estimate of needed repairs. The buyer or buyer's agent will often schedule these visits to coincide with the home inspection for convenience. An inspector must remember that, although the property owner has granted access to the inspector, this does not mean the inspector may grant access to other parties.

### Relationship with Other Inspectors

Inspectors are required by TREC rule (§535.220) to follow minimum guidelines when dealing with other inspectors. These guidelines require an inspector to conduct his or her business with fairness and integrity and cooperate with others to promote high standards in the inspection profession.

Additionally, inspectors have a duty to report any possible violation of statute or rule committed by other license holders to TREC. Bad actors in the real estate inspection field not only harm the public; they are harmful to the industry as a whole.

## DISCUSSION

1. What about allowing other persons inside the home during an inspection?
2. What are some areas where inspectors can increase cooperation with other persons in the industry?

## Inspector Independence

TREC rules (§535.220) require inspectors to conduct their business in a manner that ensures independence from outside influence when performing real estate inspections. Inspector independence is vital to an inspector's ability to present a fair and impartial opinion regarding all of the components inspected. Maintaining independence is in the best interest of both the inspector and the inspector's clients. When others try to influence an inspector, a client's trust can be compromised. The inspector's client relies on the knowledge and expertise of the inspector to provide a factual and honest assessment of the inspected property. The inspector's expertise and knowledge matter little if an inspector is influenced by a seller or seller's agent to keep certain deficiencies out of an inspection report, so the property is easier to sell, or by a buyer or buyer's agent to focus on certain items to give the buyer something to negotiate before closing on the property.

## The Really Big Stuff

**Tex TerrificGuy is just starting an inspection for his client, the buyer.**

**Bill BadGuy, a broker and top seller, arrives at his seller's home to speak with Tex.**

Bill: Hey, Tex. Good to see you. You ready to give me a good inspection? I've got a cash buyer ready to close by the end of the month.

Tex: Good to see you, too, Bill. Has your seller looked at the roof on this house? See how it's sagging?

Bill: That's not bad. Not bad at all. This house has been on the market for 20 months. I really need to get it sold, and my seller can't afford any repairs.

Tex: Looks like we might have some foundation issues, too. See that crack?

Bill: Now, look. That could just be a little settling. No need to put that in your report. Buyers just want to know the big things. No big things on this house. It's ready to move!

Tex: Well, not so fast. Bill, I can't just ignore things that aren't right. The buyer's paying me for an honest inspection, and we've got some problems here. Don't get me wrong—it's all fixable. It's not a lost cause.

Bill: Not a lost cause? It could be for my seller. He can't afford a new roof, and he needs every penny out of this house. What's he supposed to do? You've always been at the top of my list of inspectors. I always tell my clients to call you first.

Tex: I'd like to stay at the top, but I have to be honest about what I see.

Bill: Oh, well now, I'm not asking you to lie. You know that. But inspections should just be about really big stuff. Nothing big here.

Tex: Sorry, Rex. I have to report what I see. The buyer can decide what's "really big."

Bill: I can't believe you, Tex. I send a lot of business your way. You think about that when you write up your report. I need to close this deal, and I know you want me to keep up the referrals!

### DISCUSSION

What are some ways in which an inspector can ensure independence?

## Inspector Compensation and Referral Fees

Inspectors may violate TREC rules (§535.220) in certain situations if their compensation depends on the closing of a real estate sale or is tied to future referrals. TREC rules (§535.220) address restrictions on inspector compensation and the inspector's payment or receipt of referral fees. There are essentially two situations involving inspectors and restrictions on referral fees:

- \* the inspector is the subject of the referral and pays a fee or other valuable consideration in exchange for receiving future referrals, or
- \* the inspector refers a person or service to his or her client and receives a fee in exchange for providing client referrals.

Both situations are directly related to inspector independence and are subject to regulation by TREC.

TREC rules (§535.220) prohibit an inspector from inspecting a property if any compensation or future referrals received by the inspector depend on findings reported in the inspection report or on the closing or settlement of a property sale. The purpose of this prohibition is to protect the public and ensure the inspector is an unbiased professional who is serving the client's

best interest. An inspector who fails to identify certain deficiencies when conducting a real estate inspection because the inspector fears he or she will not get future inspection referrals does not serve the public interest. In addition, when an inspector's payment for a real estate inspection is dependent on the closing of a real estate sale, there is a risk the inspector may not fully disclose the severity of any deficient conditions in an effort to ensure that the property sale closes and the inspector may receive payment for the inspection.

TREC rules (§535.220) also prohibit an inspector from paying OR receiving a fee or other valuable consideration to or from any other settlement service provider, such as a real estate agent or title agent. For the purpose of this prohibition, the term "valuable consideration" includes, but is not limited to, the referral of inspections, inclusion on a list of inspectors, preferred providers, or similar arrangements or inclusion on lists of inspectors that are contingent on other financial agreements.

TREC rules (§535.220) allow inspectors to refer "non-settlement" services, such as a home security or pest control company, to their clients. Many of these companies will often pay a referral fee to the inspector for providing names and contact information for

the inspector's clients. TREC rules allow inspectors to accept a fee or other valuable consideration for referring these "non-settlement" services to clients only if the inspector has the client's consent. From a client's perspective, an inspector's acceptance of referral fees may be viewed as improper influence to write an inspection report in a way that provides business for the service companies who pay referral fees to the inspector. Requiring an inspector to obtain the client's permission before accepting the referral fee gives the client adequate notice of the inspector's relationship to the service company, so the client has an opportunity to address any concerns with the inspector.

## DISCUSSION

1. What are some possible best practices for obtaining the client's permission?
2. Does providing language in the inspection contract similar to the language below meet the requirement that the inspector obtain the client's permission?

*"Your inspector may have an affiliation with a third party service provider ("TPSP") in order to offer you additional value added services. By entering into this agreement you*

- (a) authorize your inspector to provide your contact information (including telephone number) to the TPSP,*
- (b) waive and release any restrictions that may prevent the TPSP from contacting you (including by telephone), and*
- (c) authorize the TPSP to contact you (including by telephone) regarding special home alarm system offers."*

## Repairs on Inspected Property

When an inspector has performed an inspection under a real estate contract, lease, or exchange of real property, TREC rules (§535.220) preclude the inspector from accepting employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice within 12 months after the date of the inspection. This provision only prevents an inspector from accepting employment to repair those homes or systems he or she inspected. It does not prevent an inspector from accepting employment to repair homes or systems the inspector did not inspect. If more than 12 months have passed since the inspection, this provision does not apply.



# Chapter 5

## Hot Topics



### CSST Lightning Safety Awareness

Corrugated Stainless Steel Tubing (CSST) is a yellow, flexible, metal gas tubing used to supply natural gas or propane to gas appliances and HVAC systems for both residential and commercial structures. Since 1990, CSST has been installed in millions of homes in the U.S. It has been shown that an indirect lightning strike near a structure in which CSST is present may cause an electrical surge to travel through the structure and perforate the sidewall of the CSST as the energy, seeking ground, arcs from one metallic system to another. This arcing may ignite the pressurized gas leaking from the perforated CSST and potentially cause a significant fire. Proper bonding and grounding a CSST system may reduce the likelihood of CSST perforation and electrical arcing due to an indirect lightning strike. While current manufacturing guidelines and gas fuel codes require direct bonding of newly installed CSST, many installations, particularly older installations, may not meet the current installation requirements.

### Bonding of the Gas Supply System: Inspector's Duty Under the Standards of Practice

Section 535.229 of the SOPs requires an inspector to report as deficient any "deficiencies in bonding and grounding." This requirement applies to ALL metal pipes, including CSST, which is just one of the materials

that may be used in a gas supply or distribution system. The SOPs do not require an inspector to determine if CSST is present in a home. However, if an inspector observes CSST during an inspection, the inspector must determine if the CSST is bonded, subject to any limitations in the SOPs. This requirement does not prevent an inspector from specifically reporting the presence of CSST in an inspection report or referring a client to additional information regarding the product.

The SOPs do not require an inspector to determine if CSST is properly bonded. The inspector need only determine if the gas supply system is bonded. Any determination as to whether a gas supply system is properly bonded should be left to a person with the required expertise to do so, such as a licensed master electrician. The preamble to the SOPs was amended in 2015 to enhance consumer protection by providing the consumer with notice regarding the potential hazard caused by the lack of bonding on gas piping, including CSST.

### Hydrostatic Testing

A hydrostatic test is a method for testing strength and leaks in pipelines, plumbing, gas cylinders, boilers, and fuel tanks. The testing pressure is always higher than the normal operating pressure of the system.

It is not mandatory to conduct a hydrostatic test when performing a real estate inspection. If a buyer wishes to have a hydrostatic test performed on a property, a licensed plumber is the only authorized professional who may perform a hydrostatic test on a system within a home. An inspector may only perform a hydrostatic test if the inspector is also a licensed plumber. Before any hydrostatic testing may be performed on a property, the property owner or seller must sign a separate written document authorizing such testing.

TREC has been informed that some real estate agents may be attempting to coerce inspectors to perform a hydrostatic test on a home by threatening to stop using the services of any inspector who refuses to perform such a test. Such behavior by a real estate agent is considered acting in bad faith and not in the best interest of the agent's client and may subject an agent to disciplinary action.

## Case Study 6

### The Hydro-Negligent Inspector

An inspector performed an inspection for the buyer of a property. At the time of the inspection, the inspector did not have professional liability insurance or any other insurance coverage. The inspector advertised on his business website that he also performed hydrostatic pressure testing. The buyer paid the inspector an additional fee to perform a hydrostatic pressure test on the property.

The inspector provided a report to the buyer indicating he had performed a hydrostatic pressure test and the result of the test was acceptable. The buyer

closed on the property and then discovered multiple leaks in the plumbing. The buyer contacted the inspector and discovered the inspector's insurance had lapsed. The buyer filed a civil suit and a complaint against the inspector. During a deposition, the inspector falsely represented that his TREC license allowed him to perform hydrostatic pressure tests. The inspector later admitted he did not perform a hydrostatic pressure test. The inspector was not licensed by the Texas Plumbing Board to perform a hydrostatic pressure test.

# Appendix A

**THE TEXAS REAL ESTATE COMMISSION (TREC) REGULATES  
REAL ESTATE BROKERS AND SALES AGENTS, REAL ESTATE INSPECTORS,  
HOME WARRANTY COMPANIES, EASEMENT AND RIGHT-OF-WAY AGENTS  
AND TIMESHARE INTEREST PROVIDERS**

**YOU CAN FIND MORE INFORMATION AND  
CHECK THE STATUS OF A LICENSE HOLDER AT**

**[WWW.TREC.TEXAS.GOV](http://WWW.TREC.TEXAS.GOV)**

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**YOU CAN SEND A COMPLAINT AGAINST A LICENSE HOLDER TO TREC  
A COMPLAINT FORM IS AVAILABLE ON THE TREC WEBSITE**

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**TREC ADMINISTERS TWO RECOVERY FUNDS WHICH MAY BE USED TO  
SATISFY A CIVIL COURT JUDGMENT AGAINST A BROKER, SALES AGENT,  
REAL ESTATE INSPECTOR, OR EASEMENT OR RIGHT-OF-WAY AGENT,  
IF CERTAIN REQUIREMENTS ARE MET**

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**IF YOU HAVE QUESTIONS OR ISSUES ABOUT THE ACTIVITIES OF  
A LICENSE HOLDER, THE COMPLAINT PROCESS OR THE  
RECOVERY FUNDS, PLEASE VISIT THE WEBSITE OR CONTACT TREC AT**



**TEXAS REAL ESTATE COMMISSION**

**P.O. BOX 12188**

**AUSTIN, TEXAS 78711-2188**

**(512) 936-3000**



# PROPERTY INSPECTION REPORT

**Prepared For:**

\_\_\_\_\_ (Name of Client)

**Concerning:**

\_\_\_\_\_ (Address or Other Identification of Inspected Property)

**By:**

\_\_\_\_\_ (Name and License Number of Inspector) \_\_\_\_\_ (Date)

\_\_\_\_\_ (Name, License Number of Sponsoring Inspector)

## PURPOSE, LIMITATIONS AND INSPECTOR / CLIENT RESPONSIBILITIES

This property inspection report may include an inspection agreement (contract), addenda, and other information related to property conditions. If any item or comment is unclear, you should ask the inspector to clarify the findings. It is important that you carefully read ALL of this information.

This inspection is subject to the rules ("Rules") of the Texas Real Estate Commission ("TREC"), which can be found at [www.trec.texas.gov](http://www.trec.texas.gov).

The TREC Standards of Practice (Sections 535.227-535.233 of the Rules) are the minimum standards for inspections by TREC-licensed inspectors. An inspection addresses only those components and conditions that are present, visible, and accessible at the time of the inspection. While there may be other parts, components or systems present, only those items specifically noted as being inspected were inspected. The inspector is NOT required to turn on decommissioned equipment, systems, utility services or apply an open flame or light a pilot to operate any appliance. The inspector is NOT required to climb over obstacles, move furnishings or stored items. The inspection report may address issues that are code-based or may refer to a particular code; however, this is NOT a code compliance inspection and does NOT verify compliance with manufacturer's installation instructions. The inspection does NOT imply insurability or warrantability of the structure or its components. Although some safety issues may be addressed in this report, this inspection is NOT a safety/code inspection, and the inspector is NOT required to identify all potential hazards.

In this report, the inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present or deficient and explain the findings in the corresponding section in the body of the report form. The inspector must check the Deficient (D) box if a condition exists that adversely and materially affects the performance of a system or component or constitutes a hazard to life, limb or property as specified by the TREC Standards of Practice. General deficiencies include inoperability, material distress, water penetration, damage, deterioration, missing components, and unsuitable installation. Comments may be provided by the inspector whether or not an item is deemed deficient. The inspector is not required to prioritize or emphasize the importance of one deficiency over another.

Some items reported may be considered life-safety upgrades to the property. For more information, refer to Texas Real Estate Consumer Notice Concerning Recognized Hazards or Deficiencies below.

THIS PROPERTY INSPECTION IS NOT A TECHNICALLY EXHAUSTIVE INSPECTION OF THE STRUCTURE, SYSTEMS OR COMPONENTS. This inspection may not reveal all deficiencies. A real estate inspection helps to reduce some of the risk involved in purchasing a home, but it cannot eliminate these risks, nor can the inspection anticipate future events or changes in performance due to changes in use or occupancy. It is recommended that you obtain as much information as is available about this property, including seller's disclosures, previous inspection reports, engineering reports, building/remodeling permits, and reports performed for and by relocation companies, municipal inspection departments, lenders, insurers, and appraisers. You should also attempt to determine whether repairs, renovation, remodeling, additions, or other such activities have taken place at this property. It is not the inspector's responsibility to confirm that information obtained from these sources is complete or accurate or that this inspection is consistent with the opinions expressed in previous or future reports.

ITEMS IDENTIFIED IN THE REPORT DO NOT OBLIGATE ANY PARTY TO MAKE REPAIRS OR TAKE OTHER ACTIONS, NOR IS THE PURCHASER REQUIRED TO REQUEST THAT THE SELLER TAKE ANY ACTION. When a deficiency is reported, it is the client's responsibility to obtain further evaluations and/or cost estimates from qualified service professionals. Any such follow-up should take place prior to the expiration of any time limitations such as option periods.

Promulgated by the Texas Real Estate Commission (TREC) P.O. Box 12188, Austin, TX 78711-2188 (512) 936-3000  
<http://www.trec.texas.gov>.

Page 1 of \_\_\_\_

Report Identification: \_\_\_\_\_

Evaluations by qualified tradesmen may lead to the discovery of additional deficiencies which may involve additional repair costs. Failure to address deficiencies or comments noted in this report may lead to further damage of the structure or systems and add to the original repair costs. The inspector is not required to provide follow-up services to verify that proper repairs have been made.

Property conditions change with time and use. For example, mechanical devices can fail at any time, plumbing gaskets and seals may crack if the appliance or plumbing fixture is not used often, roof leaks can occur at any time regardless of the apparent condition of the roof, and the performance of the structure and the systems may change due to changes in use or occupancy, effects of weather, etc. These changes or repairs made to the structure after the inspection may render information contained herein obsolete or invalid. This report is provided for the specific benefit of the client named above and is based on observations at the time of the inspection. If you did not hire the inspector yourself, reliance on this report may provide incomplete or outdated information. Repairs, professional opinions or additional inspection reports may affect the meaning of the information in this report. It is recommended that you hire a licensed inspector to perform an inspection to meet your specific needs and to provide you with current information concerning this property.

**TEXAS REAL ESTATE CONSUMER NOTICE CONCERNING HAZARDS OR DEFICIENCIES**

Each year, Texans sustain property damage and are injured by accidents in the home. While some accidents may not be avoidable, many other accidents, injuries, and deaths may be avoided through the identification and repair of certain hazardous conditions. Examples of such hazards include:

- malfunctioning, improperly installed, or missing ground fault circuit protection (GFCI) devices for electrical receptacles in garages, bathrooms, kitchens, and exterior areas;
- malfunctioning arc fault protection (AFCI) devices;
- ordinary glass in locations where modern construction techniques call for safety glass;
- malfunctioning or lack of fire safety features such as smoke alarms, fire-rated doors in certain locations, and functional emergency escape and rescue openings in bedrooms;
- malfunctioning carbon monoxide alarms;
- excessive spacing between balusters on stairways and porches;
- improperly installed appliances;
- improperly installed or defective safety devices;
- lack of electrical bonding and grounding; and
- lack of bonding on gas piping, including corrugated stainless steel tubing (CSST).

To ensure that consumers are informed of hazards such as these, the Texas Real Estate Commission (TREC) has adopted Standards of Practice requiring licensed inspectors to report these conditions as "Deficient" when performing an inspection for a buyer or seller, if they can be reasonably determined.

These conditions may not have violated building codes or common practices at the time of the construction of the home, or they may have been "grandfathered" because they were present prior to the adoption of codes prohibiting such conditions. While the TREC Standards of Practice do not require inspectors to perform a code compliance inspection, TREC considers the potential for injury or property loss from the hazards addressed in the Standards of Practice to be significant enough to warrant this notice.

Contract forms developed by TREC for use by its real estate license holders also inform the buyer of the right to have the home inspected and can provide an option clause permitting the buyer to terminate the contract within a specified time. Neither the Standards of Practice nor the TREC contract forms require a seller to remedy conditions revealed by an inspection. The decision to correct a hazard or any deficiency identified in an inspection report is left to the parties to the contract for the sale or purchase of the home.

INFORMATION INCLUDED UNDER "ADDITIONAL INFORMATION PROVIDED BY INSPECTOR", OR PROVIDED AS AN ATTACHMENT WITH THE STANDARD FORM, IS NOT REQUIRED BY THE COMMISSION AND MAY CONTAIN CONTRACTUAL TERMS BETWEEN THE INSPECTOR AND YOU, AS THE CLIENT. THE COMMISSION DOES NOT REGULATE CONTRACTUAL TERMS BETWEEN PARTIES. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY CONTRACTUAL TERM CONTAINED IN THIS SECTION OR ANY ATTACHMENTS, CONSULT AN ATTORNEY.

**ADDITIONAL INFORMATION PROVIDED BY INSPECTOR**

Report Identification: \_\_\_\_\_

**I=Inspected**      **NI=Not Inspected**      **NP=Not Present**      **D=Deficient**

**I**   **NI**   **NP**   **D**

## I. STRUCTURAL SYSTEMS

**A. Foundations**

*Type of Foundation(s):*

*Comments:*

**B. Grading and Drainage**

*Comments:*

**C. Roof Covering Materials**

*Types of Roof Covering:*

*Viewed From:*

*Comments:*

**D. Roof Structures and Attics**

*Viewed From:*

*Approximate Average Depth of Insulation:*

*Comments:*

**E. Walls (Interior and Exterior)**

*Comments:*

**F. Ceilings and Floors**

*Comments:*

**G. Doors (Interior and Exterior)**

*Comments:*

**H. Windows**

*Comments:*

**I. Stairways (Interior and Exterior)**

*Comments:*

**J. Fireplaces and Chimneys**

*Comments:*

**K. Porches, Balconies, Decks, and Carports**

*Comments:*

**L. Other**

*Comments:*

Page 3 of \_\_\_\_

Report Identification: \_\_\_\_\_

**I=Inspected**      **NI=Not Inspected**      **NP=Not Present**      **D=Deficient**

**I**   **NI**   **NP**   **D**

## II. ELECTRICAL SYSTEMS

**A. Service Entrance and Panels**

*Comments:*

**B. Branch Circuits, Connected Devices, and Fixtures**

*Type of Wiring:*

*Comments:*

## III. HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS

**A. Heating Equipment**

*Type of Systems:*

*Energy Sources:*

*Comments:*

**B. Cooling Equipment**

*Type of Systems:*

*Comments:*

**C. Duct Systems, Chases, and Vents**

*Comments:*

## IV. PLUMBING SYSTEMS

**A. Plumbing Supply, Distribution Systems and Fixtures**

*Location of water meter:*

*Location of main water supply valve:*

*Static water pressure reading:*

*Comments:*

**B. Drains, Wastes, and Vents**

*Comments:*

**C. Water Heating Equipment**

*Energy Sources:*

*Capacity:*

*Comments:*

**D. Hydro-Massage Therapy Equipment**

*Comments:*

**E. Other**

*Comments:*

Page 4 of \_\_\_\_

Report Identification: \_\_\_\_\_

**I=Inspected**      **NI=Not Inspected**      **NP=Not Present**      **D=Deficient**

|          |           |           |          |
|----------|-----------|-----------|----------|
| <b>I</b> | <b>NI</b> | <b>NP</b> | <b>D</b> |
|----------|-----------|-----------|----------|

### V. APPLIANCES

**A. Dishwashers**  
*Comments:*

**B. Food Waste Disposers**  
*Comments:*

**C. Range Hood and Exhaust Systems**  
*Comments:*

**D. Ranges, Cooktops, and Ovens**  
*Comments:*

**E. Microwave Ovens**  
*Comments:*

**F. Mechanical Exhaust Vents and Bathroom Heaters**  
*Comments:*

**G. Garage Door Operators**  
*Comments:*

**H. Dryer Exhaust Systems**  
*Comments:*

**I. Other**  
*Comments:*

### VI. OPTIONAL SYSTEMS

**A. Landscape Irrigation (Sprinkler) Systems**  
*Comments:*

**B. Swimming Pools, Spas, Hot Tubs, and Equipment**  
*Type of Construction:*  
*Comments:*

**C. Outbuildings**  
*Comments:*

Report Identification: \_\_\_\_\_

**I=Inspected**      **NI=Not Inspected**      **NP=Not Present**      **D=Deficient**

|          |           |           |          |
|----------|-----------|-----------|----------|
| <b>I</b> | <b>NI</b> | <b>NP</b> | <b>D</b> |
|----------|-----------|-----------|----------|

**D. Private Water Wells** (A coliform analysis is recommended.)

*Type of Pump:*

*Type of Storage Equipment:*

*Comments:*

**E. Private Sewage Disposal (Septic) Systems**

*Type of System:*

*Location of Drain Field:*

*Comments:*

**F. Other**

*Comments:*



# TEXAS REAL ESTATE CONSUMER NOTICE CONCERNING HAZARDS OR DEFICIENCIES

Each year, Texans sustain property damage and are injured by accidents in the home. While some accidents may not be avoidable, many other accidents, injuries, and deaths may be avoided through the identification and repair of certain hazardous conditions. Examples of such hazards include:

- malfunctioning, improperly installed, or missing ground fault circuit protection (GFCI) devices for electrical receptacles in garages, bathrooms, kitchens, and exterior areas;
- malfunctioning arc fault protection (AFCI) devices;
- ordinary glass in locations where modern construction techniques call for safety glass;
- malfunctioning or lack of fire safety features, such as smoke alarms, fire-rated doors in certain locations, and functional emergency escape and rescue openings in bedrooms;
- malfunctioning carbon monoxide alarms;
- excessive spacing between balusters on stairways and porches;
- improperly installed appliances;
- improperly installed or defective safety devices;
- lack of electrical bonding and grounding; and
- lack of bonding on gas piping, including corrugated stainless steel tubing (CSST).

To ensure that consumers are informed of hazards such as these, the Texas Real Estate Commission (TREC) has adopted Standards of Practice requiring licensed inspectors to report these conditions as "Deficient" when performing an inspection for a buyer or seller, if they can be reasonably determined.

These conditions may not have violated building codes or common practices at the time of the construction of the home, or they may have been "grandfathered" because they were present prior to the adoption of codes prohibiting such conditions. While the TREC Standards of Practice do not require inspectors to perform a code compliance inspection, TREC considers the potential for injury or property loss from the hazards addressed in the Standards of Practice to be significant enough to warrant this notice.

Contract forms developed by TREC for use by its real estate license holders also inform the buyer of the right to have the home inspected and can provide an option clause permitting the buyer to terminate the contract within a specified time. Neither the Standards of Practice nor the TREC contract forms requires a seller to remedy conditions revealed by an inspection. The decision to correct a hazard or any deficiency identified in an inspection report is left to the parties to the contract for the sale or purchase of the home.



This form has been approved by the Texas Real Estate Commission for voluntary use by its license holders. Copies of TREC rules governing real estate brokers, salesperson and real estate inspectors are available from TREC. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)

# Appendix B

## Texas Administrative Code

|               |                                 |
|---------------|---------------------------------|
| TITLE 22      | EXAMINING BOARDS                |
| PART 23       | TEXAS REAL ESTATE COMMISSION    |
| CHAPTER 535   | GENERAL PROVISIONS              |
| SUBCHAPTER R  | REAL ESTATE INSPECTORS          |
| RULE §535.220 | Professional Conduct and Ethics |

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector license holder must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

(b) The relationship between an inspector and a client should at a minimum meet the following guidelines.

(1) In accepting employment as an inspector, the inspector should protect and promote the interest of the client to the best of the inspector's ability and knowledge, recognizing that the client has placed trust and confidence in the inspector.

(2) In the interest of the client and the inspector's profession, the inspector should endeavor always to maintain and increase the inspector's level of knowledge regarding new developments in the field of inspection.

(3) The inspector should conduct the inspector's business in a manner that will assure the client of the inspector's independence from outside influence and interests that might compromise the inspector's ability to render a fair and impartial opinion regarding any inspection performed.

(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.

(1) The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector's, the inspector's business and the inspection industry.

(2) The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.

(3) The inspector accepts the duty of protecting the public against fraud, misrepresentation or unethical practices in the field of real estate inspections.

(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.

(1) The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.

(2) The inspector should cooperate with other inspectors to insure the continued promotion of the high standards of the real estate inspection profession and pledges himself to the continued pursuit of increasing competence, fairness, education and knowledge necessary to achieve the confidence of the public.

(3) If an inspector has knowledge of a possible violation of the rules of the Commission or Chapter 1102, the inspector should report the possible violation to the Commission.

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.

(2) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

- (A) federally related mortgage loan originator;
  - (B) mortgage broker;
  - (C) title service provider;
  - (D) attorney;
  - (E) a person who prepares documents, including notarization, delivery, and recordation;
  - (F) appraiser;
  - (G) inspector;
  - (H) settlement agent;
  - (I) a person who provides mortgage insurance services;
  - (J) a person who provides services involving hazard, flood, or other casualty insurance or homeowner's warranties;
  - (K) real estate agent or broker; and
  - (L) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.
- (3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:
- (A) the referral of inspections;
  - (B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or
  - (C) inclusion on lists of inspectors contingent on other financial agreements.
- (4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's consent.
- (5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.
- (6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this subchapter on which the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.
- (7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.
- (8) This subsection does not prohibit an inspector from:
- (A) engaging in legal promotional or educational activities to or with settlement service providers that are not conditioned on the referral of business; or
  - (B) purchasing advertising and promoting the inspector at market rates from any person in any publication, event or media.
- (f) The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector, the inspector's business, and the inspection industry.
- (g) Each active real estate inspector licensed by the Commission shall provide the consumer notice adopted under §531.18 of this title by:
- (1) displaying it in a readily noticeable location in each place of business the inspector maintains; and
  - (2) providing a link to it labeled "Texas Real Estate Commission Consumer Protection Notice", in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the inspector.

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**Source Note:** The provisions of this §535.220 adopted to be effective March 6, 1992, 17 TexReg 1542; amended to be effective August 31, 2004, 29 TexReg 8297; amended to be effective August 28, 2006, 31 TexReg 6736; amended to be effective January 1, 2015, 39 TexReg 9669; amended to be effective January 1, 2016, 40 TexReg 8249

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| TITLE 22 PART  | EXAMINING BOARDS             |
| 23 CHAPTER 535 | TEXAS REAL ESTATE COMMISSION |
| SUBCHAPTER R   | GENERAL PROVISIONS           |
| RULE §535.221  | REAL ESTATE INSPECTORS       |
|                | Advertisements               |

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(a) For the purposes of this section, advertisements are all communications created or caused to be created by a licensed inspector for the purpose of inducing or attempting to induce a member of the public to use the services of the inspector, including but not limited to the following types of communications when disseminated for this purpose: inspection reports, business cards, invoices, signs, brochures, email, the Internet, electronic transmissions, text messages, and purchased telephone directory displays and advertising by newspaper, radio and television.

(b) Advertisements by a person licensed as an inspector must contain the name or assumed business name of the license holder. The advertisements must also contain the license number of the person. If the person is licensed as a real estate inspector or as an apprentice inspector, the advertisements must also contain the following:

- (1) the name or assumed name of the person's sponsoring professional inspector; and
- (2) a statement indicating that the person is sponsored by that professional inspector.

(c) A licensed professional inspector, real estate inspector or apprentice inspector shall notify the Commission in writing within 30 days after the inspector starts or stops using a name in business other than the name in which the inspector is licensed.

(d) Websites containing advertising by one or more inspectors must include the license number of each licensed person whose name or assumed business name appears on the website. For the purposes of an inspector's or inspection company's own website, it is sufficient for the license number(s) to appear on a single prominent page of the website, such as the main page or the "About Us" page. For the purposes of social networking websites, including websites through which license holders may transmit electronic messages to other members of the same site, it is sufficient for license number(s) to appear on the inspector's main or profile page.

(e) The Commission may reprimand or suspend or revoke the license of a person who is found to have engaged in false or misleading advertising or to have failed to comply with provisions of this section.

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**Source Note:** The provisions of this §535.221 adopted to be effective January 4, 1993, 17 TexReg 8955; amended to be effective December 21, 1993, 18 TexReg 9103; amended to be effective March 12, 1997, 22 TexReg 2429; amended to be effective January 1, 2001, 25 TexReg 11653; amended to be effective January 1, 2011, 35 TexReg 11693; amended to be effective March 21, 2012, 37 TexReg 1908; amended to be effective January 1, 2015, 39 TexReg 9669

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| TITLE 22 PART  | EXAMINING BOARDS             |
| 23 CHAPTER 535 | TEXAS REAL ESTATE COMMISSION |
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| RULE §535.222  | REAL ESTATE INSPECTORS       |
|                | Inspection Reports           |

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(a) For each inspection, the inspector shall:

(1) prepare a written inspection report noting observed deficiencies and other items required to be reported; and

(2) deliver the report to the person for whom the inspection was performed within three days unless otherwise agreed in writing by the client.

(b) The inspection report shall include:

(1) the name and license number of each inspector who participated in performing the inspection, as well as the name(s) and license number(s) of any supervising real estate inspector(s) and sponsoring professional inspector(s), if applicable;

(2) the address or other unique description of the property on each page of the report; and

(3) the client's name.

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**Source Note:** The provisions of this §535.222 adopted to be effective February 1, 2009, 33 TexReg 9240; amended to be effective January 1, 2011, 35 TexReg 11693

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| TITLE 22 PART  | EXAMINING BOARDS                |
| 23 CHAPTER 535 | TEXAS REAL ESTATE COMMISSION    |
| SUBCHAPTER R   | GENERAL PROVISIONS              |
| RULE §535.223  | REAL ESTATE INSPECTORS          |
|                | Standard Inspection Report Form |

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The Commission adopts by reference Property Inspection Report Form REI 7-5, approved by the Commission for use in reporting inspections results. This document is published by and available from the Commission website: [www.trec.texas.gov](http://www.trec.texas.gov), or by writing to the Commission at Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of substantially complete one-to-four family residential property shall be reported on Form REI 7-5 adopted by the Commission ("the standard form").

(2) Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section, the inspector shall reproduce the text of the standard form verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the printed version of the standard form.

(3) An inspector may make the following changes to the standard form:

(A) delete the line for name and license number, of the sponsoring inspector, if the inspection was performed solely by a professional inspector;

(B) change the typeface; provided that it is no smaller than a 10 point font;

(C) change the color of the typeface and checkboxes;

(D) use legal sized (8-1/2" by 14") paper;

(E) add a cover page to the report form;

(F) add footers to each page of the report except the first page and may add headers to each page of the report;

(G) place the property identification and page number at either the top or bottom of the page;

(H) add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(I) list other items in the corresponding appropriate section of the report form and additional captions, letters, and check boxes for those items;

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| SUBCHAPTER R   | GENERAL PROVISIONS  |
| RULE §535.226  | REAL ESTATE INSPECTORS  |
|                | Sponsorship of Apprentice Inspectors and Real Estate Inspectors |

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- (a) An apprentice inspector or real estate inspector may be sponsored by only one licensed professional inspector.
- (b) A change in sponsorship shall be reported to the Commission immediately. If the sponsorship has ended because the professional inspector has terminated the sponsorship, the professional inspector shall immediately so notify the apprentice or real estate inspector in writing. If the sponsorship has ended because the apprentice inspector or real estate inspector has left the sponsorship, the apprentice inspector or real estate inspector shall immediately so notify the professional inspector in writing.
- (c) An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the Commission has been notified of the change and any required fee has been submitted. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title.
- (d) A licensed professional inspector is responsible for the conduct of a sponsored apprentice inspector. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by:
- (1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector to accompany the apprentice; and
  - (2) reviewing any written inspection report prepared by the apprentice inspector for compliance with the provisions of the standards of practice adopted by the Commission.
- (e) A licensed professional inspector is responsible for the conduct of a sponsored real estate inspector. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector. At a minimum a professional inspector shall provide indirect supervision of the real estate inspector by:
- (1) communicating with the real estate inspector on a regular basis about the inspections being performed by the real estate inspector; and
  - (2) reviewing on a regular basis written inspection reports prepared by the real estate inspector for compliance with the provisions of the standards of practice adopted by the Commission.
- (f) A sponsoring professional inspector may delegate the supervision of an apprentice inspector or real estate inspector to another professional inspector who is qualified to sponsor, but the sponsor remains responsible for the conduct of the sponsored inspector.

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| TITLE 22 PART  | EXAMINING BOARDS                          |
| 23 CHAPTER 535 | TEXAS REAL ESTATE COMMISSION              |
| SUBCHAPTER R   | GENERAL PROVISIONS                        |
| RULE §535.227  | REAL ESTATE INSPECTORS                    |
|                | Standards of Practice: General Provisions |

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(a) Scope.

(1) These standards of practice apply when a professional inspector or real estate inspector who is licensed under this chapter accepts employment to perform a real estate inspection for a prospective buyer or seller of real property.

(2) These standards of practice define the minimum requirements for a real estate inspection conducted on a one to four family unit that is substantially completed. Substantially completed means the stage of construction when a new building, addition, improvement, or alteration to an existing building can be occupied or used for its intended purpose.

(3) For the purposes of these standards of practice a real estate inspection:

(A) is a limited visual survey and basic performance evaluation of the systems and components of a building using normal controls that provides information regarding the general condition of a residence at the time of inspection.

(B) is not intended to be a comprehensive investigation or exploratory probe to determine the cause or effect of deficiencies noted by the inspector; and

(C) does not require the use of:

(i) specialized equipment, including but not limited to:

(I) thermal imaging equipment;

(II) moisture meters;

(III) gas or carbon monoxide detection equipment;

(IV) environmental testing equipment and devices;

(V) elevation determination devices; or

(VI) ladders capable of reaching surfaces over one story above ground surfaces; or

(ii) specialized procedures, including but not limited to:

(I) environmental testing;

# Texas Administrative Code

TITLE 22

EXAMINING BOARDS

PART 23

TEXAS REAL ESTATE COMMISSION

CHAPTER 535

GENERAL PROVISIONS

SUBCHAPTER R

REAL ESTATE INSPECTORS

RULE §535.229

Standards of Practice: Minimum Inspection Requirements for Electrical Systems

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(a) Service entrance and panels.

(1) The inspector shall report as Deficient:

- (A) a drop, weatherhead or mast that is not securely fastened to the building;
- (B) the absence of or deficiencies in the grounding electrode system;
- (C) missing or damaged dead fronts or covers plates;
- (D) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;
- (E) electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;
- (F) electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;
- (G) deficiencies in:
  - (i) electrical cabinets, gutters, cutout boxes, and panel boards;
  - (ii) the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;
  - (iii) the compatibility of overcurrent devices and conductors;
  - (iv) the overcurrent device and circuit for labeled and listed 240 volt appliances;
  - (v) bonding and grounding;
  - (vi) conductors;
  - (vii) the operation of installed ground-fault or arc-fault circuit interrupter devices; and
- (H) the absence of:
  - (i) trip ties on 240 volt overcurrent devices or multi-wire branch circuit;
  - (ii) appropriate connections;





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