

On The Record . . .

Official Newsletter of BERTOLINO LLP

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Regulatory and Criminal Law Consequences of Real Estate Inspection Fraud

by Tony Bertolino, Esq.

The Texas Real Estate Commission (TREC) is the state agency that licenses various real estate professionals, including inspectors, and ensures that they follow all relevant laws and rules. Violations of these laws or rules can lead to disciplinary proceedings and severe sanctions. As a result, all real estate inspectors must keep up to date with changes in the laws and rules that govern their profession, including those related to real estate inspection fraud.



General Standards of Conduct for TREC-Licensed Real Estate Inspectors

22 Tex. Admin. Code § 535.220 outlines the general standards of professional conduct for TREC-licensed real estate inspectors as integrity beyond that of a person involved in ordinary commerce. Each inspector must uphold a high degree of professionalism, independence, objectivity, and fairness in conducting home inspections and uphold the integrity, reputation, and practice of the home inspection profession. The inspector also has a duty to protect the public against fraud, misrepresentation, or unethical practices in the field of real estate inspections.

Likewise, Tex. Occ. Code § 1102.302(2) states that an inspector may not act in a manner or engage in a practice that is dishonest or fraudulent; or involves deceit or misrepresentation. Additionally,

TREC-licensed real estate inspectors must follow the Standards of Practice (SOPs), 22 Tex. Admin. Code § 535.227 – 535.233, that TREC has developed as the minimum requirements for a real estate inspection in Texas. These SOPs apply to all real estate inspections performed for a prospective buyer or seller of one to four-family dwellings, or most residential properties. As part of these SOPs, the inspector must provide the prospective buyer or seller with a completed TREC *Property Inspection Report Form* (REI 7-6).

If TREC-licensed real estate inspectors violate any of the rules or laws that relate to their profession, then Tex. Occ. Code § 1102.401 gives TREC the authority to reprimand the inspector, place the inspector's license on probation, or suspend or revoke the inspector's license. Furthermore, under Tex. Occ. Code § 1102.403, TREC may assess an administrative penalty for any violation of a rule or law by an inspector, instead of or in addition to another form of disciplinary action.

Civil Liability of TREC-Licensed Real Estate Inspectors

Under Tex. Business and Commerce Code § 27.01, fraud in a real estate transaction may consist of a "false representation of a past or existing material fact, when the false representation is: (A) made to a person for the purpose of inducing that person to enter into a contract; and (B) relied upon by that person into entering into that contract. A person who makes this type of false representation is liable to the person defrauded for actual damages, as well as reasonable attorney's fees and court costs.

Therefore, if a licensed real estate inspector completed a fraudulent real estate inspection report that purposely failed to disclose a defect in a residential property, and the buyer subsequently purchased the property relying on that inspection report, the buyer may have a valid cause of action against that inspector for fraud under this section.

A consumer who has obtained a civil judgment for damages in court against a TREC-licensed inspector for real estate

inspection fraud may be able to seek recovery from the Real Estate Inspection Recovery Fund if the inspector refuses or is unable to pay the judgment. Although the Texas state legislature now has repealed the fund, consumers have until March 1, 2026, to file a claim with the Fund for events giving rise to a claim that occurred before September 1, 2023.

Criminal Liability for Real Estate Inspection Fraud

Under Tex. Occ. Code § 1102.406, a person commits an offense if the person willfully violates or fails to comply with this chapter, including acting in a manner or engaging in a practice that is dishonest or fraudulent, or involving deceit or misrepresentation under § 1102.302(2). This offense is a Class A misdemeanor under Texas law.

Conclusion

Real estate inspectors licensed by the Texas Real Estate Commission (TREC) must adhere to strict standards of conduct and remain vigilant about changes in relevant laws and rules. Violations, particularly those involving fraud, can result in severe disciplinary actions, civil liability, and even criminal charges. Inspectors must maintain integrity, professionalism, and transparency to protect their licenses and reputations. Understanding and complying with TREC regulations and standards is essential for all real estate inspectors to avoid the significant repercussions of non-compliance.

Employee Spotlight: Lesa Surber, Paralegal



We are thrilled to introduce the latest addition to our amazing team here at Bertolino Law Firm, Lesa Surber. With a master's degree in legal studies, Lesa has over five years of experience working in different areas of law. Ms. Surber brings a wealth of knowledge and passion to our firm.

Lesa's commitment to excellence and dedication to serving our clients align perfectly with our core values. As we continue to strive for unparalleled legal representation with 100% client-focus, she will play a pivotal role in advancing our mission.

Please enjoy these fun facts about our newest firm paralegal and join us in extending a warm welcome to Lesa.

My nickname: I have one but only my family calls me this name

I am skilled at: Organization and Listening

On the weekends and in my free time I am often: Visiting with my family or go to the movies, shopping or try a new recipe

Number one on my bucket list: To visit Sweden and Denmark

The best sweet or salty snack: Sweet pickles and pretzels

Best movie ever: Star Wars

My favorite candy: Starburst "FaveReds"

My favorite sports teams: College football - Texas Longhorns

If I had a theme song that played every time I walk into the office it would be: "9 to 5" by Dolly Parton on Monday, and "Friday I'm in Love" by the Cure on Friday. On Tuesday, Wednesday and Thursday relaxing sounds of rainfall in a green forest.

People say I look like: My mom and twin sisters

[Learn more about Lesa!](#)

Hallmark Achievements

Texas Board of Nursing v. CJ

Facts: CJ hired firm after receiving a complaint from a former patient. The patient reported that CJ gave her the wrong medication and it caused her to become ill and require hospitalization. The patient reported this to CJ's employer and the employer reported it to BON.



Outcome: The firm requested the investigative file from BON. After review of the file, it appeared that there were 2 witness affidavits from the patient and her family stating that CJ was the nurse who provided the medication to the patient. However, there was no evidence, but for statements and reports regarding what the medication was. The firm therefore requested the actual doctor's order for the medication. After a year of waiting BON provided additional records. Still, there was no order from the doctor. The firm therefore argued that there was no evidence to prove what medication was ordered. Meaning even if CJ provided the medication to the patient, he could have been issued the wrong medication by the doctor's order. Based on the evidence the firm requested that BON dismiss the complaint. After review of the evidence BON dismissed the complaint.

Texas Board of Nursing v. RK



Facts: RK hired firm after receiving a complaint from a former patient. The patient filed the complaint with the Board and alleged that RK incorrectly reported that she had HIV, forged records, did not report that she see her primary care physician (PCP), offered to take her to the doctor herself and did not report the secondary negative test results to the patient.

Outcome: Prior to retaining the firm, RK submitted a response to the allegations herself detailing what occurred. After reviewing the response BON offered her a public disciplinary order requiring her to complete several hours of CE. The order would be public on her license verification and reported to the NPDB.

The firm rejected the offer and requested the investigative file from BON. After review of the file, the firm drafted a supplemental response. In the response the firm argued that based on the language used by the testing facility, the results appeared on their face to have been verified and retested by the lab. Therefore, indicating to RK that retesting was not necessary. Further after review of RK's employer's policies, RK followed all policies and was not required to follow up with the patient after she received the negative results. She was only required to attempt to notify her of the negative results, which she did. We also provided expert opinions stating that RK acted as any other reasonable nurse would have in a similar situation. After review of our response, BON dismissed the complaint.

Texas Board of Professional Engineers v. NP



Facts: Client hired firm after receiving a complaint regarding a prior property inspection. NP worked as an investigator for an insurance company. He inspected properties and made determinations on what damage occurred. That assessments were submitted to the insurance company and then the insurance company makes decisions on payout based on causation and damages. NP inspected a client's property and issued a report to his employer detailing that most of the damage was not caused by a recent storm, as the client indicated. The client was upset by the company's decision and hired another inspector who came to a different conclusion. The client then filed a complaint against NP alleging that he committed fraud.

Outcome: The firm submitted a response arguing that the client was just upset that the insurance company was not covering the cost of all his damage. We argued that the secondary inspection report was biased as the inspector was just trying to appease the client. That report was a few short pages with conclusory remarks. This was in contrast to NP's 40-page report with data, pictures and fully expressed opinions on the damage to the property. We also provided an expert report noting how NP's report was drastically more comprehensive than the client's secondary report. Based on the firm response, the Board dismissed the complaint.

How Do Criminal Case Matters Impact Your Government-Issued License to Practice Your Chosen Career

by Troy Beaulieu, Esq.



Receiving notice that a complaint has been filed against you with your state regulatory agency can be a frustrating and overwhelming experience. Those stress levels understandably increase when the complaint relates to a criminal matter. While generally separate matters, criminal case matters and regulatory complaints can overlap and impact each other. When fighting aggressively to protect people's licenses under government attack, Bertolino LLP attorneys frequently see the influence that a criminal case matter can have on the fight to protect your license, reputation, and livelihood. This article will give you basic information about the three main ways a criminal matter can impact your state-issued license and what you can do about it.

Criminal Convictions and Deferred Adjudication Outcomes Can Threaten Your License

Many clients come to Bertolino LLP after they have received a criminal conviction, deferred adjudication or other case disposition that has an impact on their government-issued license. State agency rules and laws dictate the impact the criminal matter may have on your license, including potential revocation or suspension. Your licensing agency's enabling statute and their rules will usually detail the potential consequences to your license. Your attorney will also want to consult Texas Occupations Code Chapter 53, which is the generic state law that addresses the impact of criminal convictions on most state-issued licenses.

In providing you with legal advice, your license defense attorney will want to determine the type of crime you were convicted of and the details of the case. Be prepared to provide your license defense attorney with your criminal case records and the ability to speak with your criminal defense attorney so your license defense attorney has all the information necessary to fight for you. These criminal case details will influence the potential impact on your license.

In addition, the attorney will probably need to assist you with self-reporting the criminal matter to your licensing authority because most state agencies require license holders to report such information. Sometimes the reporting obligation is triggered by just being arrested or charged with a crime, but more often this obligation to inform the government arises once you have resolved the criminal case by agreement or once convicted at the close of your criminal trial. Take this issue seriously because failing to report a criminal case matter when required is usually an independent basis for taking disciplinary action against your license.

Finally, be aware that certain deferred adjudication outcomes in your criminal case may be treated by your state regulator as if you were convicted of the

crime. Deferred adjudication is an outcome where you plead guilty to a criminal offense, but the criminal court judge agrees to defer taking any action on your case. If you complete a period of community supervision / probation while resolution of your case is deferred by the court, then it can be dismissed without having any criminal conviction on your record. This can be a very favorable outcome for your criminal case because it avoids many of the negative consequences of an actual conviction. However, be aware that many state licensing agencies treat these deferred adjudication outcomes as if you were convicted of a crime for purposes of your state-issued license.

Many criminal defense attorneys are unfamiliar with these nuanced legal consequences. If you are contemplating accepting a deferred adjudication or any sort of plea agreement in your criminal case, it's important before you accept the agreement to consult with a qualified license defense attorney knowledgeable about the potential impact the plea could have on your license.

Your License May Be Endangered Even When You Resolve Your Criminal Case Favorably

Sometimes criminal cases get resolved without any conviction or deferred adjudication because the prosecution has insufficient evidence, the grand jury fails to indict you, your criminal defense lawyer gets the charges dismissed in court or you are found innocent after trial. However, many state agencies may still try to take action against your government-issued license even though the criminal case has been dismissed. Many regulators have the authority to discipline your license by demonstrating that you committed the underlying bad act even though there was no criminal conviction. You can face disciplinary action, including suspension or revocation of your license if the regulatory agency proves you committed the behavior that initially got you charged with a crime. Things such as drug possession, assaultive behavior or fraudulent activity and other types of conduct can serve as a basis for disciplinary action even though law enforcement and prosecutors have dropped the criminal case against you. For example, pre-trial diversion or dismissal agreements that require you to sign a contract and complete certain conditions (community service, restitution, education etc.) and result in dismissal of your criminal case may be the best outcome for your criminal matter but could still expose you to consequences from your state regulator.

Because of the possibility of regulatory action despite dismissal of your criminal case, you should consult a skilled license defense attorney familiar with the impact criminal charges can have on your livelihood and ability to practice.

Your License May Be Jeopardized by Potential or Pending Criminal Case Matters Connected to Your Regulatory Complaint

Many times, the allegations raised in a complaint could also expose you to criminal liability. Allegations such as fraud, embezzlement, unlawful possession of drugs, mistreatment of individuals under your care or inappropriate relationships with patients, clients or others could constitute criminal conduct. Many times, a regulatory complaint can be ongoing while law enforcement is investigating or even prosecuting a license holder for the same conduct. Sometimes law enforcement and regulatory agencies collaborate to share evidence, information and witnesses and some regulatory agencies even have their own law enforcement officers and criminal prosecutors with

limited criminal law enforcement jurisdiction. These types of situations are known as parallel proceedings and can complicate how you choose to handle your license defense matter with your regulator and your connected criminal matter.

If your license defense case involves allegations which also expose you to potential criminal liability, there are several additional considerations come into play which impact your license defense matter and should be discussed carefully with your license defense attorney and your criminal defense attorney. These include:

1. The potential for self-incriminating statements connected to your regulatory complaint which could be used by law enforcement against you;
2. Your 5th Amendment right to remain silent and not make statements that could incriminate you and the potential negative impact it can have on your license defense case;
3. Your licensing agency's ability to obtain certain records despite 5th Amendment limitations based on the Required Records Doctrine; and,
4. The inapplicability of 5th Amendment protections to business entities.

Anytime your license defense case involves allegations which may also implicate criminal liability, it's important to consult a knowledgeable license defense attorney familiar with parallel proceedings who can provide you with solid legal counsel and work collaboratively with your criminal defense attorney to protect your rights.

What You Can Do to Help Protect Your License When a Criminal Matter Threatens Your Livelihood and Professional Reputation

Now that you've read a little bit about the danger criminal case matters pose to your professional or occupational license, here are some practical things you should remember to do to reduce the risk to the government-issued license you worked hard to obtain:

- **Refrain from Talking to Law Enforcement or Your State Regulator without An Attorney:** When you are facing the threat of criminal prosecution and attack from your regulator, it's imperative to get good legal advice and counsel from a license defense attorney and a criminal defense attorney and let your attorneys talk to the government for you.
- **Get Critical License Defense Counsel to Make Good Decisions:** Recognize that criminal defense attorneys often do not know about license defense, regulatory and administrative law statutes, rules, and provisions that threaten your government-issued license when a criminal matter is at issue. You need a knowledgeable license defense attorney to provide advice and advocate for your license, reputation, and livelihood.
- **Be Proactive by Getting License Defense Advice Up Front:** Contact a license defense attorney early on in your criminal case so you can get solid legal advice up front on how a criminal matter may impact your license.

· **Do not Accept a Plea Agreement Until You Consult with a License Defense Attorney:** Consult a qualified license defense attorney before entering into any plea agreement in your criminal case to understand the impact it has on your license from your state board.

· **Get Legal Counsel on How Deferred Adjudication and Pre-Trial Diversion Impacts Your License:** Remember that even deferred adjudication or pre-trial diversion resolutions where your criminal case is ultimately dismissed can still jeopardize your state-issued license.

· **Get Help with Self-Reporting to Avoid Discipline:** Immediately contact a license defense attorney about any criminal case outcome to determine if you are required to self-report the matter to your state regulator. Failure to report is an independent basis for taking disciplinary action against your license.

· **Get Advice on the Threat Underlying Conduct Poses to Your License:** Consult a license defense attorney about the risk to your government-issued license even when your criminal case is dismissed. Many regulatory agencies will still attack your license based on the underlying conduct, regardless of the criminal prosecutor's decision to drop your criminal case.



A Free, Informational Bulletin Tailored to Your Regulated Industry

Your industry is constantly changing, and you need to be in the know to stay ahead of your competition. To help license holders meet this challenge, Bertolino LLP is excited to announce it has launched a free, educational update to keep license holders informed of the ever-changing laws, rules, regulations and legal interpretations that impact their livelihood and businesses.

[Subscribe](#) for this free, periodic, informational service to stay current on what's happening in the regulatory world impacting your industry.

COMING JUNE 2024 ...

**Know Your Regulator:
The Podcast that Inspires
You to Engage**

Professional Recognition Days: May Calendar

Team Bertolino is grateful for the expertise and dedication of these professionals. Thank you for your outstanding contributions to your respective industries.

Month of May:

- Occupational Therapy Month
- Counseling Awareness Month

May 1:

- School Principals Day
- Therapeutic Massage Awareness Day

May 2:

- National Life Insurance Day

May 4:

- International Firefighters Day

May 5:

- Teacher Appreciation Week

May 6:

- National Nurses Day /National Nurses Week

May 7:

- National Teachers Day



Presented by BERTOLINO LLP, this is a free, educational podcast to keep professional license holders informed of the ever changing laws, rules, regulations, and legal interpretations that impact their livelihood and businesses.

May 8:

- Occupational Safety & Health Professionals Day

May 21:

- National Waitstaff Day

May 24:

- National Caterers Appreciation Day



Side Bar ...

How to Apply for the 2024/2025 Bertolino Impact in Government Scholarship

Bertolino LLP has transitioned from the traditional written essays for scholarship submissions. Students will record video essays between 30 and 60 seconds long addressing the following points:

- Assume we are now 50 years into the future. Describe how American society has changed in at least one significant legal way. How are people interacting with the new laws?
- Explain how and why the law has evolved to meet this society-impacting change.
- How do Americans (including



Students must shoot and edit their videos before posting the content as an unlisted YouTube video. Using the official [scholarship submission form](#) on our website, applicants can then send their videos to Bertolino LLP alongside other essential application materials, including proof of acceptance to an accredited United States university and an unofficial transcript.

Bertolino LLP's scholarship selection committee will not consider applications submitted without essential materials or after the scholarship's submission deadline has closed. Visit our [Scholarship Page](#) for

the legal profession itself) interact differently with the law and people who need legal services because of this societal change?

more information and complete submission details. Students have until June 1st, 2024, at 11:00 PM CT to submit their applications.

- Has this change been an overall positive or negative for Americans and their interaction with the law?

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