

Texas Real Estate Commission
General Provisions
Rules adopted at the August 9, 2004 meeting

Subchapter R
Real Estate Inspectors
§§535.217, 535.223

The Texas Real Estate Commission (TREC) adopts amendments to §§535.217 concerning dishonest conduct as grounds for disciplinary action and, 535.223 concerning standard inspection reports with changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5247). Changes in the form adopted by reference reflect nonsubstantive variations from the proposed rules to clarify their intent and improve style and readability.

The adopted amendments to §535.217 require that licensed inspectors disclose to all parties to the transaction and obtain the written consent of the client that the inspector intends to receive a fee or other valuable consideration from a person other than the inspector's client. The amendment also requires that the licensee disclose to and obtain the written consent of the client that the inspector is paying a fee to a service provider or a participant in the transaction. The amendments adopt by reference a Fee or Other Valuable Consideration Disclosure Form for required use by licensed inspectors to comply with the disclosure and consent requirements. The amendments to section 535.223 revise the requirements regarding the use of the standard inspection report form and permit an inspector to use additional space on page two of the form for commentary that may not fit on page one. The rule revisions and form were recommended by the Texas Real Estate Inspector Committee.

A draft of the form adopted by reference in section 535.217 was released for comment for several months prior to the filing of the formal rulemaking proposal to adopt them. Approximately 30 comments were received and considered by the Commission and the Real Estate Inspector Committee (TREIC) during this period. Two written comments and one oral comment were received in response to the notice of the proposed rule as

published in the above-referenced issue of the *Texas Register*. The American Home Inspection Association (AHIA) commented against the rule as proposed. All comments regarding this adoption including those not specifically referenced herein, were fully considered by the commission.

Comment: One commenter believes that the amendments inject consumers into the internal operations of inspectors and unnecessarily suggest by implication that inspectors engage in unethical behavior. The commenter further believes that adoption of the rule will raise unwarranted suspicion of inspectors which may unfairly lead to the reduction or elimination of third party fee arrangements involving Texas licensed inspectors.

Response: The commission disagrees with the comments and believes that the consumer is best served by adopting the form and the revisions to the rule as proposed with minor non-substantive revisions. The TREIC originally recommended that the commission adopt the disclosure statement to provide for better informed consumers regarding fees paid to or by licensed inspectors. The requirements of notice and consent regarding fees paid to or by licensed inspectors have been in the TREC rules for several years. However, concerns expressed by and to TREIC regarding compliance with the disclosure provisions lead TREIC to recommend that the notice and consent be reduced to writing. The commission agrees with TREIC's recommendations as additional safeguards compliance with which will not be unduly burdensome.

Comment: One commenter commented in favor of the revisions to §535.217 and further believes that the written disclosure requirement should be extended to real estate brokers and salespersons.

Response: The commission appreciates the comment in favor of the rule.

Texas Real Estate Commission
General Provisions
Rules adopted at the August 9, 2004 meeting

Comment: One commenter recommended that the commission should table the recommended revisions to §535.217 for further review. In addition the commenter believes that the existing provisions regarding disclosure and consent are sufficient.

Response: The commission disagrees with the comments and believes that the consumer is best served by adopting the form and the revisions to the rule as proposed with minor non-substantive revisions because there is a public benefit to having more fully informed consumers due to the required written disclosure of fees paid to or by licensed inspectors.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of Chapter 1102 to insure compliance with the provisions of Chapter 1102.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adopted amendments.

§535.217. Dishonest Conduct as Grounds for Disciplinary Action. For the purposes of Texas Occupations Code §1102.302, the commission deems the following conduct by a licensed inspector to be dishonest and grounds for disciplinary action:

(1) accepting a fee or other valuable consideration in a real estate transaction from a person or entity, other than the inspector's client, without first disclosing to all parties in the real estate transaction that the inspector intends to receive the fee or other valuable consideration, and obtaining the written consent of the inspector's client.

(2) paying a portion of any fee received by the inspector to a service provider or a participant in a real estate transaction, other than the inspector's client, without the written consent of the inspector's client.

(3) The Texas Real Estate Commission adopts by reference the Fee or Other Valuable Consideration Disclosure Form, REI 7B-0, approved by the Commission in 2004 which is published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

(4) A licensed inspector must use the Fee or Other Valuable Consideration Disclosure Form or identical terminology in a pre-inspection agreement to comply with subparagraphs (1) and (2) of this section. The inspector may select the type and size of the fonts, provided the fonts are no smaller than those used in the Fee or Other Valuable Consideration Disclosure Form.

Section 535.223. Standard Inspection Report Forms

(a) The Texas Real Estate Commission adopts by reference Property Inspection Report, REI 7A-0, approved by the Texas Real Estate Commission in 1998 and published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property must be reported on Form REI 7A-0 ("the form"). Licensed inspectors shall complete the applicable portions of the form and provide the report within a reasonable period of time to the persons for whom the inspection has been performed. If necessary to report the inspection of a part, component or system not contained in the form, or space provided on the form is inadequate for a complete reporting of the inspection, such as when the inspector provides a

Texas Real Estate Commission
General Provisions
Rules adopted at the August 9, 2004 meeting

higher level of inspection performance than that required by the standards of practice adopted by the commission, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission. If a part, component or system contained in the form is present in the property and has not been inspected under the departure provisions of §535.227 of this title (relating to Standards of Practice: General Provisions), the inspector shall make an appropriate notation on the form, clearly indicating the reason the part, component, or system has not been inspected.

(c) Inspectors may reproduce the form adopted by the commission from printed copies obtained from the commission and by computer. With the exception of the changes to the form which are permitted by this section, the inspector shall reproduce the text of the form verbatim and the spacing, length of blanks, borders, fonts and placement of text on the page must appear to be identical to that used by the commission in the printed version of the form. Inspectors may insert information in the spaces provided for that purpose.

(d) When using form REI 7A-0, the inspector may make the following changes.

(1) The inspector may select the type and size of the fonts, provided the fonts are no smaller than those used in the printed version of the form adopted by the commission.

(2) The inspector may use legal sized (8½" by 14") paper.

(3) The inspector may select the information to be inserted below the caption "Property Inspection Report" and above the text of the form relating to TREC rules; however, the inspector must include the name of the inspector's client, the address or other identification of the

inspected property, the date the inspection was performed, and the name and license number of any inspector participating in the inspection. If the person performing the inspection is licensed as an apprentice inspector or real estate inspector, the license number and name of the inspector's sponsor also must be included, and the inspector supervising an apprentice must sign the report.

(4) The inspector may select other information to be inserted in the space on the first page of the report and may allocate additional space on page 2 for that purpose; provided the caption "Additional Information Provided By Inspector" is not deleted.

(5) The inspector may delete inapplicable provisions relating to the optional systems and re-letter the remaining provisions.

(6) The inspector may add footers to each page of the report except the first page and may add headers to each page of the report.

(7) Whether the form is reproduced by computer or is preprinted by the inspector, the inspector may allocate such space for comments as the inspector deems necessary or may attach additional pages of comments to the report.

(8) The inspector may renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or deleting text.

(9) The inspector may list other built-in appliances and additional captions, letters and check boxes for those items.

(10) The inspector may add numbers or letters in parentheses to the right of the caption for each item and may place the property identification and page number either at the top or bottom of the page.

(e) This section does not apply to inspections performed for a lender or for a person other than the prospective buyer or prospective seller.

Texas Real Estate Commission
General Provisions
Rules adopted at the August 9, 2004 meeting

(f) This section does not apply to quality control construction inspections of new homes, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or builder's employee in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector. If the inspector attaches the notice, the inspector is not required to use a form adopted by the commission to report the inspection.

Texas Real Estate Commission may contain additional information a buyer should consider in making a decision to purchase." If the report form required by the relocation company or seller's employer does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector. If the inspector attaches the notice, the inspector is not required to use a form adopted by the commission to report the inspection.

(h) Failure to comply with this section is grounds for the suspension or revocation of an inspector's license or the imposition of an administrative penalty by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 12, 2004.

TRD No. 200405137
Loretta DeHay
General Counsel
Effective date: September 1, 2004

(g) This section does not apply to the following:

(1) inspections of remodeling or re-inspections;

(2) inspections for which federal or state law requires use of a different report; or

(3) inspections for which a relocation company or a seller's employer requires use of a different report, and the first page of the report contains a notice either in bold or underlined print reading substantially similar to the following: "This report was prepared for a relocation company or seller's employer in accordance with the company's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspection reports required by the