

**PROPOSED REGULATION OF THE STATE BOARD
OF LANDSCAPE ARCHITECTURE**

LCB File No. R217-03

January 29, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-13, NRS 233B.050 and 623A.130.

Section 1. Chapter 623A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Complainant” means a person filing a complaint.*

Sec. 3. *“Complaint” means a complaint filed with the Board concerning:*

- 1. A landscape architect;*
- 2. A landscape architect intern;*
- 3. An applicant for a certificate of registration;*
- 4. An applicant for a certificate to practice as a landscape architect intern; or*
- 5. Any other person accused of violating a provision of this chapter or chapter 623A of*

NRS.

Sec. 4. *“Designated member of the Board” means:*

- 1. The President of the Board; or*
- 2. The member of the Board designated by the President of the Board pursuant to the provisions of NRS 623A.305.*

Sec. 5. *“Respondent” means a person against whom a complaint is filed.*

Sec. 6. 1. *Upon the receipt of a complaint, the designated member of the Board shall review the complaint to determine if the complaint is complete by adequately setting forth:*

- (a) The nature of the complaint;*
- (b) The identity of the complainant; and*
- (c) The identity of the respondent.*

2. *The designated member of the Board may consult with the Executive Director in conducting the review of the complaint pursuant to subsection 1.*

3. *If the designated member of the Board determines that the complaint does not meet the requirements of subsection 1, the designated member of the Board shall:*

(a) If the complaint was not submitted on the official complaint form of the Board, provide to the person filing the complaint the official complaint form of the Board.

(b) Request that the person submitting the complaint provide the information that the designated member of the Board has determined to be missing from the complaint.

Sec. 7. 1. *Once the designated member of the Board has determined pursuant to section 6 of this regulation that a complaint is complete, the designated member of the Board shall provide a copy of the complaint to the respondent.*

2. *Upon the receipt of a copy of a complaint that has been filed against the respondent, the respondent shall submit to the Board a written response to the complaint within 20 days.*

3. *If the respondent fails to respond as required pursuant to subsection 2, he shall be deemed to have admitted the allegations in the complaint.*

Sec. 8. 1. *Upon the receipt of the response to a complaint pursuant to section 7 of this regulation, the designated member of the Board shall review the complaint and the response to determine whether a probable violation of this chapter or chapter 623A of NRS has occurred.*

2. The designated member of the Board may consult with the Executive Director or the legal counsel for the Board in conducting the review of a complaint pursuant to the provisions of subsection 1.

3. After conducting a review of a complaint pursuant to the provisions of subsection 1, the designated member of the Board shall recommend to the Board that:

(a) The Board dismiss the complaint; or

(b) The Board proceed with a formal disciplinary hearing and schedule the matter for a disciplinary hearing.

Sec. 9. 1. *At a public meeting of the Board, the Board will review the recommendation of the designated member of the Board on a complaint provided pursuant to the provisions of section 8 of this regulation and decide whether to:*

(a) Dismiss the complaint; or

(b) Proceed with a formal disciplinary hearing on the complaint and fix a date for the hearing on the matter.

2. If the Board decides pursuant to the provisions of subsection 1 to dismiss the complaint, the Board will provide a copy of its decision to the complainant and the respondent.

3. If the Board decides pursuant to the provisions of subsection 1 to proceed with a formal disciplinary hearing, the legal counsel for the Board shall prepare:

(a) A formal disciplinary complaint setting forth the specific violations of this chapter or chapter 623A of NRS that the respondent is alleged to have violated; and

(b) A notice of hearing pursuant to the provisions of NAC 623A.520.

4. The legal counsel for the Board shall serve the formal disciplinary complaint and the notice of hearing prepared pursuant to the provisions of subsection 3 upon the respondent by certified mail, return receipt requested.

Sec. 10. *1. After the formal disciplinary complaint and the notice of hearing have been served upon the respondent pursuant to the provisions of section 9 of this regulation, the designated member of the Board, the Executive Director and the legal counsel for the Board may determine parameters within which the complaint may be settled with the respondent.*

2. If, pursuant to the provisions of subsection 1, the designated member of the Board, the Executive Director and the legal counsel for the Board determine parameters within which the complaint may be settled, the legal counsel for the Board shall offer to the respondent to settle the complaint.

3. If the legal counsel for the Board and the respondent reach an agreement to settle the complaint, the legal counsel for the Board shall prepare a proposed stipulated agreement that resolves the complaint.

4. The legal counsel for the Board shall submit the proposed stipulated agreement to the Board for the approval of the Board at the next public meeting of the Board. If the Board approves the proposed stipulated agreement, the stipulated agreement is effective and the complaint against the respondent must be dismissed.

Sec. 11. *Any party to a formal disciplinary complaint may request that the Board issue a subpoena pursuant to the provisions of NRS 623A.140.*

Sec. 12. NAC 623A.010 is hereby amended to read as follows:

623A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 623A.020 to 623A.065, inclusive, *and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 623A.520 is hereby amended to read as follows:

623A.520 1. All parties to a disciplinary proceeding or other contested matter under the Nevada Administrative Procedure Act will be afforded an opportunity for a hearing before the board or a duly appointed hearing panel after reasonable notice of at least 30 days.

2. The notice must contain:

- (a) The time, place and nature of the hearing.
- (b) The legal authority and jurisdiction under which the hearing will be held.
- (c) A reference to the particular sections of NRS and this chapter which are involved.
- (d) A clear statement of the matters asserted.

3. At the hearing, each party has the right to be represented by counsel, to respond to and introduce evidence and argument on all issues involved, and to produce witnesses and to examine and cross-examine opposing witnesses.

4. *The respondent may request a continuance of a hearing. The Board will grant the first request for a continuance of a hearing requested by a respondent. The Board will grant a second or subsequent request for a continuance only upon a showing by the respondent of clear and convincing grounds for the granting of the second or subsequent request for a continuance of a hearing.*

5. *The President of the Board or another member of the Board appointed by the President shall chair the hearing.*

6. *The member of the Board chairing the hearing shall make all rulings concerning the admissibility of evidence. The formal rules of evidence do not apply.*

7. *A hearing will be conducted in the following order:*

(a) *The legal counsel for the Board shall mark and place into evidence all exhibits that support the allegations contained in the complaint.*

(b) *The respondent may state his objections, if any, to the exhibits marked and placed into evidence by the legal counsel for the Board.*

(c) *The respondent shall mark and place into evidence all exhibits which support the defense of the respondent.*

(d) *The legal counsel for the Board may state his objections, if any, to the exhibits marked and placed into evidence by the respondent.*

(e) *The legal counsel for the Board may make an opening statement.*

(f) *The respondent may make an opening statement.*

(g) *The legal counsel for the Board shall call witnesses, if any, to testify concerning the allegations contained in the complaint.*

(h) *The respondent may cross-examine a witness called by the legal counsel for the Board.*

(i) *The respondent shall call witnesses, if any, to testify concerning the allegations contained in the complaint.*

(j) *The legal counsel for the Board may cross-examine a witness called by the respondent.*

(k) *The respondent may make a closing statement.*

(l) *The legal counsel for the Board may make a closing statement.*

8. *All allegations in a complaint must be proved by substantial evidence.*

9. After the hearing has concluded, the Board will, by majority vote, make an initial determination as to the allegations contained in the complaint.

10. After the Board has made a determination as to the decision of the Board regarding the allegations contained in the complaint:

(a) The Board will orally announce the decision of the Board; and

(b) The legal counsel of the Board shall draft a written final determination of the Board.

11. The Executive Director of the Board shall submit the written final determination of the Board prepared pursuant to the provisions of subsection 10 to the Board for approval. If the Board approves of the written final determination of the Board prepared pursuant to the provisions of subsection 10, the Board will serve the written final determination on the respondent by certified mail, return receipt requested.

12. A person who is aggrieved by a final decision of the Board in a contested case is entitled to a judicial review pursuant to the Nevada Administrative Procedure Act.