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

Dear General Abbott:

At its meeting on October 10, 2011, the Texas Real Estate Commission ("Commission," or "TREC") authorized me to request an opinion regarding the insurance requirement for real estate inspectors in Texas.

Since September 1, 2007, real estate inspectors have been required by Chapter 1102 of the Texas Occupations Code to carry insurance as follows:

Sec. 1102.114. ISSUANCE OF LICENSE. The commission shall issue the appropriate license to an applicant who:

- (1) meets the required qualifications;
- (2) pays the fee required by Section 1102.352(a); and
- (3) 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.

Section 1102.203(a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license and providing proof of liability insurance as required by Section 1102.114(3).

Subchapter G, referenced in Section 1102.114, is entitled "Prohibited Acts" and includes negligence, incompetence, and violations of the chapter and Commission Rules. Based on this language, and pursuant to a previous ruling from the Office of the Attorney General (Tex. Att'y Gen. Op. No. GA-0581 (2007)), the Commission has interpreted these provisions as requiring professional liability insurance or any other insurance that protects the public against a violation of Subchapter G (commonly referred to as "error and omissions" insurance).

Although there appear to be sufficient providers of such policies in Texas today, a concern exists that there may not be access to such coverage in the future. Given the uncertainty of insurance markets and the necessity that inspectors obtain insurance policies as described above in order to receive or renew a license from the Texas Real Estate Commission, we ask the following questions:

1. Would the insurance described above still be required if every insurance provider left the Texas market and no policy was available to satisfy the requirements of Sections 1102.114 and 1102.203(a), Texas Occupations Code?

2. Does the Commission have the discretion to waive this requirement if no such insurance coverage is available in Texas?

Thank you for your attention to this matter. Please do not hesitate to contact me if I may be of further assistance.

Sincerely,

Douglas Oldmixon