



Texas Real Estate Commission

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May 29, 2009

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OPINION COMMITTEE

FILE # ML-46076-09

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The Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
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Attention: Opinion Committee

Re: Whether the Commission has jurisdiction under Texas Occupations Code Chapter 1102 to take disciplinary action against a person licensed under Chapter 1102 if the person inspects real property for a person who is not a buyer or seller or potential buyer or seller of real property.

Dear General Abbott:

At its meeting on May 26, 2009, the Texas Real Estate Commission (TREC or the Commission) authorized me to request an opinion regarding TREC's jurisdiction over an inspector licensed under Texas Occupations Code, Chapter 1102 (the Code) who conducts an inspection as to the condition of the improvements to real property for a person who is not a buyer or seller, or a potential buyer or seller, of the property.

A license is required under §1102.001 of the Code for a person who "accepts employment to perform a real estate inspection for a buyer or seller of real property." Further, a "real estate inspection" is defined in part in §1102.001 as "a written or oral opinion as to the condition of the improvements to real property." Finally, under §§1102.101 through .103, a person may not act or attempt to act as an apprentice, real estate, or professional inspector for a buyer or seller of real property unless the person hold a license under the Code. Based on long-standing agency interpretation of these provisions and their predecessors under V.A.C.S. Art. 6573a, §23, the TREC Enforcement Division has not accepted complaints filed against persons licensed under the Code if the person who engaged them to inspect improvements to real property was not a buyer or seller or potential buyer or seller of the property at the time of the inspection.

For purposes of this jurisdictional question, please assume the following facts. An inspector licensed under the Code was engaged by a person who purchased a home from a builder who constructed the home. The licensee was engaged after the closing on the sale to inspect the property to give his opinion on construction defects alleged by the person who purchased the property. After the inspector provided his opinion, the builder filed a complaint against the

inspector with the Commission, but Commission staff closed the complaint based on its long-standing interpretation of the agency's jurisdiction.

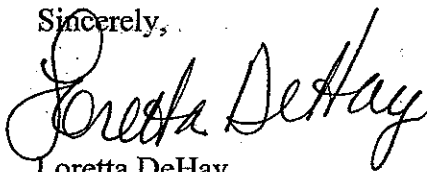
Based on the above facts and law, the Commission asks the following questions.

1. Does the Commission have jurisdiction under the Code to take disciplinary action against a person licensed under the Code if the person inspects real property for a person who is not a buyer or seller or potential buyer or seller as described above?
2. Given the Commission's long-standing interpretation that it does not have jurisdiction, if the Commission does in fact have jurisdiction over a licensee in such case, may it open a complaint against the licensee based on an inspection performed prior to the issuance of the Attorney General's opinion on this matter?
3. If the answer to question number one is no, does an offer by legal counsel for the person who purchased the property to settle the matter if the builder were to, among other things, purchase the property back from the person, cause that person to be a seller for jurisdictional purposes under the Code?

The Commission also has jurisdiction over real estate salespersons and brokers under Texas Occupations Code, Chapter 1101. Under Chapter 1101, the Commission's jurisdiction over salespersons and brokers is clearly limited to situations in which they act as a broker or salesperson as defined in Chapter 1101, and other narrow circumstances delineated in §1101.652. However, the Commission's jurisdiction over inspectors is less clear under Chapter 1102. In addition, new laws passed since the enactment of the Code imply TREC's jurisdiction over inspectors acting for persons engaged in disputes under Title 16, Texas Property Code, the Texas Residential Construction Commission Act.

Given the evolution of the laws in this arena, the Commission respectfully requests your opinion on this matter. Should you require any additional background information, please contact me.

Sincerely,



Loretta DeHay
General Counsel and Interim Administrator
Texas Real Estate Commission

cc: TREC Commissioners
Real Estate Inspector Advisory Committee members