

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

LCB File No. R098-12

August 3, 2012

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

AUTHORITY: §§1, 3, 5-8, 15, 16 and 18, NRS 624.100; §2, NRS 624.100, 624.282 and 624.283; §4, NRS 624.100 and 624.283; §§9-11, NRS 624.100 and 624.940; §12, NRS 624.100 and 624.935; §§13 and 14, NRS 624.100 and 624.945; §17, NRS 40.6887.

A REGULATION relating to contractors; making various changes concerning contractors; eliminating the designation of the principal office of the State Contractors' Board; revising the fee for the late filing of an application to renew a contractor's license; revising various provisions governing work concerning residential pools and spas; limiting the motions that may be made in a disciplinary proceeding; revising provisions governing fees assessed by the Board against a contractor relating to certain requests submitted to the Board concerning constructional defects; repealing various provisions governing contractors, meetings of the Board and investigators employed by the Board; and providing other matters properly relating thereto.

Section 1. NAC 624.120 is hereby amended to read as follows:

624.120 ~~[1.]~~ Any person may file with the Board a petition for a declaratory order or advisory opinion as to the applicability of any provision of chapter 624 of NRS.

~~[2.—The principal office of the Board is in Reno, Nevada.]~~

Sec. 2. NAC 624.130 is hereby amended to read as follows:

624.130 The Board will charge and collect the following fees:

| | |
|--|------|
| To issue a duplicate license | \$25 |
| To issue a duplicate identification card | 10 |

| | |
|--|------------|
| To issue a duplicate certificate of eligibility | 50 |
| To consider an application for a change in the name of the licensee | 250 |
| To consider an application regarding a conversion of the licensee conducted pursuant to chapter 92A of NRS | 300 |
| To consider an application for an increase of a licensee’s monetary limit for a single project..... | 75 |
| To supply a pamphlet containing the statutes and regulations relating to contractors | 5 |
| To supply a report containing information regarding not more than 500 current licensees | 100 |
| To supply a report containing information regarding more than 500 current licensees..... | 200 |
| To consider a request for a permanent increase or decrease of a licensee’s monetary limit | 250 |
| To consider a request to change the qualified person or other principal listed on a license | 250 |
| To consider a request to broaden a license to include the entire classification or other specific subclassifications within the classification..... | 250 |
| To issue or renew a license | 600 |
| <i>For the late filing of an application to renew an active license</i> | <i>150</i> |
| For an administrative fee if the applicant or licensee has established a cash deposit with the Board..... | 200 |
| To issue or renew an inactive license..... | 300 |

For the late filing of an application to renew an inactive license75

To consider an application for the issuance of a license for a classification
in which the applicant is not licensed..... 300

To issue a certificate of eligibility..... 500

To renew a certificate of eligibility 300

~~For photocopies (per page) 1~~

To charge for returned checks 25

Sec. 3. NAC 624.132 is hereby amended to read as follows:

624.132 As used in NAC 624.132 to ~~624.138,~~ **624.137**, inclusive, unless the context otherwise requires, the words and terms defined in NAC 624.133 and 624.134 have the meanings ascribed to them in those sections.

Sec. 4. NAC 624.630 is hereby amended to read as follows:

624.630 1. The Board will mail to each licensee, at his or her address of record, an application for the renewal of his or her license. Except as otherwise provided in subsection 2, the licensee must return the completed application to the Board not later than the last day of the month in which the license expires. If the Board prescribes a shorter or longer period of validity for the licensee pursuant to NRS 624.283, the Board will notify the licensee of that fact.

2. If the Board has requested that a licensee submit a financial statement with the application for renewal, the licensee must return to the Board, not later than the first day of the month in which the license expires, a completed application, the renewal fee and:

(a) For a licensee whose license is issued before June 30, 2010:

(1) If the monetary limit of the license is less than \$1,000,000:

(I) A current financial statement prepared by an independent certified public accountant;

(II) A current financial statement submitted on a form prescribed by the Board and accompanied by an affidavit that verifies the accuracy of the financial statement; or

(III) A current financial statement prepared using accounting software in accordance with generally accepted accounting principles and accompanied by an affidavit that verifies the accuracy of the financial statement; or

(2) If the monetary limit of the license is \$1,000,000 or more, a financial statement that is prepared and reviewed or audited by a certified public accountant within 1 year before the filing of the application.

(b) For a licensee whose license is issued on or after June 30, 2010, the financial statement required by NAC 624.593.

3. If a licensee fails:

(a) To renew his or her license before it expires, a late fee will be charged ~~at the rate of one-half the renewal fee~~ as set forth in NAC 624.130.

(b) To attempt renewal within the first 6 months of the new license biennium, the Board will deny, revoke or refuse to renew the license. In either situation, the licensee must apply for a new license.

4. If a licensee has filed a timely application for renewal, accompanied by the required fee, but necessary information is lacking, the Board will conditionally renew the license until the information is received. If the information is not received within a reasonable time, the Board will deny the renewal.

5. If the completed application for renewal contains information which warrants the action, the Board will impose or reduce the limits upon the license, or remove a classification or subclassification from the license.

Sec. 5. NAC 624.640 is hereby amended to read as follows:

624.640 1. If a licensee bids or contracts outside the scope of his or her license or exceeds the monetary limit placed on the license, the bid or contract is void. ~~[This subsection applies to contracts entered into on or after April 22, 1994.]~~

2. Each licensee shall prominently display his or her unexpired license or licenses in the licensee's chief place of business and shall exhibit his or her pocket card to any interested person.

3. If any change occurs in a licensee's address or personnel which affects the accuracy of the statements in the application upon which his or her license is based, the licensee shall report the change in writing to the Board within 30 days after the change occurs.

4. If a license issued by the Board was based in part on the employment of a particularly qualified person, the licensee must continue to employ such a person in order to retain the license.

5. Each licensee shall include in all bids the licensee submits or contracts he or she enters into for construction work within this State, the number of his or her license and any monetary limit placed upon the license.

6. Each licensee shall ascertain that each person whose bid on a construction project the licensee considers is appropriately licensed.

Sec. 6. NAC 624.6952 is hereby amended to read as follows:

624.6952 ~~["Contract for the construction of a residential pool or spa" means a contract between a contractor who is licensed pursuant to chapter 624 of NRS and the owner of a single-family residence for work upon that residence, or the land adjacent thereto, where:~~

- ~~—1.— The primary purpose of the contract is the construction, repair, restoration, alteration or improvement of a residential pool or spa, including, without limitation, all appurtenant equipment; and~~
- ~~—2.— The aggregate contract price of all such contracts, including labor, services and materials to be furnished by the contractor, exceeds \$1,000.]~~ *“Contract” has the meaning ascribed to it in NRS 624.905.*

Sec. 7. NAC 624.6954 is hereby amended to read as follows:

624.6954 “Contractor” ~~[means a person licensed pursuant to the provisions of chapter 624 of NRS who performs work concerning a residential pool or spa.]~~ *has the meaning ascribed to it in NRS 624.910.*

Sec. 8. NAC 624.6956 is hereby amended to read as follows:

624.6956 “Owner” means an owner of a single-family residence who enters into a contract for ~~[the construction of]~~ *work concerning* a residential pool or spa with a contractor.

Sec. 9. NAC 624.6958 is hereby amended to read as follows:

624.6958 A contractor shall ensure that each contract for ~~[the construction of]~~ *work concerning* a residential pool or spa that the contractor enters into:

1. Is evidenced in writing and that any changes to the contract are also evidenced in writing.
2. ~~[Contains]~~ *In addition to each provision required by NRS 624.940, contains* the following, each of which must be printed in at least 10-point bold type:
 - (a) ~~[The name of the contractor and his or her business address and license number;~~

- ~~—(b) The name and mailing address of the owner and the address or legal description of the property;~~
- ~~—(c) The date of execution of the contract;~~
- ~~—(d) The estimated date of completion of all work to be performed pursuant to the contract;~~
- ~~—(e) A description of the work to be performed pursuant to the contract;~~
- ~~—(f) The total amount to be paid to the contractor by the owner for all work to be performed pursuant to the contract, including all applicable taxes;~~
- ~~—(g) The amount of any advance deposit paid or promised to be paid to the contractor by the owner in accordance with subsection 4 of NAC 624.6964;~~
- ~~—(h) The dollar amount of any progress payment and the stage of construction at which the contractor will be entitled to collect progress payments during the course of construction pursuant to the contract in accordance with subsection 1 of NAC 624.6964;~~
- ~~—(i) A statement that the contractor has provided to the owner:
 - ~~—(1) The notice and informational form required pursuant to NRS 624.600; and~~
 - ~~—(2) Any other notices and forms required pursuant to federal, state or local law;~~~~
- ~~—(j) A statement that any additional work to be performed pursuant to the contract, whether or not pursuant to a change order, which will require the owner to pay additional money and any other change in the terms in the original contract must be agreed to in writing by the parties and incorporated into the original contract as a change order;~~
- ~~—(k) A plan and scale drawing showing the shape, size, dimensions and the specifications for the construction and equipment for the residential pool or spa and for other home improvements, and a description of the work to be done, the materials to be used and the equipment to be installed, and the agreed consideration for the work;~~

~~—(l) A notice, in close proximity to the signatures of the owner and the contractor, stating that the owner has the right to request a bond for payment and performance;~~

~~—(m)~~ A schedule of payments that meets the requirements of NAC 624.6964;

~~{(n)}~~ (b) An agreement by the contractor to provide to each subcontractor or supplier prompt and full payment upon completion of each stage or phase of construction for the contracted amount of services rendered or materials supplied; and

~~{(o)}~~ (c) A statement that upon satisfactory payment being made for any portion of the work performed, the contractor shall, in accordance with subsection 3 of NAC 624.6966 and before any further payment is requested or made, provide to the owner a full and unconditional release from any claim of mechanic's lien for that portion of the work for which payment has been made.

3. Is signed by the contractor or a person named on his or her license.

Sec. 10. NAC 624.696 is hereby amended to read as follows:

624.696 ~~{Except as otherwise provided in NAC 624.6962, a}~~ A contract for ~~{the construction of}~~ *work concerning* a residential pool or spa may, in addition to the items required pursuant to NAC 624.6958, contain any provision agreed to by the parties.

Sec. 11. NAC 624.6964 is hereby amended to read as follows:

624.6964 Except as otherwise provided in this section, a schedule of payments that is required to be included in a contract for ~~{the construction of}~~ *work concerning* a residential pool or spa pursuant to ~~{paragraph (m) of}~~ subsection 2 of NAC 624.6958 and any payment made pursuant to that schedule must comply with the following requirements:

1. The schedule of payments must be stated in dollars and cents and must, for each payment, specifically reference the amount of work or services to be performed and any materials and equipment to be supplied or installed.

2. The schedule of payments must not set a timetable for the completion of any stage or phase of the project that exceeds 30 days, unless completion of the stage or phase is delayed by an act of God or the owner agrees in writing to a longer period.

3. Except as otherwise provided in subsection 4, the schedule of payments must not provide for the contractor to receive, nor may the contractor actually receive, payments in excess of 100 percent of the contracted amount for any stage or phase of the work performed on the project at any time, excluding any applicable finance charges.

4. The schedule of payments may provide for the owner to pay to the contractor a down payment ~~[before the commencement of work pursuant to the contract, but a down payment must not exceed \$1,000 or 10 percent of the aggregate price of the contract, whichever is less, excluding any applicable finance charges.]~~ *that complies with the provisions of paragraph (g) of subsection 2 of NRS 624.940.*

5. Payment for any stage or phase of the work performed for the contracted amount, as set forth in the schedule of payments, must not be due until the completion of that stage or phase of construction.

6. A contractor may require final payment for the final stage or phase of the construction of a residential pool or spa after the completion of the plastering and the final inspection by the local building department, unless any installation of equipment, decking or fencing that is required in the contract is not completed.

7. The requirements set forth in subsections 1 to 6, inclusive, do not apply if the contract provides for:

- (a) The contractor to furnish a bond for payment and performance covering full performance and completion of the contract;
- (b) Full payment to be made upon satisfactory completion of the entire project; or
- (c) A schedule of payments to commence upon satisfactory completion of the entire project.

Sec. 12. NAC 624.6966 is hereby amended to read as follows:

624.6966 1. A contractor who receives an initial payment of \$1,000 or 10 percent of the aggregate contract price, whichever is less, pursuant to a contract for ~~the construction of~~ *work concerning* a residential pool or spa shall start the work within 30 days after the date all necessary permits for the work, if any, are issued, unless the person who made the payment agrees in writing to a longer period to apply for the necessary permits or start the work or to longer periods for both.

2. A contractor who receives money pursuant to a contract for ~~the construction of~~ *work concerning* a residential pool or spa shall complete the work diligently and shall not refuse to perform any work for any 30-day period.

3. If satisfactory payment is made for any portion of the work performed, the contractor shall, before any further payment is made, furnish the owner a full and unconditional release from any claim of mechanic's lien for that portion of the work for which payment has been made.

4. The requirements of subsection 3 do not apply if the contract provides for the contractor to furnish a bond for payment and performance covering full performance and completion of the contract and the bond is furnished by the contractor.

5. At the time the owner signs the contract, the contractor shall furnish the owner a legible copy of all documents signed and a written and signed receipt for any money paid to the contractor by the owner.

6. The contractor shall apply for and obtain all necessary permits in a timely manner.

Sec. 13. NAC 624.6967 is hereby amended to read as follows:

624.6967 A contractor engages in deceptive advertising if, in the course of his or her business or occupation, the contractor:

1. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for ~~[the repair, restoration, improvement, construction or]~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa.

2. Knowingly makes a false representation as to affiliation, connection, association with or certification by another person or entity.

3. Represents that goods or services for ~~[the repair, restoration, improvement, construction or]~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa are of a particular standard, quality or grade, or that such goods are of a particular style or model, if the contractor knows or reasonably should know that the goods or services are of another standard, quality or grade or that the goods are of another style or model.

4. Makes false or misleading statements of fact concerning the price of goods or services for ~~[the repair, restoration, improvement, construction or]~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa or the reasons for, existence of, or amounts of reductions in price.

5. Fraudulently alters any contract, written estimate of repair, written statement of charges or other document in connection with ~~[the repair, restoration, improvement, construction or]~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa.
6. Knowingly makes any false representation in a transaction for ~~[the repair, restoration, improvement, construction or]~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa.
7. Makes any untrue statement of a material fact in an advertisement for the repair, restoration, improvement, construction or sale of residential pools or spas.
8. Fails to disclose a material fact in connection with advertising for the repair, restoration, improvement, construction or sale of residential pools or spas.
9. Disparages the goods, services or business of another by false or misleading representation of fact.
10. Advertises goods or services with the intent not to sell them as advertised.
11. Advertises goods or services for the repair, restoration, improvement, construction or sale of residential pools or spas with the intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity.
12. Advertises that a residential pool or spa can be completed within a certain number of days, unless at least 51 percent of the residential pools or spas the contractor has completed were completed within the advertised number of days.
13. Fails to complete a project for ~~[the repair, restoration, improvement, construction or]~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa within the time set forth in an advertisement of the contractor.

14. As a part of an advertising plan or scheme, notifies a person, by any means, that the person has won a prize and that as a condition of receiving the prize the person must enter into a contract for ~~the repair, restoration, improvement, construction or~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa.

15. Advertises for ~~the repair, restoration, improvement, construction or~~ *work concerning residential pools or spas or the* sale of residential pools or spas:

(a) Using an illustration of a pool or spa and setting forth a price, if the price does not accurately reflect the completed residential pool or spa as illustrated.

(b) Setting forth an offer for financing of the project, unless the advertisement identifies the person through which the financing will be obtained and the annual percentage rate that will be charged for the financing.

16. Provides a contract for ~~the repair, restoration, improvement, construction or~~ *work concerning a residential pool or spa or the* sale of a residential pool or spa that contains terms which are less favorable than the terms the contractor advertised.

Sec. 14. NAC 624.69675 is hereby amended to read as follows:

624.69675 **1.** A contractor shall not:

~~1.~~ **(a)** Engage in deceptive advertising or “bait and switch” advertising in connection with the sale of contracts for ~~the repair, restoration, improvement, construction or~~ *work concerning residential pools or spas or the* sale of residential pools or spas.

~~2.~~ **(b)** Sell a residential pool or spa for installation pursuant to the exemption set forth in subsection 4 of NRS 624.031 unless the contractor provides to the builder who is also the owner of the residential pool or spa a copy of the provisions of NRS 278.573, subsection 4 of NRS 624.031 and NRS 624.930.

2. As used in this section “bait and switch” advertising has the meaning ascribed to it in NRS 624.945.

Sec. 15. NAC 624.697 is hereby amended to read as follows:

624.697 If a contractor, while carrying out duties preparatory to entering into or pursuant to a contract for ~~[the construction of]~~ *work concerning* a residential pool or spa, fails to comply with one or more of the provisions of *NRS 624.900 to 624.965, inclusive, and* NAC 624.695 to 624.697, inclusive, such failure:

1. ~~[Render]~~ *Renders* the contract unenforceable against the owner; and
2. Constitutes cause for disciplinary action pursuant to NRS 624.300.

Sec. 16. NAC 624.7273 is hereby amended to read as follows:

624.7273 1. *A party may only make motions authorized by NRS 622A.360.* A motion, unless made at a hearing, must be made in writing.

2. A written motion must set forth the nature of the relief requested and the grounds for the relief.

3. A party who wishes to oppose a motion must serve and file a written response to the motion not later than 10 days after receiving the motion.

4. The moving party may serve and file a written reply only if an opposition to the motion has been served and filed.

5. The Board or its designee may issue a decision on a motion without oral argument.

6. If the Board or its designee wishes to oppose a motion, the Board or its designee is not required to serve or file a written response to the motion.

Sec. 17. NAC 624.795 is hereby amended to read as follows:

624.795 1. Pursuant to the provisions of NRS 40.6887, a contractor who constructed or contracted for the construction of the residence or appurtenance that is the subject of the request ~~shall~~ *may be required to* pay to the Board fees sufficient to cover the costs of providing a response to or rendering a decision on the request.

2. The Board will notify the contractor of the assessment of ~~the~~ *any such* fees by the Board.

3. The contractor shall pay ~~the~~ *any such* fees assessed to cover the costs to the Board within 15 days after receiving notice of the fees pursuant to subsection 2.

Sec. 18. NAC 624.040, 624.050, 624.060, 624.100, 624.138, 624.605, 624.6951 and 624.6962 are hereby repealed.

TEXT OF REPEALED SECTIONS

624.040 Regular meetings. (NRS 624.080, 624.100) The Board will hold a regular meeting in January, April, July and October of each year. The January meeting will be held in the principal office of the Board, and the other three meetings will be held within this State at times and locations designated by the Board at each preceding meeting.

624.050 Special meetings. (NRS 624.080, 624.100) To call a special meeting, at least four members of the Board or the Chair must send written notice to the Executive Officer, or the Executive Officer may call a special meeting on his or her own motion. The Executive Officer

shall give each member of the Board notice of each special meeting at least 5 days before it is held. A special meeting may be held at any public place within this State.

624.060 Notice of meeting. (NRS 624.080, 624.100) The Executive Officer will direct all notices of regular or special meetings of the Board to the members of the Board at the addresses shown on the official records of the Board.

624.100 Abstention by member of Board. (NRS 624.100)

1. A member of the Board shall abstain from participating or voting on a matter if:

(a) The applicant or licensee involved in the matter is a person with whom the member has any contractual relationship;

(b) The member has an investment or other proprietary interest in the business of the applicant or licensee; or

(c) The member presently intends to invest in the business of an applicant or licensee or enter into a contractual relationship with him or her.

2. A member shall not vote on a matter if the member is biased and shall not participate in the matter unless he or she is needed for a quorum.

624.138 Unprofessional conduct. (NRS 624.100, 624.112)

1. An investigator who is employed by the Board shall not engage in any unprofessional conduct.

2. For the purposes of this section, unprofessional conduct includes, without limitation:

(a) The failure to investigate or issue a notice to correct a violation that, if not corrected, would constitute a hazard to the public health or safety;

(b) The failure to investigate properly an alleged violation of the provisions of chapter 624 of NRS;

- (c) The failure to report a conflict of interest when conducting an investigation;
- (d) The personal use of information obtained during an investigation or knowingly disclosing such information to a person who is not authorized to receive the information;
- (e) The misrepresentation of a material fact related to the performance of his or her duties as an investigator; and
- (f) The commission of any negligent or unlawful act in the performance of his or her duties as an investigator.

624.605 Issuance of license prohibited if name is same as or similar to name of existing licensee. (NRS 624.100, 624.254) The Board will not issue a license to an applicant if the name on the license would be the same as the name on a previously issued license or would be so similar as to cause confusion in the minds of the public.

624.6951 “Bait and switch” advertising defined. (NRS 624.100) “Bait and switch” advertising has the meaning ascribed to it in NRS 482.351.

624.6962 Conditions, stipulations or provisions of contract void under certain circumstances. (NRS 624.100, 624.940) A condition, stipulation or provision in a contract for the construction of a residential pool or spa is void if the condition, stipulation or provision:

1. Requires a person to waive any right granted pursuant to NAC 624.695 to 624.697, inclusive; or
2. Relieves a person of an obligation or liability imposed pursuant to NAC 624.695 to 624.697, inclusive.