

The Penalty Matrix

By now, many of you have heard of the proposed 'Penalty Matrix' for Texas Real Estate Commission Licensed Real Estate Inspectors.

For those of you that are not familiar with this so-called 'Penalty Matrix' (PM), it is a schedule of Monetary Fines designed to penalize Inspectors. As an Inspector you can be fined for advertising/marketing transgressions. However, the PM is primarily designed to penalize Inspectors for 'missing' deficiencies and failing to report deficiencies in a property Inspection Report.

Some of you are already asking where this idea came from.

Some of you want to know who is behind this grand scheme.

What we do know is that the proposed fines have a minimum and maximum dollar amount for each 'oversight'/omission or 'transgression' described in the PM.

What we do know is that the proposed fines can be assessed for each day that a particular violation or transgression has occurred.

What we do know is that the dollar amount of the fines, relative to the average per-inspection fee typically charged, is outrageous and onerous.

What we also know, with reasonable certainty, is that there is not a single Real Estate Inspector who has discovered every deficiency, every defect in the property they have inspected.

If it is a foregone conclusion that all Inspectors 'miss' or 'fail to report' at least some deficiencies in every home we inspect, how can a schedule of fines that exceeds the typical inspection fee be **fair and just** to the Inspection Community?

For now, let's look at where we are with the PM.

Who proposed this system and schedule of fines? Who proposed such a simplistic and onerous method of dealing with Inspector Errors & Omissions? Who is a proponent of the PM?

We should have some definitive answers to these questions this Friday the 1st of April.

This Penalty Matrix endeavor is being pushed through the TREC Rulemaking Process, as we speak. The Train has left the Station.

So...where does it go from here?

The TAREI Solution

What Texas Consumers and Texas Inspectors deserve is an Enforcement Division that provides protections for thorough Inspectors and focuses on poorly performing Inspectors.

Regardless of whether a schedule of fines (the PM) is constructed and implemented, a Mitigation Formula should immediately be considered to upgrade and professionalize TREC's dealings with Inspectors and to better protect the Consumer.

If the Inspector Advisory Committee and the Commission insist on moving forward with a Penalty Matrix...

What Texas Consumers and Texas Inspectors deserve is a Penalty Matrix that rewards thorough Inspectors and penalizes poorly performing Inspectors.

Step 1. Create a schedule of fines that has a floor of 'No Action', \$ 00.00 and a maximum dollar amount of \$ XX.00

Step 2. Create a Mitigation Formula that does a comparative cost analysis. This is where the Value of the Inspection and the Value to the Inspector's Client is compared to the Loss to the Client.

Step 3. When a consumer complaint is received by TREC Enforcement, TREC Enforcement determines if the complaint is valid and accurate. In addition, TREC determines whether the Consumer exercised proper 'Due-Diligence' subsequent to the Inspection.

Step 4. If the complaint is valid and the Consumer exercised reasonable 'Due-Diligence', TREC assesses the potential fine of \$XX.00 amount per violation complained of by the consumer.

Step 5. The Consumer is directed to obtain cost estimates to repair or replace the undisclosed deficiencies. In addition, the Consumer is directed to obtain cost estimates to repair or replace ALL '**Discovered and Reported**' Deficiencies. (In the alternative, TREC obtains these cost estimates)

Step 6. TREC compares the cost estimates of undisclosed and/or unreported deficiencies to the cost estimates of '**Discovered and Reported**' deficiencies.

Step 7. TREC compares the cost estimates to known industry cost estimates (to determine if the cost estimates are reasonable).

Step 8. TREC, utilizing the Mitigation Formula, determines the dollar amount, if any, of the fines/penalties assessed to the Inspector.

Step 9. TREC apprises the Consumer and Inspector of the \$ amount of the fine assessed by the PM, if any.

Step 10. If there is a \$ Penalty assessed/attached to the Inspector, after appropriate appeals are exhausted, Inspector pays the \$ Penalty to TREC, who then forwards to the Consumer, 'X' percentage of the total fine assessed.

**Example Penalty Matrix:
(Schedule of fines with integrated Mitigation Formula)**

Inspector fails to discover and/or report 5 deficiencies.

Attic lighting and control switch for mechanical equipment illumination.
Cost \$100.00

Rusted and leaking dishwasher.
Cost \$600.00

Water damaged wood flooring.
Cost \$1000.00

Rotted Fascia
Cost \$250.00

Broken bathtub stopper.
Cost \$50.00

Total Cost of undiscovered and/or unreported deficiencies: \$2000.00

Mitigation Items; Inspector discovers and reports the following items...

Hail damaged roof shingles.
Cost \$10,000

Sub-slab plumbing leak (discovered via recommended hydrostatic test)
Cost \$12,000

Faulty Central Heating unit.
Cost \$2000.00

Aluminum wiring with improper receptacle, light switch and fixture connections.
Cost \$2000.00

Widespread water damaged and decayed siding and trim.
Cost \$7000.00

Widespread failure of thermal-pane/double insulated windows (25 windows).
Cost \$1500.00

Total Cost of discovered and reported deficiencies: \$34,500.00

In essence, the value of the discovered and reported deficiencies exceeded the value or 'loss' to the consumer by a ratio of 17 to 1.

The fine assessed by TREC should be \$00.00.

There should be no penalty levied upon the Inspector.

Proposed Fine Ratio as per the Penalty Matrix with Integrated Mitigation Formula:

Max. Total % allowable monetary fine: Reported deficiencies V Unreported

100%	1 to 1 ratio
67%	2 to 1 ratio
33%	3 to 1 ratio
00%	4 to 1 ratio

If TREC institutes a Safety Deficiency Factor (SDF) into the Penalty Matrix, a Mitigation Formula must also be utilized that incorporates the same SDF. If TREC assigns a dollar value to a safety item (that will be interesting to see), that same dollar value is to be utilized in the Mitigation Formula.

**If TREC insists on moving forward with a Penalty Matrix for Inspectors...
A Penalty Matrix with an Integrated Mitigation Formula is the most equitable approach to protecting consumers, rewarding thorough inspectors and penalizing poorly performing inspectors.**