

March 3, 2010

TREC Administrator Douglas Oldmixon
P.O. Box 12188
Austin, Texas 78711-2188

Re: INACHI Position Statement on TREC Errors & Omissions Insurance requirements

Dear Mr. Oldmixon,

During the 80th Legislative session in 2007 Senator Elliot Shapleigh authored SB 914 to address issues “*relating to the continuation and functions of the Texas Real Estate Commission and the regulation of real estate brokers, salespersons, inspectors, appraisers, residential service companies, and timeshares; providing administrative penalties*” as required by the earlier Sunset Commission findings.

As I’m sure you are aware, during the waning hours of the legislative session, Representative Brian McCall of Plano introduced an amendment to Senate Bill 914 that provided for TREC regulated home inspectors license applicants and renewals to “*offer(s) proof that the applicant carries liability insurance with a minimum limit of \$100,000 per occurrence to protect the public against a violation of Subchapter G*”. **SB914 effectively requires all Texas home inspectors to purchase and maintain Errors & Omissions insurance.**

Due to the late hour that the amendment was added to the bill then no public comment was provided for nor solicited nor was any Texas Real Estate Commission staff, Inspector Advisory Committee, trade association or any other public comments or advice requested or allowed for. Due to the critical nature of SB 914, the primary goal of which was to extend the existence and function of the Texas Real Estate Commission, the bill with amendments was approved and was signed by Governor Perry in June 2007. When the clandestine manner in which the E&O amendment was attached to SB 914 and the lack of public input was described to Gov. Perry he commented “....” **The opportunity is now to address the Governor’s concerns.**

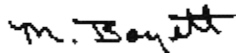
No one has been able to identify any consumer call for the E&O requirement or show any consumer advocacy group, state agency, trade organization or other interest group that championed the requirement. No one has ever claimed or shown that Texas consumers were harmed due to the lack of mandated E&O insurance. Indeed, the Inspector Recovery Fund, overseen by TREC, that requires an initial investment of \$100 for all new licensees has seemingly worked well since the early 1990’s to address consumer grievances. At the end of 2009 that fund had approximately \$618,000 in reserves and, on average, pays approximately \$19,300 out each year to settle consumer claims. **The well managed Inspector Recovery Fund results in over 32 years of reserves at the end of 2009 to address consumer grievances!**

Home Inspectors are the only licensed business in the state that is required to carry E&O insurance. No one has been able to explain why home inspectors are singled out. In March of 2008 there were 4,324 inspector licensees (includes Inactive licenses) and 3,549 in December of 2009 or 18% fewer. If the Inactive licensees are excluded the percent reduction is even greater, probably closer to a 35% reduction. **The prejudicial E&O requirement results in an unfair restraint of trade and financial burden on Texas home inspectors contributing to many leaving the industry over the last two years.**

Based on the 2007 volume of transactions and enforcement actions taken by TREC, Real Estate Brokers and Agents are 30x more likely to have actions taken against them than Inspectors. The Brokers and Agents Recovery Fund held approximately \$13.8M in reserves at the end of 2009 and with an average yearly payout of \$380,250 then that yields 30+ years of reserves in that account as well. With a 30x more likelihood of actions against them and a 20x more costly impact to the consumer one would think Brokers and Agents would be required to carry E&O insurance to protect the public long before home inspectors would be required to. **Yet amazingly, TREC licensed Real Estate Brokers and Agents are not mandated or required to maintain E&O insurance.**

In conclusion, INACHI believes E&O should be a business decision made by each inspector and not required by obtrusive, cost prohibitive government mandates. Instead of lowering test standards to help stop the exodus of inspectors then eliminate the onerous, prejudicial Inspector E&O requirement and allow the Recovery Fund to, once again, provide for consumer protection like it did successfully for almost 20 years.

Regards,



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