

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

LCB File No. R117-01

Effective March 29, 2002

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

AUTHORITY: §§1-6, NRS 597.7191 and 624.100; §7, NRS 597.719, 597.7191 and 624.100.

Section 1. Chapter 624 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Advertising” means attempting by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation for the repair, restoration, improvement, construction or sale of residential pools or spas.*

Sec. 3. *“Bait and switch” advertising has the meaning ascribed to it in NRS 482.351.*

Sec. 4. *A contractor engages in deceptive advertising if, in the course of his business or occupation, he:*

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 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 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 he 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 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 sale of a residential pool or spa.

6. Knowingly makes any false representation in a transaction for the repair, restoration, improvement, construction or 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 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 sale of a residential pool or spa.

15. Advertises for the repair, restoration, improvement, construction or 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 sale of a residential pool or spa that contains terms which are less favorable than the terms the contractor advertised.

Sec. 5. A contractor shall not:

1. Engage in deceptive advertising or "bait and switch" advertising in connection with the sale of contracts for the repair, restoration, improvement, construction or sale of residential pools or spas.

2. 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, 597.715 and subsection 4 of NRS 624.031.

Sec. 6. NAC 624.695 is hereby amended to read as follows:

624.695 As used in NAC 624.695 to 624.697, inclusive, *and sections 2 to 5, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 624.6952, 624.6954 and 624.6956 *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 624.6958 is hereby amended to read as follows:

624.6958 A contractor shall ensure that each contract for the construction of 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 the following, each of which must be printed in at least 10-point bold type:
 - (a) The name of the contractor and his 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) 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) 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 license.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R117-01**

The Nevada State Contractors' Board adopted regulations assigned LCB File No. R117-01 which pertain to chapter 624 of the Nevada Administrative Code on February 5, 2002.

Notice date: 9/12/2001
Hearing date: 10/24/2001

Date of adoption by agency: 2/5/2002
Filing date: 4/5/2002

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 624 regarding the standards for advertisements used by contractors in connection with the sale of contracts for the repair, restoration, improvement or construction of residential pools or spas and the mandatory elements that must be included in a contract for the repair, restoration, improvement or construction of a residential pool or spa.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The workshop and hearing was noticed on September 12, 2001 by posting at the Washoe County Court House; Washoe County Library; Reno City Hall; Las Vegas City Hall; Sawyer State Building; Clark County Library and Offices of the Contractors' Board in Reno and Las Vegas. The hearing was held on October 24, 2001. The notice was posted on the agency's website and mailed to approximately 135 interested individuals. Mr. Hugh Spencer and Mr. Richard Spencer, owners of Bluebird Pools attended the workshop and hearing. Mr. Hugh Spencer indicated his support for the proposed regulation and requested clarification regarding financing by a pool company.

2. The number of persons who:

- (a) Attended each hearing; 2**
- (b) Testified at each hearing: 1**
- (c) Submitted to the agency written comments: 0**

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notice posting, website and direct mail. No comments were received.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted by the Nevada State Contractors Board at its February 5, 2002 meeting without change since the only comment received was in favor of the proposed regulation as it was written.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:
(a) Both adverse and beneficial effects; and
(b) Both immediate and long-term effects

(a) The proposed revisions are expected to have a minimal economic impact on the regulated pool and spa industry both immediate and long-term by providing guidelines for advertising. Beneficial effects will include greater confidence for the consumer when hiring a licensed contractor to perform repair, restoration, improvement or construction of a swimming pool or spa.

(b) The estimated economic effect on the public is expected to be beneficial. The proposal should allow a homeowner to enter into a contract for repair, restoration, improvement or construction of a pool or spa based on accurate advertising and a contract that contains mandatory elements of the law.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The cost of enforcement of the proposed regulation will be minimal.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations which the proposed amendments duplicate.