



Texas Real Estate Commission
Texas Appraiser Licensing and Certification Board
 Post Office Box 12188 Austin, Texas 78711-2188
 1101 Camino La Costa Austin, Texas

Wayne Thorburn
 TREC Administrator
 TALCB Commissioner
 512-465-3900

June 18, 2007

The Honorable Greg Abbott
 Attorney General of Texas
 Post Office Box 12548
 Austin, TX 78711-12548

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JUN 20 2007

OPINION COMMITTEE

RQ-0591-GA

FILE # ML-45239-07
 I.D. # 45239

Attention: Opinion Committee

Dear General Abbott:

At its meeting on June 4, 2007, the Texas Real Estate Commission (TREC, or the Commission) authorized me to request an opinion of your office about the provisions in Senate Bill 914, 80th Legislative Session, which require an applicant for a license or renewal of a home inspector license to provide proof that the applicant carries liability insurance with a minimum level of \$100,000 per occurrence of coverage. Specifically, TREC seeks clarification as to whether sections 38 and 39 of SB 914 require an applicant to carry general liability insurance, or professional liability insurance, or both. If the bill requires both general liability insurance and professional liability insurance, how should the commission interpret the \$100,000 per occurrence requirement; would the bill require a minimum of \$100,000 per occurrence for each type, or \$100,000 combined coverage for both.

Currently, home inspectors licensed by TREC are not required to carry liability insurance but there is a Real Estate Inspector Recovery Fund to which licensees pay a fee upon obtaining a license. An aggrieved party can apply for payment from the fund for a maximum of \$12,500 per transaction and \$30,000 per licensee if the person has obtained a court order and is unable to receive payment of the judgment from the licensee.

Given the circumstances, the commission respectfully requests the Office of the Attorney General to determine how TREC should interpret the requirement that an applicant for a license and an applicant for a renewal must, among other things, "offers 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."

Sincerely,

Wayne Thorburn

cc: TREC Commissioners
 Texas Real Estate Inspector Committee members
 Loretta DeHay, General Counsel
 Devon Bijansky



Texas Real Estate Commission

Post Office Box 12188 Austin, Texas 78711-2188
1101 Camino La Costa Austin, Texas

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August 21, 2007

AUG 21 2007

OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
Austin, TX 78711-12548

Administration Division
Loretta DeHay
General Counsel
512/465-3900
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FILE # RQ-0591-2A
I.D. # 45326

RE: RQ-0591-GA

Dear General Abbott:

At its meeting on August 6, 2007, the Texas Real Estate Commission (TREC or the Commission) authorized me to amend the above-referenced request for an opinion regarding the enforceability of provisions in Senate Bill 914, 80th Legislative Session. Sections 38 and 39 of Senate Bill 914 require an applicant for a license or renewal of a home inspector license to provide proof that the applicant carries liability insurance with a minimum level of \$100,000 per occurrence of coverage to protect the public against a violation of Chapter 1102, Texas Occupations Code. Chapter 1102 is the licensing and regulatory law for home inspectors in Texas.

Specifically, TREC amends its original request to ask a third question. In its original request, TREC asked the following questions:

1. Whether sections 38 and 39 of Senate Bill 914 require a home inspector applicant for a license or renewal of a license to carry general liability insurance, or professional liability insurance, or both.
2. If Senate Bill 914 requires both general liability insurance and professional liability insurance, how should the commission interpret the \$100,000 per occurrence requirement; would the bill require a minimum of \$100,000 per occurrence for each type, or \$100,000 combined coverage for both?

The Texas Real Estate Inspector Committee (the Committee), an advisory committee to the Commission, recommended that the Commission ask a follow-up question regarding the type and extent of insurance coverage required by Senate Bill 914 in light of existing provisions in Chapter 1102, Texas Occupations Code. Among other things, Chapter 1102 prohibits a licensed home inspector from engaging in fraud or misrepresentation while acting as a home inspector for a buyer or seller of real property in Texas. Since neither professional or general liability insurance will protect against fraud, misrepresentation, or other type of intentional act, the Committee believes that the insurance requirement for coverage "to protect the public against a violation of Subchapter G" of Chapter 1102 is entirely unenforceable as against public policy. Thus the third question is as follows:

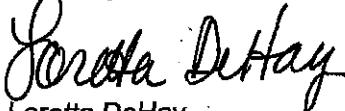
3. Are sections 38 and 39 of Senate Bill 914 unenforceable because they are contrary to public policy regarding insurance coverage for fraud?

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To provide some insight into the Commission's perspective on this matter, at a meeting on June 4, 2007, the Commission issued an interim policy statement to define "liability insurance" in the amendatory language to Chapter 1102 to mean professional liability insurance, also known as errors and omissions insurance, until the Office of the Attorney General issues an opinion about the new requirements. At the August 6, 2007 meeting, the Commission voted to amend the interim policy statement to clarify that Senate Bill 914 requires professional liability insurance only for insurable acts that also violate Chapter 1102. The Commission believes that the amendatory provisions do not require insurance coverage for acts that are not insurable as against public policy.

Should you require any additional background information, please contact me.

Sincerely,



Loretta DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission

cc: TREC Commissioners
Real Estate Inspector Committee members