

Texas Real Estate Commission Commissioners

Regarding the Proposed TREC Commentary and Standards of Practice
January 2, 2010

As requested by TREC, a review of the proposed Inspection Standards of Practice Commentary draft has been completed with inspector, engineering and code official participation.

The proposed Commentary draft:

- Creates new requirements based on speculation or inference that deviate from literal interpretation.¹
- Is factually incorrect.²
- Creates definitions that significantly and adversely affect Scope.³
- Improperly assigns responsibility, a subject that has been historically left to the inspector, consumer and courts to decide.⁴

The revised Standards of Practice have been in place for about one year. Many persons have withheld comment in order to gain experience and to see how the Commentary may develop.

The Standards of Practice

- Lack specificity in many areas and do not meet the Commissioners 2006 dictate for specificity.
- Authoring style is inconsistent, confusing and has serious conflicts.
- Have caused adverse financial impact on inspectors and consumers due to increased requirements.
- Over regulate the Profession and requires the consumer to pay for information they do not desire.
- Have been re-titled by unknown persons, with no debate from the inspector committee, from "Guidelines" to "Requirements" thus placing an onerous burden on the inspector to be perfect. The term "guideline" has been used by TREC since 1996. I have been unable to find out who made this profound change from TREC staff.
- The Standards are complex and comprehensive. Discussion amongst inspectors results in agreement that very few inspectors can comply with the TREC Standards rule in the majority of inspections. The Commissioners should ask inspector committee members if they can comply with the Standards the majority of the time. A Rule that cannot be consistently met by competent inspectors may be illegal, especially if it is unreasonable or vague in its requirements.

The Commentary interprets the Standards from an obscure intent perspective rather than from a literal interpretation. Many inspectors disagree with these "intent" interpretations. A Request For Interpretation (RFI) procedure should be created to answer questions by the highest TREC authority regarding the Standards. The RFI process would maintain a traceable history of Standards questions / answers and the answers could be adopted into the Standards as rule. This is a common process for technical documents. A RFI process should be placed on the Commissioners agenda for discussion as a required procedure.

If the Commentary continues, it must follow literal interpretation of the Standards. All new requirements created by the Commentary must be adopted into the Standards as rule. A Request for Interpretation procedure should be required by the Commissioners. This will help inspectors understand the requirements of the complex rule by allowing them to ask questions in a way that retains the history of such questions. It is requested the Commissioners provide direction to staff and the inspector committee regarding the Standards, Commentary and a RFI procedure.

Please contact me if you have a question.

Thank you.



John Cahill
Past Inspector Committee Chairman

1. The Commentary states the intent is for the inspector to walk the roof, crawl the crawl space and enter the attic. The Standards however do not state the requirement. It is improper for the Commentary to create requirements with interpretations of intent. If it is the Commissioners desire to make such a requirement it should be clearly stated in the Standards.
2. The Commentary is factually incorrect. For example, the Commentary states fasteners are required to be placed below the seal tabs. However, TAMKO roof products manufacturer states the fastening method as a recommendation and not a requirement. TAMKO allows fastening above the seal tab. GAF requires the fasteners to be placed in the mastic on its high wind series. Fastener location is manufacturer dependent and the standards do not require inspecting to manufacturing specifications. The Commentary is incorrect and asserts an opinion that is not universally applied.
3. The Commentary creates or modifies definitions. For example "Reasonable judgment" is given a definition that is not in the Standards. The Commentary definition has significant impact on how the Standards can be interpreted.
4. The Commentary improperly assigns inappropriate responsibility. The inspector is designated as responsible for all roof fasteners inspected in a random method. The Standards have historically never stated an inspector is responsible for installation of items inspected. Responsibility is defined by the contract between the inspector and consumer.