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April 8, 2010

Devon Bijansky- General Council
Texas Real Estate Commission
P.O. Box 12188
Austin Texas 78711-2188

Re: TREC Standards of Practice

Dear Council Bijansky,

Thank you for your reply to our letter. We may be getting bogged down in the specifics of AFCIs, GFCIs and the like. The issue is much broader as we see it.

In simple terms; some Standards of Practice (SOP) which are adopted by the Texas Real Estate Commission (TREC) for real estate inspectors require an inspector to note that a home has deficiencies if it is not equipped with newer technology and construction practices that are the now the minimum standard for new homes. We feel this approach is in direct conflict with TREC rules as well as the construction codes adopted by the State of Texas. Let me attempt to explain:

In your email response you state that the term "deficient" is used broadly to include the absence of certain safety upgrades. From 535.227 (a) (4) "Deficiency" is defined as "A condition that, in the inspector's reasonable opinion, adversely and materially affects the performance of a system or component or constitutes a hazard to life, limb, or property as specified by these standard of practice. General deficiencies include but are not limited to inoperability, material distress, water penetration, damage deterioration, missing parts and unsuitable installation." If it is TREC's position that performance of a home that doesn't have "certain safety upgrades" will be adversely and materially affected as a safe and habitable place to live; then millions of Texans that live in homes more than a year old are living in unsafe conditions. If it is TREC's position that a home without "certain safety upgrades" is a home that constitutes a hazard to life or limb; then millions of Texans that live in homes more than a year old are living in substandard housing. I don't really believe that it is TREC position to declare 99.9% of the homes in Texas as substandard.

As a group of code officials that are charged with ensuring that health, safety and the welfare of the people that live or visit our communities are doing so in safe and habitable buildings, we (BOAT) believe that

buildings can be and are safe even if they don't meet today's construction standards. If any municipal code official discovered a condition that met TREC's definition of deficient, they would have no choice except to order immediate action to be taken to abate the imminent life safety hazard. If it was the State's intent to make all homes as safe as possible the State adopted codes would require retrofitting of all residence with "certain safety upgrades" similar to residential sprinkler systems. (As a note: The 2009 International Residential Code contains a requirement for residential sprinkler systems in all newly constructed homes.)

This is where we feel that the SOP are in conflict with the construction codes that are adopted by the State of Texas. Some examples of specific code sections were cited in my previous letter but the premise in all of the codes is the same. *Buildings that were constructed to code at the time there were constructed and are maintained in proper operational condition in accordance with the original design are generally considered safe to occupy.* There are certainly conditions and instances that make some building unsafe and the SOP cover a wide range of those conditions but requiring a real estate inspector to note a building is unsafe (deficient) because it doesn't meet standards for newer homes is inconsistent with the State adopted codes and how those codes are enforced in the State.

This conflict is also evident in the TREC's OP-I dated 10-27-08. In the notice it addresses a list of issues, some of which are code provisions taken from the most recently published construction codes. In addition to the requirement that a real estate inspector must report these conditions as deficient there is a statement where TREC considers the potential for injury or property loss from the hazards addressed in the Standards of Practice to be significant. In essence TREC has placed itself in the arena of code development and building safety and bases its position on the recommendation of a committee of nine.

The International Code Council responsible for the International Building Code and International Residential Code, the National Fire Protection Association responsible for the National Electrical Code and the International Association of Plumbing and Mechanical Officials responsible for the Uniform Plumbing Code (all codes adopted by the State) hold code development hearings with thousands of code officials, fire officials and industry professionals providing expert testimony as to what is and what isn't safe and under a consensus process they determine what materials and construction standards should be used to have safe and habitable buildings. These model code groups support the premise that buildings without the newest technology and most recent construction practices can be safe (or lacking deficiencies in TREC language).

It is not our intention to demean the job done by TREC or real estate inspectors. The inspectors provide a very valuable service as part of TREC overall goal of consumer protection. I am personally familiar with the real estate inspection process and the underlying goals of real estate inspections as early in my carrier I held a real estate inspectors licenses in the State of Texas and performed numerous real estate inspections. I do believe that the current SOP are moving the program from a service where the real estate inspector is providing a detailed report of existing real property conditions to where TREC is attempting to influence or "improve" real property conditions, which from reading the enabling legislations appears to be beyond the scope.

I feel confident there are multiple ways to resolve the conflicting SOP. A few that come to mind would be:

- Alter the SOP so that real estate inspectors are required to report only those conditions that meet the actual definition of deficiency.
- Alter to SOP or the report format so that an inspector could note or suggest potential safety enhancements rather than noting "certain safety upgrades" as deficiencies.
- Alter the SOP so that they allow an inspector to use their "reasonable opinion" in determining if a condition is deficient. (The opinion of the inspector is eliminated when they are required to note a "safety upgrade" condition is deficient.)
- Change the definition of deficiency, eliminate the definition or add other definitions to clarify what are truly hazardous conditions from those that would be considered "safety upgrades."
- Alter the composition of the Inspector Committee to include one or more individuals that are employed by a municipality or other governmental entity as code enforcement official.
- Have the SOP reviewed by a qualified third party to determine where conflicts occur between the SOP and other construction codes, housing codes, property maintenance codes and existing building codes.

As stated in the final paragraph of my previous letter, the Building Officials Association of Texas stands ready to assist the Texas Real Estate Commission. We are willing to establish a volunteer committee of certified and licensed professionals that could review the TREC SOP and provide a report to the Commission on discrepancies between the SOP and construction codes used in the State of Texas. We will do this at our expense because this issue is very important to our membership. Every code official in the State of Texas that I have spoken with regularly has to deal with residents that have had a real estate inspection report that cite standards and requirements that are not pertinent to their structure. Assisting in resolving the conflict will assist local building officials in the performance of their daily duties and further the mission of TREC. Please feel free to contact me should you have any further questions my telephone number is 972-919-2533 and my email address is jim.olk@farmersbranch.info .

Sincerely,



Jim Olk
Past President

Enc: Copy of email from Devon Bijansky dated April 7, 2010

TREC REPLY LETTER

Mr. Olk:

Your March 22, 2010, letter to Texas Real Estate Commission chairman John Eckstrum was forwarded to me.

In your letter, you expressed concerns regarding the Standards of Practice for TREC-licensed inspectors as adopted in November 2008 and effective February 1, 2009. You cited sections 535.229(a)(13), (16), and (17), as well as the provision regarding GFCI receptacles, and stated that you believe these inspection standards are in conflict with construction codes currently in effect in Texas.

The Standards of Practice were adopted by the Commission after development by the Texas Real Estate Inspector Committee, an advisory committee composed of 6 professional inspectors and 3 public members. The Committee's goal in developing the Standards was to establish those issues of which, at a minimum, prospective buyers should be made aware. (TREC-licensed inspectors merely report certain conditions as "deficient"; they cannot require repairs or upgrades to be made.) Many of these issues have strictly financial ramifications (for instance, a non-operational air conditioning system), but some of them could have life-safety consequences as well. Although the grandfathering provisions you cited permit structures predating the codes to remain in use, the fact that a structure was constructed in compliance with a previous code does not ensure that an occupant will not be injured by a condition that today's codes no longer consider safe enough for new construction. Accordingly, while the Committee is aware of the grandfathering provisions in the codes, they determined that issues such as electric panels in clothes closets, lack of or improperly functioning GFCIs/AFCIs at certain locations, and the lack of a main disconnecting means are important safety items of which a prospective buyer should be aware in making the decision to purchase a home. As explained in the inspection report form (<http://www.trec.state.tx.us/pdf/forms/insp/REI-7-2-PropertyInspectorReport.pdf>), the term "deficient" is used broadly to include the absence of certain safety upgrades.

Please note also that most of the provisions that you cited were in the previous Standards of Practice, which were in effect from September 2000 through January 2009. Panel location was addressed in section 535.230(a)(6), main disconnecting means was addressed in 535.230(a)(8), GFCI devices were addressed in 535.230(c)(2)(G), and testing of gas lines was addressed in section 535.231(b)(2). (The AFCI provision was added with the February 2009 revisions.)

I must confess that I am unfamiliar with the methods of testing gas lines. However, I will forward your letter to the Inspector Committee and the Standards of Practice subcommittee for consideration at their next meetings. (TREC Administrator Douglas Oldmixon also forwarded me your request to address the Commission at the May meeting about the issues discussed in your letter. The Inspector Committee is meeting on April 26; I would recommend that you begin by addressing the Committee, as that body is charged with recommending rules relating to standards of practice for real estate inspection. Additionally, the Committee is currently reviewing the standards.)

Thank you for sharing your concerns with us. Please let me know if there is anything else I can do for you.

Devon V. Bijansky
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