

No. 4425

**OFFICIAL ORDER  
of the  
TEXAS COMMISSIONER OF INSURANCE**

Date: APR 28 2016

**Subject Considered:**

THOMAS A. MALONEY, P.E.  
3108 Bay Spring  
League City, TX 77573

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 10776

**General remarks and official action taken:**

The commissioner of insurance considers the application of Thomas A. Maloney, P.E. of League City, Texas, for appointment as a qualified inspector.

**WAIVER**

Maloney acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Maloney waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

1. Maloney's professional engineer license number is 101820.
2. Maloney previously held an appointment with the department as a qualified inspector to perform building inspections for the purpose of establishing that buildings or structures are eligible for windstorm and hail insurance through the Texas Windstorm Insurance Association (TWIA).
3. On November 5, 2012, the commissioner entered Order No. 12-0866 by consent, and ordered Maloney to surrender his appointment effective as of the date of the order, canceled his qualified inspector appointment, and barred him from applying or re-applying for an appointment for three years from the date of the order.
4. Order No. 12-0866 concluded that with respect to an entire re-roof on an apartment building located at 610 N. Ferry Road, Galveston, Texas (N. Ferry Re-Roof), Maloney:

- a. failed to provide substantiating information requested by TDI, in violation of 28 TEX. ADMIN. CODE § 5.4604(h)(3) – (h)(5);
  - b. failed to comply with 28 TEX. ADMIN. CODE § 5.4604(g)(1) – (g)(5).
  - c. knowingly, willfully, fraudulently, or with gross negligence, signed or caused to be prepared an inspection report or sworn statement that contains a false, fictitious, or fraudulent statement or entry, as contemplated by TEX. INS. CODE § 2210.256 and 28 TEX. ADMIN. CODE § 5.4604(f)(1); and
  - d. failed to timely respond to a TDI inquiry in violation of TEX. INS. CODE § 38.001.
5. In addition, Order No. 12-0866 found that in April 2012 the Texas Board of Professional Engineers (TBPE) issued a warning letter to Maloney regarding his windstorm certification of the N. Ferry Re-Roof.
  6. On May 21, 2014, TBPE entered a consent order issuing an informal reprimand against Maloney in File No. D-34582 pertaining to the windstorm design and inspections of a remodel of the complainant's residence located at 11619 32<sup>nd</sup> Street, Santa Fe, Texas (32<sup>nd</sup> Street Remodel) during the period of August 2012 through the fall of 2012. TBPE concluded that Maloney failed to act as a faithful agent to his clients, and failed to conduct engineering and business related matters in a manner respectful of the client and involved parties in violation of TBPE rules.
  7. On May 21, 2015, TBPE entered a consent order against Maloney in File Nos. D-35476 and D-35521, finding that in 2012, Maloney failed to ensure that TDI received WPI-2 forms for: two re-roof projects he inspected for M&M Bayshore, LLC; and six properties he inspected for Fred Hartel Company. TBPE concluded that Maloney failed to practice engineering in a careful and diligent manner in violation of a TBPE rule. TBPE issued an informal reprimand and required that Maloney pay restitution in the amount of \$400 to M&M Bayshore, LLC, and in the amount of \$900 to Fred Hartel Company, and further ordered that he complete a Texas Tech University Engineering Ethics I course.
  8. The May 21, 2014, and May 21, 2015, orders entered by TBPE against Maloney pertain to acts committed by him prior to the surrender and cancellation of his qualified inspector appointment under Order No. 12-0866.
  9. To the department's knowledge, Maloney has not committed any acts in violation of Texas law during his three year bar from applying for an appointment as a qualified inspector.
  10. On January 26, 2016, TDI received an application from Maloney for appointment as a qualified inspector. Together with his application, Maloney disclosed the existence of Order No. 12-0866, and affirmed his placement on the TBPE roster of windstorm engineers, as contemplated by 28 TEX. ADMIN. CODE § 5.4608.

11. On January 27, 2016, TDI notified Maloney that it proposed to disapprove his application for appointment due to the cancellation of his qualified inspector appointment under Order No. 12-0866, and the reasons cited in that order.
12. On February 26, 2016, Maloney requested a hearing on TDI's denial of his application.

## CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.052 and 2210.2551-2210.256; and 28 TEX. ADMIN. CODE § 5.4604.
2. The commissioner has the authority to dispose of this case informally pursuant to the provisions of TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104, 82.055, and 2210.256(e); and, 28 TEX. ADMIN. CODE §§ 1.47 and 5.4604(f)(3).
3. Maloney has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this order, including, but not limited to, a public hearing, a proposal for decision, rehearing, and judicial review.
4. Pursuant to TEX. INS. CODE § 2210.2551(a)-(c) and 28 TEX. ADMIN. CODE § 5.4604(e), the department has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors, including whether to approve or disapprove an application for appointment of an engineer as a qualified inspector.
5. Maloney has previously committed acts for which the department may disapprove an appointment under TEX. INS. CODE § 2210.2551(a)-(c) and 28 TEX. ADMIN. CODE § 5.4604(e).
6. However, after consideration of findings of fact nos. 8 – 12, the commissioner determines that the department will grant Maloney's application for appointment, subject to the probationary terms outlined below.

Based on the findings of fact and conclusions of law, the commissioner grants a qualified inspector appointment to Thomas A. Maloney, P.E., subject to a one-year probationary period during which he must comply with the following terms and conditions:

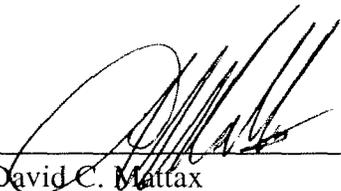
1. These terms and conditions apply to all inspections performed on or after the date of this order for the purpose of establishing that a building, structure, addition, alteration, roof, foundation, or repair (structure) is eligible for windstorm and hail insurance, and all WPI-1s (Application for Certificate of Compliance) and WPI-2s (Inspection Verification Form) submitted on or after the date of this order.
2. Any requirements in this order for Maloney to submit methods of installation or contractor methods of installation will mean:

- a. the manufacturer's recommended method(s) for installation;
  - b. the method(s) of installation set forth in the builder's plans and specifications; or
  - c. other construction standards adopted by the commissioner.
3. Maloney must not act as a qualified inspector on any structure unless he or another person has submitted a WPI-1 to TDI's windstorm inspections division prior to beginning to construct, alter, remodel, enlarge, or repair a structure. Maloney must notify the department's windstorm inspections division, through submission of a WPI-1 by him or another person, of his intent to perform building inspections for the purpose of establishing that the structure is eligible for windstorm and hail insurance, as contemplated in TEX. INS. CODE § 2210.2515(b) and (d).
4. If Maloney deviates from the prescriptive building codes or construction guides adopted by the commissioner, Maloney must prepare plans and structural calculations, as contemplated by 28 TEX. ADMIN. CODE § 5.4604(g)(2). TDI may request that Maloney submit plans and structural calculations after his submission of a WPI-2 form for any structure.
5. Windstorm plans and structural calculations for structures must include, when applicable, the following information:
- a. applicable building code standard used, the wind load standard used, the wind speed used, the wind importance factor used, and the exposure category used in the design of the structure;
  - b. summary of the wind loads acting on the structure for the design of the main wind force-resisting systems, components, and cladding;
  - c. uplift loads and building components used to transfer uplift loads from the roof down to the foundation;
  - d. lateral shear loads and the building components used to transfer lateral shear loads caused by the applied wind loads from the roof down to the foundation;
  - e. design of connections to transfer wind loads from one element to the next from the roof to foundation;
  - f. roof cladding and roof framing connections;
  - g. roof deck type and anchorage method, including fastener type and spacing;
  - h. wall connections to the roof, floor diaphragms, and framing;

- i. roof and floor diaphragm systems, including collectors, drag struts, and boundary elements;
  - j. vertical wind force resisting systems, including braced frames, moment frames, and shear walls;
  - k. windforce resisting system connections to the foundation;
  - l. foundation design, including the overturning resistance of the foundation system;
  - m. design pressure requirements for any roof or exterior covering used on a structure;
  - n. type of roof covering or exterior covering and anchorage method, including fastener type and spacing;
  - o. type of soffit material and anchorage method, including fastener type and spacing;
  - p. design pressure and high wind installation requirements for all exterior opening products, including windows, doors, garage doors, and skylights; and
  - q. methods for protection of exterior openings from windborne debris, when applicable.
6. Maloney must not act as the inspecting windstorm engineer of record during the construction of any structure based on the plans and calculations prepared by another appointed engineer unless Maloney is performing inspections under the direct supervision of the engineer who prepared the plans and calculations for the structure.
7. As part of the inspection process, Maloney must determine, and the appointed engineer or the appointed engineer's employee will confirm, building code compliance of the building products used during the construction process by obtaining and utilizing the following information during the design and inspection of the structure:
  - a. test information;
  - b. model code or department product evaluation reports; or
  - c. manufacturer's high wind installation requirements.
8. Maloney must provide the windstorm inspections division with the name, address, telephone number, resume, and qualifications, of all individuals performing building inspections under his supervision for the purpose of establishing that a structure is eligible for wind and hail insurance. Maloney may use inspector personnel that are direct employees of his or his firm. However, Maloney must be responsible for the training and actions of those personnel. Contract inspection firms are not permitted.

9. On a monthly basis, Maloney must perform follow-up or joint inspections with each and every individual identified under probationary term and condition no. 8 to ensure that the construction of structures conforms to the requirements set forth by Maloney and the applicable building code. On request by the department, Maloney must provide copies of signed and sealed inspection records for each of these follow-up or joint inspections.
  
10. Maloney must prepare an inspection form or report to be used during each and every inspection. The inspection form or report will include, but is not limited to, the following information:
  - a. complete address of locations being inspected;
  - b. type of inspection;
  - c. date and time of inspection;
  - d. status of inspection;
  - e. type of construction;
  - f. wind zone;
  - g. exposure category;
  - h. mean roof height;
  - i. products or a copy of the builder's specifications and the windstorm plans, and any deviations;
  - j. manufacturers of the products identified under probationary term and condition no. 8 if not stated in the builder's specifications or windstorm plans;
  - k. product testing information of the products identified under probationary term and condition no. 7.
  - l. manufacturer installation requirements of the products identified under probationary term and condition no. 7.
  - m. deviations from the contractor methods of installation established by the manufacturer's recommendations;
  - n. on-site compliance report, including the printed name and signature of inspector; and
  - o. reference to the appropriate windstorm plans for the building plan.

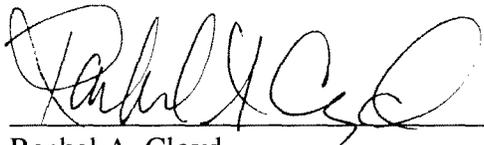
11. Maloney must notify the windstorm inspections division within 24 hours of beginning building inspections under the supervision of an engineer appointed as a qualified inspector for the purposes of establishing that a structure is eligible for windstorm and hail insurance.
12. The terms and conditions of this order apply to any inspections Maloney certifies, verifies, or performs individually as an appointed qualified inspector, as well as those conducted under the supervision of another engineer appointed as a qualified inspector.
13. Maloney must comply with TEX. INS. CODE §§ 2210.251, 2210.2515, 2210.254, and 28 TEX. ADMIN. CODE § 5.4604. Any violation of the Texas Insurance Code, Texas Administrative Code, or the terms of this order, may result in disciplinary action, including revocation of Maloney's appointment as a qualified inspector, pursuant to TEX. INS. CODE §§ 2210.2551 – 2210.256.



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David C. Mattax  
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



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Rachel A. Cloyd  
Staff Attorney, Enforcement Section  
Texas Department of Insurance

