

Chapter 3

Duties and Responsibilities



Learning Objectives

After this chapter you will be able to

- ⇒ Explain the minimum level of competence for Texas licensing;
- ⇒ Distinguish between direct and indirect supervision of an apprentice and real estate inspector;
- ⇒ Recall consumer notice requirements;
- ⇒ Describe examples of compliant advertising.

Competency

Inspectors must prove a minimum level of competence for Texas licensure by:

- completing qualifying educational courses;
- completing the appropriate amount of experience (by either completing a required number of inspections or the required number of substitute experience hours); and
- passing the national and state licensing exams.

Licensed inspectors must continue to demonstrate professional competency before they are eligible for renewal of a license, which is accomplished by completion of required continuing education hours.

In addition to the licensing requirements, inspectors must adhere to the minimum standards of competency established by the TREC Standards of Practice (22 TAC §§535.227-535.2337).

Duty to report certain information to TREC

An inspector **must** report the following to TREC within **30 days**:

- Addition or termination of a DBA;
- Changes to company name;
- Changes to contact information for license holder; and
- New felony convictions or misdemeanor involving fraud.

CASE STUDY 2

To Disclose or not to Disclose - That is the Question

An Inspector pled guilty to a felony offense, and the court put the inspector on probation for two years. The inspector failed to notify the Commission within 30 days of the plea of guilty.

When the inspector renewed his license he responded “no” to the question on the renewal application that stated: Have you had an instance of entering a plea of guilty or nolo contendere to, have you been found guilty of, or been convicted of felony, regardless of an order granting probation, community supervision, deferred adjudication, or suspending the imposition of sentence that has not previously been reported to the Texas Real Estate Commission: if “Yes”, you must complete the applicable section of the Background History Form.” The inspector should have checked “yes” and filled out and submitted a background History Form.

Duties of a Sponsoring Inspector

One way to become a real estate inspector is to find a sponsoring inspector and serve under the sponsor as an apprentice inspector. Only a licensed Professional Real Estate Inspector may serve as a sponsor in Texas. The law imposes many duties on sponsoring real estate inspectors. These duties may be found in Rule §535.226 of the Texas Administrative Code, Title 22, Part 23, Chapter 535, subchapter R, which states:

- (a) An apprentice inspector or real estate inspector may be sponsored by only one licensed professional inspector.
- (b) A change in sponsorship shall be reported to the Commission immediately. If the sponsorship has ended because the professional inspector has terminated the sponsorship, the professional inspector shall immediately so notify the apprentice or real estate inspector in writing. If the sponsorship has ended because the apprentice inspector or real estate inspector has left the sponsorship, the apprentice inspector or real estate inspector shall immediately so notify the professional inspector in writing.
- (c) An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the Commission has been notified of the change and any

required fee has been submitted. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title.

- (d) licensed professional inspector is responsible for the conduct of a sponsored apprentice inspector. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by:
 - (1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector to accompany the apprentice; and
 - (2) reviewing any written inspection report prepared by the apprentice inspector for compliance with the provisions of the standards of practice adopted by the Commission.
- (e) A licensed professional inspector is responsible for the conduct of a sponsored real estate inspector. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector. At a minimum a professional inspector shall provide indirect supervision of the real estate inspector by:
 - (1) communicating with the real estate inspector on a regular basis about the inspections being performed by the real estate inspector; and
 - (2) reviewing on a regular basis written inspection reports prepared by the real estate inspector for compliance with the provisions of the standards of practice adopted by the Commission.
- (f) A sponsoring professional inspector may delegate the supervision of an apprentice inspector or real estate inspector to another professional inspector who is qualified to sponsor, but the sponsor remains responsible for the conduct of the sponsored inspector.

Sponsoring Inspector's Purpose

A sponsoring real estate inspector serves several purposes in the industry. A sponsor provides one path for a person to become a licensed Real Estate Inspector or Professional Inspector. An applicant may pursue this path if an existing licensed Professional Inspector agrees to sponsor them. Serving as a sponsoring inspector also allows a Professional Real Estate Inspector to expand their inspection business to be a multi-inspector company. Becoming a sponsor allows Professional Real Estate Inspectors to have assistance, especially when inspecting larger homes.

Professional Real Estate Inspectors may sponsor both apprentice inspectors and licensed real estate inspectors; however, the level of required supervision is different for each. Professional inspectors must provide direct supervision for apprentices and indirect supervision for real estate inspectors.

Direct Supervision

Direct supervision requires the sponsoring professional inspector to be present on site when an apprentice conducts an inspection. If a professional inspector cannot be present on site, he or she must arrange for another licensed Real Estate Inspector to be present with the apprentice during the inspection. The rules allow a sponsoring Professional Inspector to delegate supervision of an apprentice to another inspector qualified to be a sponsor, but the sponsoring Professional Inspector remains responsible for the conduct of the persons sponsored. Direct supervision also requires a professional inspector sponsor to review any inspection reports prepared by an apprentice to make sure that the apprentice is following the Texas Standards of Practice for real estate inspection.

Indirect Supervision

In contrast, indirect supervision does not require a sponsoring inspector to be present on site when a licensed Real Estate Inspector conducts a real estate inspection. The sponsoring inspector must still communicate regularly with the Real Estate Inspector and review that inspector's reports on a regular basis.

Consumer Information

Consumer Protection Notice

(TREC No. CN I-2)

Inspectors must provide notice to consumers and service recipients regarding the ability to file a complaint with TREC and the availability of the Inspector Recovery Fund. TREC has combined both notices into one Consumer Protection Notice (TREC No. CN I-2). TREC rules require inspectors to post the notice in a readily noticeable location in each place of business maintained by the inspector (§535.220). If an inspector has a business website, he or she is also required to post a link to the notice on that website. The link must be in a readily noticeable place on the home page of the website and must be labeled:

- "Texas Real Estate Commission Consumer Protection Notice" in at least a 10-point font; or
- "TREC Protection Notice" in at least a 12-point font.

The purpose of the required notice is to provide consumers important information in a readily accessible way. Section 1102.364 (TOC) also allows additional methods to provide the required notice to consumers about the Inspector Recovery Fund if an inspector does not have a place of business or a business website.

No place of business? No website?

The inspector must provide the notice by one of three additional methods allowed under section Texas Occupations Code 1102.364. These include

- on a written contract for the inspector's services;
- on a brochure that the inspector distributes; or
- in a bill or receipt for the inspector's services.

Texas Real Estate Consumer Notice Concerning Hazards or Deficiencies (TREC OP-I)

The OP-I is an optional form inspectors may use to provide additional information to a client. TREC considers the potential for injury or property loss from the hazards addressed in the Standards of Practice to be significant enough to warrant this notice.

Advertising

There are a number of different ways that inspectors can advertise their business and services, and there are a number of different target markets inspectors can focus on to achieve the highest impact for their advertising dollar; however, guidelines must be followed by inspectors when they advertise their services to others.

TREC Rule §535.221 detail guidelines for inspector advertising. Advertisements include all communications created or caused to be created by a licensed inspector for the purpose of inducing or attempting to induce a member of the public to use the services of the inspector. These include but are not limited to the following types of communication when disseminated for this purpose:

- inspection reports,
- business cards, invoices,
- signs, brochures,
- email,
- websites, including pop-ups and chat features,
- electronic transmissions,
- text messages,
- purchased telephone directory display, and
- advertising by newspaper, radio and television.

Additionally, TREC Rule §535.44 prohibits an inspector from using the TREC seal in any advertisement or on the inspector's website and TREC Rule §535.44 prohibits the use of the TREC logo for the same purposes.

An advertisement for a Professional Real Estate

Inspector must include:

- the license holder's name or assumed business name, and
- license number

An advertisement for a real estate or apprentice inspector must include:

- license holder's name or assumed business name,
- license number,
- name or assumed name of the sponsor, and
- statement indicating the person is sponsored by a professional inspector.

What's wrong with These Ads?

Jack S. Clouseau is a Professional Inspector.

Pink Panther Inspections

555-326-0000

www.inspectRclouseau.com

TREC Inspector

Charles N. Atruk is a Real Estate Inspector

Spot On Inspections

555-898-2121

1234 Spector Rd. Noname, TX 78787



Website Advertising

An inspector's website must display the license number of each inspector whose name appears on the website. License number(s) must at least be on a single prominent page, such as an About Us page. For social networking purposes, it is sufficient for the inspector's license number to be on the main or profile page.

Compensation

Inspectors are prohibited by TREC rule from receiving a "fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's consent" (§535.220).

NOTE: These practices are discussed more fully in Chapter 4.