

LCB File No. R201-03

**PROPOSED REGULATION OF THE
STATE CONTRACTORS' BOARD**

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Workshop and Hearing for the Adoption, Amendment or Repeal of Regulations
Of
The State of Nevada Contractors' Board**

The State of Nevada Contractors' Board ("Board") will hold a workshop and public hearing on Wednesday, December 3, 2003. The workshop will begin at 2:00 p.m. and the hearing will commence immediately following the workshop. The workshop and hearing will be video-conferenced between the Board's Henderson Office located at 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno Office located at 9670 Gateway Drive, Reno, Nevada 89521. The purpose of the workshop and hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to Chapter 624 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060 and 233B.0603:

1. The need for and purpose of the proposed regulation or amendment.

The purpose of the proposed regulation is to amend Chapter 624 of the Nevada Administrative Code to clarify certain provisions regarding the residential recovery fund and the disciplinary hearing process.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.

The proposed regulation clarifies the manner in which residential recovery fund claims must be completed and changes certain provisions of the rules of practice for disciplinary matters before the Board. A copy of the proposed regulation may be obtained by writing to the Board's offices at 9670 Gateway Drive, Reno, Nevada 89521.

3. The estimated economic effect of this proposed regulation on the business which it is to regulate and on the public.

(a) Adverse and beneficial effects.

There should be minimal economic impact on the industry.

(b) Both immediate and long-term effects.

Minimal.

4. The estimated cost to the Agency for enforcement of the proposed regulation.

Minimal.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

The proposed regulation does not overlap or duplicate any regulation of other state or local governmental entities.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

Does not apply.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Does not apply.

8. Whether proposed regulation establishes a new fee or increases an existing fee.

Does not apply.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public workshop and hearing or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors' Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 or in Reno at 9670 Gateway Drive, Suite 100, Reno, Nevada 89521. Written submissions must be received by the Board on or before Wednesday, November 26, 2003. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notices and the regulation to be adopted will be available at the State Contractors' Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and 9670 Gateway Drive, Suite 100, Reno, Nevada 89521. In all counties in which an office of the Board is not maintained, a copy of this notice and the text of the proposed regulation will also be available for public inspection and copying at the main public library during business hours. This notice and the text of the proposed regulation will be available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the Board, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been mailed to all persons on the agency's mailing list of administrative regulations and posted at the following locations:

Washoe County Court House
Washoe County Library
Reno City Hall
Las Vegas City Hall
Sawyer State Building
Clark County Library
Offices of the State Contractors' Board in Reno and Henderson

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NAC 624.750 THROUGH NAC 624.770 INCLUSIVE

Explanation – Matter in *italics* is new; matter in brackets ~~{}~~ is material to be omitted

NAC 624.750 Claim: Contents; time for processing; notification of change of information.
(NRS 624.560)

1. A complaint seeking recovery must be filed on a form entitled “Residential Recovery Fund Claim” that will be provided by the board. A complaint seeking recovery must include, without limitation:

(a) The name, address and telephone number of the claimant filing the complaint seeking recovery;

(b) The name, address, license number and telephone number, if known, of the accused residential contractor;

(c) A description of:

(1) The facts concerning the alleged failure by the accused residential contractor to perform qualified services adequately; and

(2) The nature and extent of the claimed loss;

(d) The date on which, or the period during which, the alleged loss occurred;

(e) A copy of the original contract and all change orders, credits, refunds or discounts.

(f) Copies of the front and back of all cancelled checks supporting the claim, payable to the contractor, sub-contractor or supplier.

(g) Proof of all cash payments supporting the claim, with signed receipts from the contractor, sub-contractor or supplier if appropriate. ~~{Copies of all paid cash receipts}~~

(h) Copies of Perfected Liens if appropriate

2. *The Executive Officer or designee may request additional information or documentation to support the claim.*

3. *The Board will assist the claimants in obtaining the appropriate documents through the issuance of subpoenas if appropriate and requested by the claimant.*

4. *Claimants may be required to submit itemized bids from licensed Nevada Contractors for estimates to complete repairs. The estimates must only be for the repair or replacement of the original work and not for enhancements, additional improvements or upgrades of services or materials.*

5. *Claims which are received and include false or altered documents or documents, billings, receipts or estimates, found to include enhancements, upgrades for services, or materials or improvements, or work or repairs outside the scope of the original contract will result in the claim being automatically denied by the Executive Officer or designee and it may not be considered by the Board or the Committee.*

~~{(e) Itemized bids from three licensed residential contractors, not including the accused residential contractor, to repair or otherwise fix the problem created by the alleged failure of the accused residential contractor to perform qualified services adequately.}~~

~~[(f) Documents relating to the underlying claim, including, without limitation, contracts between the claimant and the accused residential contractor, copies of the front and back of canceled checks, paid receipts and escrow settlement accounts, if any;]~~

~~[(g) Proof of payment on the underlying claim from other sources, including, without limitation, payment from bonds, sureties, guarantees, warranties, letters of credit or policies of insurance;]~~

~~[(h) Certified copies of all writs of execution, garnishment or attachment or of any other writ designed to enforce any judgment of the court in favor of the claimant against the accused residential contractor, and proof of all efforts, and inability resulting therefrom, to collect the judgment or order;]~~

~~[(i) A statement detailing the efforts made by the claimant to recover the loss from the accused residential contractor, the estate of the accused residential contractor or a third party; and]~~

~~[(j) Any other information requested by the executive officer.]—~~

6. The Board may not approve a payment from the Residential Recovery Fund until full and complete documentation has been provided by the claimant, as required by the Executive Officer or designee.

7. The Board shall advise the claimant by certified mail, the requirements of NRS 624.500(4) are being tolled, awaiting receipt of additional documents from the claimant, if the claim cannot be investigated and processed within 6 months of receipt of the claim. The letter shall include the identification of those specific documents which are being requested and provide a timeframe for producing the requested documents.

8. If the claimant cannot provide adequate documentation to support the claim within 6 months of filing the claim, the claim will be closed and may be re-opened upon receipt of the requested documents for consideration by the Board.

*9. The board will not **approve** ~~process~~ a complaint seeking recovery until 30 ~~15~~ days after the date on which the civil judgment was issued by the court or the final decision and order was issued by the board or its designee, as appropriate.*

10. If after a complaint seeking recovery is filed, any information in the complaint changes, the claimant shall forthwith notify the board of the change.

NAC 624.755 Procedure for processing: Notice to accused contractor; investigation; hearing. (NRS 624.560)

1. Upon receiving a complaint seeking recovery, the staff of the board shall:
 - (a) Send a copy of the complaint seeking recovery, by certified mail *to the address of record* to the accused residential contractor named in the complaint seeking recovery; and
 - (b) Commence an investigation into the facts alleged in the complaint seeking recovery.
2. When necessary, the chairman of the board may appoint a committee to hear complaints seeking recovery filed with the board or appoint a specific committee to hear a specific complaint seeking recovery. Such a committee will act as the designee of the board.
3. A hearing on a complaint seeking recovery before the board or an appointed committee is informal, and the board or appointed committee will consider all relevant testimony and evidence presented. The written report of the results of the investigation conducted by the staff must be made a part of the record of the hearing.
4. A claimant or an accused residential contractor:

(a) May appear before the board or appointed committee to present evidence and arguments in support or defense of a claim.

(b) Any residential contractor appearing before the board and presenting evidence or arguments in defense of the claim, must provided the board staff the documents, evidence or exhibits to be presented to the board, ten (10) days in advance of the hearing date.

(c) The board shall not consider any documents, evidence or exhibits which are not presented to the board, ten (10) days in advance of the hearing date.

(d) Shall appear before the board or appointed committee to present evidence and arguments in support or defense of a claim upon the request of any member of the board or appointed committee.

5. Complaints seeking recovery *which are complete* will be *investigated*~~{processed}~~ in the order in which the complaints are received.

NAC 624.760 Determination; final order. (NRS 624.560)

1. In making its determination on a complaint, the board or appointed committee will consider all matters relevant to the complaint seeking recovery, including, without limitation:

(a) The financial condition of the recovery fund;

(b) The nature of the complaint seeking recovery and the amount of money sought to be recovered by the claimant; and

(c) If there is more than one claimant, the equitable division of available money from the recovery fund among the claimants.

2. The board or appointed committee will authorize payment of the complaint seeking recovery in full or in part, or deny the claim in full or in part, by entry of a final order.

NAC 624.765 Claimant's agreement with board. (NRS 624.560) As a condition of receiving payment from the recovery fund, a claimant must enter into an agreement with the board pursuant to which the board is subrogated to the rights of the claimant against the accused residential contractor, the estate of the accused residential contractor or a third party for an amount equal to the amount of money paid from the recovery fund to the claimant plus the amount of all costs incurred by the board in recovering that amount of money from the accused residential contractor, the estate of the accused residential contractor or the third party. The agreement must provide that the claimant will cooperate with the board in any proceeding commenced to recover such money from the accused residential contractor, the estate of the accused residential contractor or the third party.

NAC 624.770 Procedure upon final order approving payment. (NRS 624.560)

1. If the board or appointed committee issues a final order approving in full or in part a complaint seeking recovery, the board or appointed committee will forward:

(a) A copy of the final order approving the complaint seeking recovery to the accounting office of the board; and

(b) A copy of the complaint seeking recovery and the final order to the office of the attorney general so that the attorney general may commence efforts to enforce any subrogation claims against the accused residential contractor.

2. The accounting office of the board shall not commence procedures for the disbursement of money pursuant to a final order approving a complaint seeking recovery until **30** ~~[45]~~ days after the date on which the board or appointed committee issued the final order.