

Chapter 4

Ethics



Learning Objectives

After this chapter you will be able to

- ⇒ Describe the duties and responsibilities owed to the client;
- ⇒ Recall best practices to enhance inspector-client relationships;
- ⇒ Explain common inspector failures;
- ⇒ Describe independent status;
- ⇒ Discuss best practices in obtaining client permissions.

Overview

Inspectors must have “integrity beyond that of a person involved in ordinary commerce.” An inspector must conduct his business with a high standard of professionalism, while maintaining independence from any outside influence. An inspector must be objective and fair while performing inspections in a real estate transaction. Each inspector should strive to uphold the integrity of the home inspection profession in the eyes of the inspector’s clients and the public. Inspectors should place the interests of their client before their own personal interest at all times and always seek to improve their knowledge of the inspection industry. The inspector’s role as a consumer protector helps protect the public against fraud, misrepresentation or unethical practices in the field of real estate inspections and real estate transactions. Another goal of inspectors is to help the public understand

the need and value for home inspections.

Responsibility to the Client

An inspector’s client is defined by TREC Rules as a buyer or seller, including a prospective buyer or seller, of real property that is the subject of a real estate inspection (§535.201). This definition dictates who the inspector is performing the inspection for and ensures that the inspector-client relationship and the corresponding duties of the inspector to the client are properly based on the person(s) who have an interest in the property that is part of the real estate transaction rather than the person who pays for the inspection.

When inspecting a property, an inspector’s primary obligation is to the client. As previously discussed, inspectors are also required by rule to provide certain notices to their clients and explain any limitations regarding how the inspector conducts his or her inspection.

Certain guidelines regarding the inspector-client relationship have also been established by TREC rule, such as:

- When an inspector accepts a job, the inspector has a duty to protect and promote the interest of the client, and should do so above the interests of the inspector.
- An inspector is prohibited from disclosing inspection results or client information without prior approval from the client.
- The inspector should always attempt to increase his or her knowledge regarding new developments in the inspection industry.
- Because the client is likely less knowledgeable and experienced with regard to the systems being inspected, the inspector is entrusted with the client’s confidence that the inspector will truthfully report the condition of the property and the property (or property’s) systems.
- The inspector should act in a manner that ensures independence from outside influences or interests that could compromise or influence how and what the inspector reports to the client regarding the property and its systems.

Responsibility to Other Parties

Access to Property for Person other than the Inspector.

An inspector's primary obligation is to the inspector's client. But, when the inspector's client is not the property owner, the inspector must also be mindful of his or her duties to the owner. Sometimes, a buyer or buyer's agent will need a third party to come by the property and weigh in on something that is outside the scope of the real estate inspection. For example, a pest control company may need to inspect for termite damage, a home security company may need access to provide an estimate for services, or a contractor may need access to the property to provide the buyer an estimate of needed repairs. The buyer or buyer's agent will often schedule these visits to coincide with the home inspection for convenience. An inspector must remember that, although the property owner has granted access to the inspector, this does not mean the inspector may grant access to other parties.

Relationship with Other Inspectors

Inspectors are required by TREC rule (§535.220) to follow minimum guidelines when dealing with other inspectors. These guidelines require an inspector to conduct his or her business with fairness and integrity and cooperate with others to promote high standards in the inspection profession.

Additionally, inspectors have a duty to report any possible violation of statute or rule committed by other license holders to TREC. Bad actors in the real estate inspection field not only harm the public; they are harmful to the industry as a whole.

DISCUSSION

1. Who can the inspector allow into the home during the inspection?
2. Do you allow the homeowner to be present during the inspection?
3. What are the pros/cons of having the homeowner present?

Inspector Independence

TREC rules (§535.220) require inspectors to conduct their business in a manner that ensures independence from outside influence when performing real estate inspections. Inspector independence is vital to an inspector's ability to present a fair and impartial opinion regarding all of the components inspected.

Maintaining independence is in the best interest of both the inspector and the inspector's clients. When others try to influence an inspector, a client's trust can be compromised. The inspector's client relies on the knowledge and expertise of the inspector to provide a factual and honest assessment of the inspected property. The inspector's expertise and knowledge matter little if an inspector is influenced by a seller or seller's agent to keep certain deficiencies out of an inspection report, so the property is easier to sell, or by a buyer or buyer's agent to focus on certain items to give the buyer something to negotiate before closing on the property.

To ensure inspector independence, §535.220 prohibits an inspector from paying another settlement provider (broker, title company, etc.) to be included a list of inspectors or preferred providers and brokers and sales agents are prohibited from asking an inspector to pay to be included on such a list (TREC Rule §535.148).

DISCUSSION

Some real estate agents have their "preferred" inspector. What are the pros/cons of this to the agent, inspector, and client?

Inspector Compensation and Referral Fees

Inspectors may violate TREC rules (§535.220) in certain situations if their compensation depends on the closing of a real estate sale or is tied to future referrals. TREC rules (§535.220) address restrictions on inspector compensation and the inspector's payment or receipt of referral fees. There are essentially two situations involving inspectors and restrictions on referral fees:

- the inspector is the subject of the referral and pays a fee or other valuable consideration in exchange for receiving future referrals, or
- the inspector refers a person or service to his or

her client and receives a fee in exchange for providing client referrals.

Both situations are directly related to inspector independence and are subject to regulation by TREC.

TREC rules (§535.220) prohibit an inspector from inspecting a property if any compensation or future referrals received by the inspector depend on findings reported in the inspection report or on the closing or settlement of a property sale. The purpose of this prohibition is to protect the public and ensure the inspector is an unbiased professional who is serving the client's best interest. An inspector who fails to identify certain deficiencies when conducting a real estate inspection because the inspector fears he or she will not get future inspection referrals does not serve the public interest. In addition, when an inspector's payment for a real estate inspection is dependent on the closing of a real estate sale, there is a risk the inspector may not fully disclose the severity of any deficient conditions in an effort to ensure that the property sale closes and the inspector may receive payment for the inspection.

TREC rules (§535.220) also prohibits an inspector from paying or receiving a fee or other valuable consideration to or from any other settlement service provider, such as a real estate agent or title agent. For the purpose of this prohibition, the term "valuable consideration" includes, but is not limited to, the referral of inspections, inclusion on a list of inspectors, preferred providers, or similar arrangements or inclusion on lists of inspectors that are contingent on other financial agreements.

TREC rules (§535.220) allow inspectors to refer "non-settlement" services, such as a home security or pest control company, to their clients. Many of these companies will often pay a referral fee to the inspector for providing names and contact information for the inspector's clients. TREC rules allow inspectors to accept a fee or other valuable consideration for referring these "non-settlement" services to clients only if the inspector has the client's consent. From a client's perspective, an inspector's acceptance of referral fees may be viewed as improper influence to write an inspection report in a way that provides business for the service companies who pay referral fees to the inspector. Requiring an inspector to obtain the client's permission before accepting the referral fee gives the client adequate notice of the inspector's relationship to the service company, so the client has an opportunity to address any concerns with the inspector.

Repairs on Inspected Property

When an inspector has performed an inspection under a real estate contract, lease, or exchange of real property, TREC rules (§535.220) preclude the inspector from accepting employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice within 12 months after the date of the inspection. This provision only prevents an inspector from accepting employment to repair those homes or systems he or she inspected. It does not prevent an inspector from accepting employment to repair homes or systems the inspector did not inspect. If more than 12 months have passed since the inspection, this provision does not apply.

“PAY TO PLAY”

Irving Inspector - wants to drop off some advertising materials with a broker's office.

Barry Broker - requires all inspectors to pay to be included in one of three service tiers, which has the added benefit of placing the inspector on a list of recommended businesses

Barry: Good afternoon. Can I help you?

Irving: Yes, I'm a home inspector and was hoping I could drop off some flyers and business cards for your clients who may be looking for a home inspector?

Barry: Absolutely. Happy to help. However, I have three service tiers. You have a choice of tier depending on how much you pay, you will be included in the "Recommended" tier, "Preferred" tier, or the "Endorsed" tier.

Irving: OK. I understand. I don't know if you know this, but inspectors are actually prohibited from paying to be on a list

Barry: Really. That seem ridiculous. I'm running a business and I don't see anything wrong with charging for access to my clients. That only seems fair to me.

Irving: I know for a fact that TREC rules don't allow us to pay for that. Isn't there anything we can work out?

Barry: We've been doing this for years and no other inspectors have had issues. We have several inspectors paying to be included.

Isaac: Well, I guess it doesn't really hurt anyone. Ok I'm in.

Barry: Great, let's go see Joe at the front desk and he'll get the paperwork started for you.

DISCUSSION

1. What are some reasons why inspectors would be prohibited from paying to be included on a preferred list?
2. What are some more subtle ways an inspector might be asked to "pay for play"?
3. What impact does an arrangement like this have on inspector independence?
4. What recourse does an inspector have in those instances the inspector feels pressured to "pay to play"?