

Engineering Advisory Opinion Request 43 - DRAFT

Policy Advisory Opinion Regarding a Texas Real Estate Commission (TREC) licensed inspector providing an opinion on a residential foundation and its relation to the practice of engineering

Request:

The Texas Board of Professional Engineers (Board) received a request from John Turner, P.E. asking the following question:

Are licensed real estate inspectors following the Texas Real Estate Commission (TREC) Standards of Practice (SOPs) performing the work of Professional Engineers when “rendering an opinion as to the performance of the foundation”?

Background:

Foundation inspection and/or analysis is required for a variety of purposes. Analyzing the cause of a condition, recommendations for repair, or providing any other expert engineering opinion associated with a foundation would be considered the practice of engineering per the Texas Engineering Practice Act §1001.003(c)(1) and could warrant disciplinary action from the Texas Board of Professional Engineers if conducted by an individual unlicensed as a Professional Engineer (PE).

Texas Real Estate Commission (TREC) Rule 22 TAC §535.227 specifies the Standards of Practice for licensed TREC Inspectors. §535.227(a)(1)(C) states that a real estate inspection is “(A) a limited visual survey and basic performance evaluation of the systems and components of a building using normal controls that provides information regarding the general condition of a residence at the time of inspection”; and “(B) is not intended to be a comprehensive investigation or exploratory probe to determine the cause or effect of deficiencies noted by the inspector.” It is important to note that “deficiency” noted by a TREC inspector on his or her Property Inspection Report is intended to only be an indicator of visible conditions or symptoms observed by an inspector that may warrant further evaluation by another qualified service professional.

A TREC licensed inspector is required to render an opinion on the performance of a foundation based on visible conditions or symptoms as noted in TREC rule §535.228(a)(1)(A); however, per the TREC Standards of Practice, a TREC licensed inspector is not required to analyze or determine the cause of a potential failure or recommend any required corrective action.

The TREC Standards of Practice, Rule 535.227(d) annotates “General limitations” and specifies that the inspector is not required to determine:

- “the cause or source of a condition” (d)(3)(D); and
- “the cause or effect of deficiencies” (d)(3)(E);

And is not required to “recommend or provide engineering, architecture, appraisal, mitigation, physical surveying, realty, or other specialty services.” (d)(7).

In addition, TREC licensed inspectors are not permitted to provide an engineering opinion on a foundation unless they also hold a PE license.

Analysis and Conclusion:

Analyzing the cause of a condition, recommendations for repair, or providing any other expert engineering opinion associated with a foundation, including the foundations systems and components, would be considered the practice of engineering per the Act §1001.003(c)(1) and could warrant disciplinary action from the Texas Board of Professional Engineers if conducted by an individual unlicensed as a Professional Engineer (PE). We conclude that a TREC licensed inspector who conducts a visual real estate inspection in conformance with the TREC Standards of Practice does not engage in the practice of engineering.