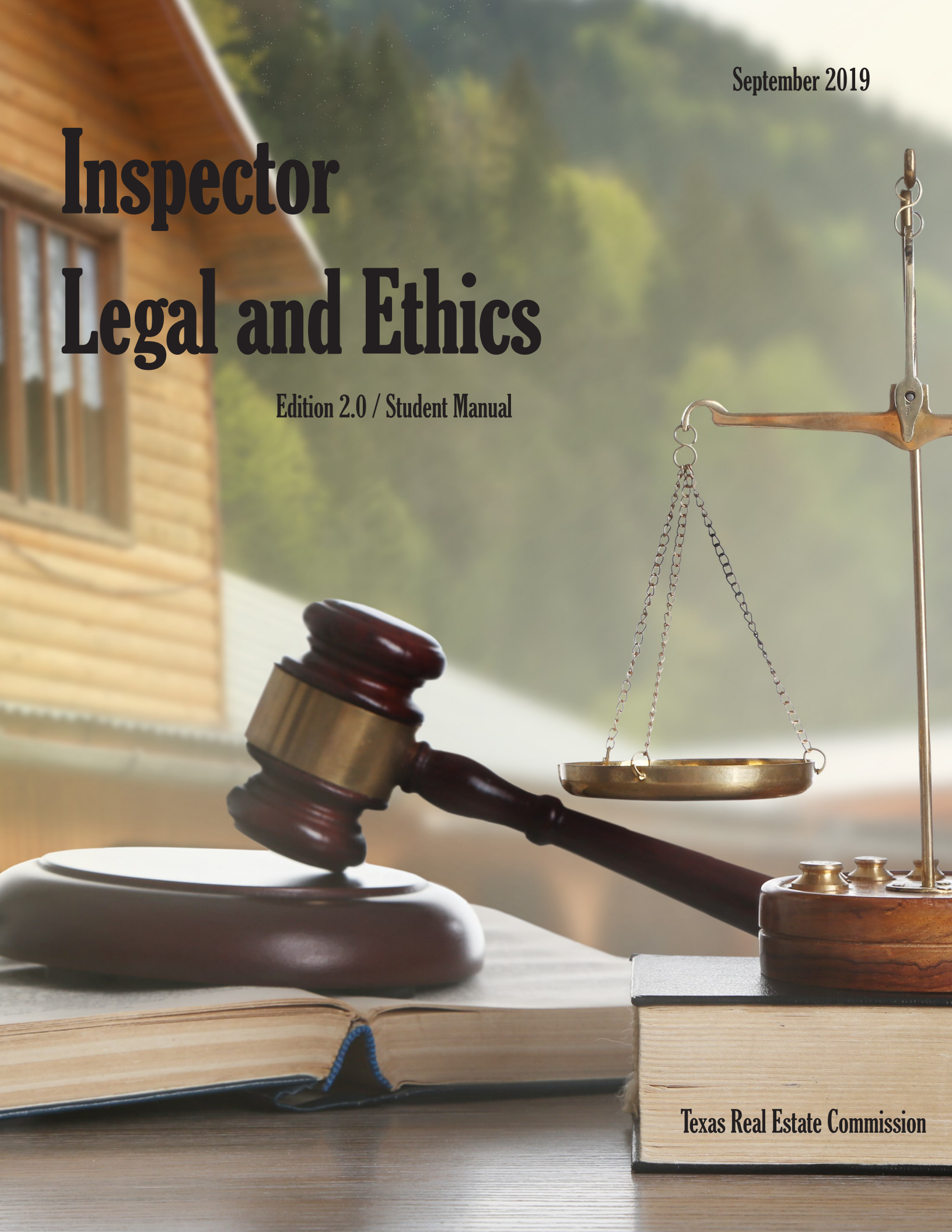


September 2019

Inspector Legal and Ethics

Edition 2.0 / Student Manual



Texas Real Estate Commission

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Chapter 1

Statutory and Rule Updates



Learning Objectives

After this chapter you will be able to

- ⇒ Understand your responsibility to know and operate under current laws;
- ⇒ Recall statutory changes to the Texas Real Estate License Act;
- ⇒ Recall statutory changes to the Texas Real Estate Inspector Act;
- ⇒ Know how to be involved in the rule-making process.

Overview

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 inspectors in Texas. These two laws are found in Chapters 1101 and 1102 of the Texas Occupations Code (TOC). In addition, there are rules applicable to real estate inspectors adopted and maintained by the Texas Real Estate Commission (TREC or Commission).

Chapter 1102 provides the Commission direct regulatory authority over the licensing and regulation of inspectors in Texas. While Chapter 1101 focuses primarily on the regulation of sales agents and brokers, it also provides the Commission the general authority to administer Chapter 1102.

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

Chapter 1101 (TOC) gives TREC authority to:

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

As a result of the agency sunset review, the 86th Texas Legislature amended Chapter 1101 in 2019 by enacting SB 624 that included changes to:

- require TREC to dismiss a complaint if it is determined that the complaint is inappropriate or without merit;
- require TREC to protect the identity of a complainant by excluding the complainant's identifying information from the notice sent to the respondent;
- remove the Texas residency requirement for all licenses regulated by TREC and instead require license holders to have geographic competency;
- remove TREC's authority to license instructors but maintain TREC's authority over the requirements to act as an instructor and require providers to ensure any instructors they use meet the TREC requirements;
- require TREC to determine if an applicant is fit to engage in the occupations regulated by TREC in lieu of determining if an applicant's moral character complies with licensing requirements; and
- authorize TREC to deny a renewal in the event that the license holder is in violation of a TREC order.

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 changes resulting from the Agency's sunset bill (SB 624) mentioned above apply to inspectors as well.

TREC Rules Publication

The rules applicable to 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.

<https://www.trec.texas.gov/rules-and-laws>

Rule Changes since January 2017

§535.216 Renewal of License

Effective 3/06/17

The amendments clarified the process for renewing an expired inspector license when the license has been expired for less than six months.

§535.218 Continuing Education Required for Renewal

Effective 12/6/17

The real estate inspector continuing education requirements for non-elective course work were updated to include a four-hour course developed by providers in accordance with a TREC approved course outline and a four-hour course developed by TREC.

Effective 3/5/19

The revisions tie the definition of a ride along course to

section §535.213 for consistency and allow inspectors to receive continuing education credit for courses applicable to inspectors that are taken to satisfy continuing education requirements for an occupational license issued by another Texas governmental body.

§535.227 Standards of Practice: General Provisions

Effective 5/24/17

Corrected a clerical error – adding “or” between subsections (f) (C) and (D).

§535.201 Definitions

Effective 5/24/17

A definition for “Standards of Practice” was added and the definition for “Texas Standards of Practice/Legal/Ethics Update” was deleted since the course was restructured and renamed.

§535.201 Definitions

Effective 8/13/18

A definition for “client” was added, and unused definitions for “code organization” and “trade association” were deleted.

Reorganized and clarified the qualifying education course requirements for inspectors, including decreasing the ride along class size from 10 students to 4 students per instructor. Multiple instructors are allowed per class to accommodate larger class sizes.

§535.219 Schedule of Administrative Penalties

Effective 3/5/19

Added statutory section 1102.305 to the penalty matrix, which was inadvertently omitted.

§535.220 Professional Conduct and Ethics

Effective 3/5/19

Tied the section back to the parallel requirement of §531.18, which was recently updated to provide more flexibility for license holders when linking to the required Consumer Protection Notice form.

Proposed TREC Rule Changes (likely effective fall 2019/winter 2020)

These proposed rules will likely be adopted at the August 2019 TREC meeting and after the final approval of these materials. If there are any changes made to the final version of the rules as adopted, you will receive a supplement to your instructor book and the online student version of the book will be updated.

§535.209 Examinations

The proposed amendments allow the two part licensure examination to be taken at two separate times. They also clarify that for an individual licensed in another state who has already passed the national examination, the coursework and examination portion associated with the national portion are not required for licensure in Texas. Courses that must be retaken if an applicant thrice fails either the national or state portion of the examination are enumerated.

§535.212. Education and Experience Requirements for a License

The new proposed rule significantly streamlines the pre-licensing requirement for inspectors. Currently, there are three license types for inspectors: apprentice, real estate and professional. The more experienced license types (real estate and professional) can be attained through experience and sponsorship or through substitute coursework. The new proposed rule sets out each path in one place and reduces the total hours of coursework and field work for the substitute paths to be more in line with other states requirements. Further, the new rule removes the requirement to repeat coursework for a higher level license.

535.213 Qualifying Real Estate Inspector Courses

The new proposed rule details the new required coursework for licensure. The courses closely track the national guidelines for the national examination and create improved Texas modules and a practicum for the field work component of training. These redesigned courses should improve the quality and consistency of inspector licensure coursework.

§535.218 Continuing Education Required for Renewal

The proposed amendments sets out the continuing education topics required for inspectors to renew their licenses that are currently cross referenced to §535.213, which is proposed for repeal. The proposed amendments also add the minimum requirements for receiving continuing education credit for a ride-along inspection course (now only available for CE). Lastly, the proposed amendment expands the ability for an inspector to receive four hours of CE credit per license period by attending any Texas Real Estate Inspector Committee meeting.

§535.222 Inspection Reports

Reduces the amount of time an inspector has to deliver a report from 3 days to 2 days and clarifies that the delivery of an inspection report is not required until the inspector receives payment for services.

DISCUSSION

1. How can an inspector get involved in the rule-making process?
2. What kind of continuing education is accepted beyond TREC Providers?

Chapter 2

Standards of Practice

Learning Objectives

After this chapter you will be able to

- ⇒ Explain when the SOPs apply;
- ⇒ Recall circumstances when departure provisions apply;
- ⇒ Describe “substantially completed” using examples from inspector practice;
- ⇒ Demonstrate understanding of how the standard inspection report form is used.

Overview

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 §§535.227-535.233 establish the minimum Standards of Practice (SOPs) applicable to all 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 an inspector licensed in Texas, for a prospective buyer or seller of 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.

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.

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.

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.

ROUTINE DEPARTURE FROM SOPs.

An inspector is required to notify a client or prospective client at first contact if the inspector routinely forgoes inspecting a particular component or system required by the SOPs, and the inspector has reason to believe that property includes that component or system.

TREC Rules §§535.222-223 Inspection Reports and Standard Inspection Report Form REI 7-5.

DISCUSSION

1. List examples of when you don't have to use the standard report form.
2. Discuss the difference in application of the departure provisions based on whether it is a routine practice or applied to a specific home inspection.
3. Does the fact that optional items are in the SOP imply that TREC inspectors are qualified to perform inspection on all optional items?
4. Are inspectors qualified to perform all tasks outlined in the SOP other than optional items?
5. If the inspector uses commercially-available software to generate inspection reports, whose responsibility is it to ensure that the current version of the TREC report is being used?
6. What are some reasons an inspector may choose not to walk a roof?

Case Study I

Outdated Form

An inspector performed an inspection on a home in 2016 and the reports used REI 7-2 for the report form when performing the inspection. The current inspection report was REI 7-5.

TREC rules require 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)). TREC Rules also require inspectors to use the Standard Inspection Report Form (REI 7-5) (§535.223). Use of this form ensures consistency in reporting.

There is some leeway in how an inspector presents report form information to the client as specified by rule (§535.222). For example, an inspector can replace the TREC logo on the form with their own logo, and change the typeface under. However, TREC rules allow for very specific changes and require the report to be in the prescribed format (§535.223).

Specific information in the report is required by rule, 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 two days after the inspector receives payment for the inspection (§535.222).

Chapter 3

Duties and Responsibilities



Learning Objectives

After this chapter you will be able to

- ⇒ Explain the minimum level of competence for Texas licensing;
- ⇒ Distinguish between direct and indirect supervision of an apprentice and real estate inspector;
- ⇒ Recall consumer notice requirements;
- ⇒ Describe examples of compliant advertising.

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 (22 TAC §§535.227-535.2337).

Duty to report certain information to TREC

An inspector **must** report the following to TREC within **30 days**:

- Addition or termination of a DBA;
- Changes to company name;
- Changes to contact information for license holder; and
- New felony convictions or misdemeanor involving fraud.

CASE STUDY 2

To Disclose or not to Disclose - That is the Question

An Inspector pled guilty to a felony offense, and the court put the inspector on probation for two years. The inspector failed to notify the Commission within 30 days of the plea of guilty.

When the inspector renewed his license he responded “no” to the question on the renewal application that stated: Have you had an instance of entering a plea of guilty or nolo contendere to, have you been found guilty of, or been convicted of felony, regardless of an order granting probation, community supervision, deferred adjudication, or suspending the imposition of sentence that has not previously been reported to the Texas Real Estate Commission: if “Yes”, you must complete the applicable section of the Background History Form.” The inspector should have checked “yes” and filled out and submitted a Background History Form.

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) 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 sponsored. 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.

Consumer Information

Consumer Protection Notice

(TREC No. CN I-2)

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 I-2). 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; or
- "TREC Protection Notice" in at least a 12-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 Rule §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 inspector. 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,
- websites, including pop-ups and chat features,
- electronic transmissions,
- text messages,
- purchased telephone directory display, and
- advertising by newspaper, radio and television.

Additionally, TREC Rule §535.44 prohibits an inspector from using the TREC seal in any advertisement or on the inspector's website and TREC Rule §535.44 prohibits the use of the TREC logo for the same purposes.

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?

Jack S. Clouseau is a Professional Inspector.

Pink Panther Inspections

555-326-0000

www.inspectRclouseau.com

TREC Inspector

Charles N. Atruk is a Real Estate Inspector

Spot On Inspections

555-898-2121

1234 Spector Rd. Noname, TX 78787



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).

NOTE: These practices are discussed more fully in Chapter 4.

Chapter 4

Ethics



Learning Objectives

After this chapter you will be able to

- ⇒ Describe the duties and responsibilities owed to the client;
- ⇒ Recall best practices to enhance inspector-client relationships;
- ⇒ Explain inspector independence;
- ⇒ Discuss best practices in obtaining client permissions.

Overview

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 client 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

An inspector’s client is defined by TREC Rules as a buyer or seller, including a prospective buyer or seller, of real property that is the subject of a real estate inspection (§535.201). This definition dictates who the inspector is performing the inspection for and ensures that the inspector-client relationship and the corresponding duties of the inspector to the client are properly based on the person(s) who have an interest in the property that is part of the real estate transaction rather than the person who pays for the inspection.

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 property (or property’s) 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.

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. Who can the inspector allow into the home during the inspection?
2. Do you allow the homeowner to be present during the inspection?
3. What are the pros/cons of having the homeowner present?

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.

To ensure inspector independence, §535.220 prohibits an inspector from paying another settlement provider (broker, title company, etc.) to be included a list of inspectors or preferred providers and brokers and sales agents are prohibited from asking an inspector to pay to be included on such a list (TREC Rule §535.148).

DISCUSSION

Some real estate agents have their "preferred" inspector. What are the pros/cons of this to the agent, inspector, and client?

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 prohibits 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.

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.

“PAY TO PLAY”

Irving Inspector - wants to drop off some advertising materials with a broker’s office.

Barry Broker - requires all inspectors to pay to be included in one of three service tiers, which has the added benefit of placing the inspector on a list of recommended businesses

Barry: Good afternoon. Can I help you?

Irving: Yes, I’m a home inspector and was hoping I could drop off some flyers and business cards for your clients who may be looking for a home inspector?

Barry: Absolutely. Happy to help. However, I have three service tiers. You have a choice of tier depending on how much you pay, you will be included in the “Recommended” tier, “Preferred” tier, or the “Endorsed” tier.

Irving: OK. I understand. I don’t know if you know this, but inspectors are actually prohibited from paying to be on a list

Barry: Really. That seem ridiculous. I’m running a business and I don’t see anything wrong with charging for access to my clients. That only seems fair to me.

Irving: I know for a fact that TREC rules don’t allow us to pay for that. Isn’t there anything we can work out?

Barry: We’ve been doing this for years and no other inspectors have had issues. We have several inspectors paying to be included.

Isaac: Well, I guess it doesn’t really hurt anyone. Ok I’m in.

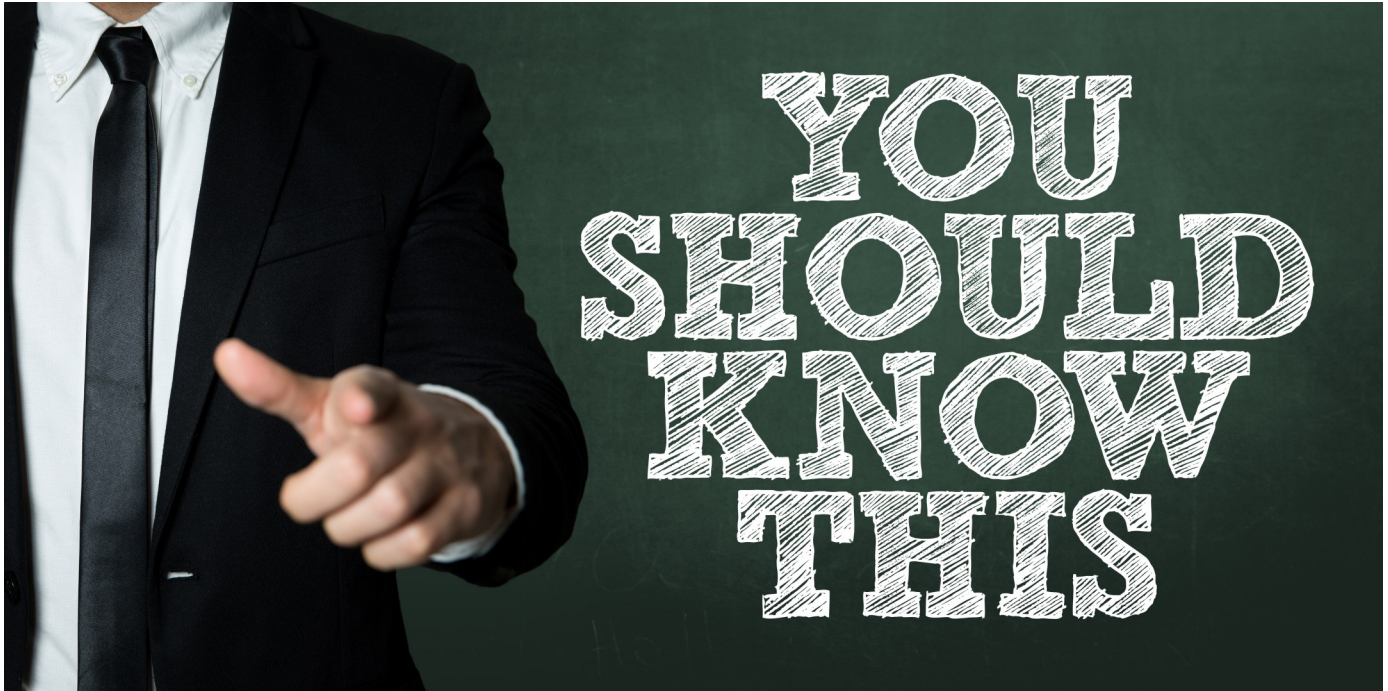
Barry: Great, let’s go see Joe at the front desk and he’ll get the paperwork started for you.

DISCUSSION

1. What are some reasons why inspectors would be prohibited from paying to be included on a preferred list?
2. What are some more subtle ways an inspector might be asked to “pay for play”?
3. What impact does an arrangement like this have on inspector independence?
4. What recourse does an inspector have in those instances the inspector feels pressured to “pay to play”?

Chapter 5

Hot Topics



Learning Objectives

After this chapter you will be able to

- ⇒ Recall SOP requirements for CSST;
- ⇒ Explain the inspector's duty regarding gas supply systems;
- ⇒ Explain hydrostatic testing;
- ⇒ Explain sewer line inspections;
- ⇒ Identify issues with providing an opinion on the foundation;
- ⇒ Discuss issues surrounding the use of drones during inspections.

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 side-wall 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 per-

forated CSST and potentially cause a 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.

Sewer Line Inspections

Section §535.231 of the SOPs require an inspector to operate plumbing fixtures, test for drain performance, and to report deficiencies in water supply pipes and waste pipes. An inspector can inspect the condition of an accessible pipe by visually inspecting the exterior of the pipe, by feeling the exterior with his or her hand, or by using a mirror or a camera that does not enter the sewer pipe.

According to the Texas State Board of Plumbing

Examiners, a sewer scope inspection must be performed by a licensed plumber. Because a TREC inspector is specifically exempt from inspecting for defects or deficiencies that are otherwise buried, hidden, latent, or concealed, unless an inspector is also a licensed plumber, an inspector should not inspect the interior of pipes using specialized invasive techniques or equipment such as a sewer scope. An inspector who performs a sewer scope inspection who is not also licensed could be subject to disciplinary action by TREC or the Board of Plumbing Examiners.

Providing an Opinion of the Foundation

Section §535.228(a) of the SOPs require an inspector to render a written opinion as to the performance of the foundation. Recently, concerns have been raised that this provision of the SOP may require an inspector to perform work that is only authorized to be done by a licensed professional engineer.

Analyzing the cause of a condition, recommendations for repair, or providing any other expert engineering opinion associated with a foundation, including the foundations systems and components, is considered the practice of engineering per Section §1001.003(c)(1) of the Occupations Code and could warrant disciplinary action from the Texas Board of Professional Engineers if conducted by someone not licensed as a Professional Engineer.

TREC rules specify that 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”; and “is not intended to be a comprehensive investigation or exploratory probe to determine the cause or effect of deficiencies noted by the inspector.” Any deficiency noted by an inspector on the Property Inspection Report is intended to only be an indicator of visible conditions or symptoms observed by an inspector and may warrant further evaluation by another qualified service professional. As a result, both the Texas Board of Professional Engineers and TREC have determined that an inspector who conducts a visual real estate inspection in accordance with the SOPs does not engage in the practice of engineering.

Using Drones for Inspections

Section §535.228(c) of the SOPs require an inspector to inspect the roof from the surface, which means walking the roof. However, drones are becoming a common tool for home inspectors to use for inspecting the roof. There are several rules and laws that govern an inspector's use of a drone to inspect the roof. First the inspector must be an FAA licensed commercial drone pilot. Second, if the inspector routinely inspects roofs using a drone and does not walk the roof, the Departure Provision of the SOPs require the inspector to notify a prospective client on first contact with that person.

And finally, the SOPs require the inspection report to contain the vantage point from which the inspector inspected the roof, so the inspector must note the use of a drone in the inspection report.



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

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

**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**

**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.

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
(<http://www.trec.texas.gov>).

(512) 936-3000

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:

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:

Report Identification: _____

I=Inspected

NI=Not Inspected

NP=Not Present

D=Deficient

I	NI	NP	D
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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

I	NI	NP	D
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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:



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- 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).

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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

Helpful Links

Inspector Rules

<https://www.trec.texas.gov/agency-information/rules-and-laws/trec-rules#sectionchapter.r>

Inspector provider pass rates

<https://www.trec.texas.gov/education/education-provider-exam-passage-rates-inspectors>

Renew license

<https://www.trec.texas.gov/renew-license/inspector>

Pocket SOP

<https://www.trec.texas.gov/forms/inspector-sop-pocket-edition>

Find a ride-a-long instructor

<https://www.trec.texas.gov/education/approved-ride-along-course-instructors-0>

Become an inspector

<https://www.trec.texas.gov/become-licensed/inspector>

Texas Real Estate Inspector Committee

<https://www.trec.texas.gov/about-commission/inspector-committee>

Property Inspection Report

<https://www.trec.texas.gov/forms/property-inspection-report-0>

Consumer Protection Notice

<https://www.trec.texas.gov/forms/consumer-protection-notice>

Disciplinary Actions

<https://www.trec.texas.gov/apps/disciplinary-actions/?page=1>

License Holder Search

https://www.trec.texas.gov/apps/license-holder-search/index.php?lic_name=&lic_hp=&industry=Real+Estate

FAQ's

<https://www.trec.texas.gov/public/frequently-asked-questions>

TREC Advisor

<https://www.trec.texas.gov/news-articles>

Commission & Committee Meeting Schedules

<https://www.trec.texas.gov/apps/meetings/>