

**ADOPTED REGULATION OF THE REAL ESTATE DIVISION OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R012-04

Effective April 6, 2004

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

AUTHORITY: §§1, 2, 4-7 and 9-11, NRS 645D.120; §§3 and 8, NRS 645D.120 and 645D.240.

A REGULATION relating to inspectors of structures; establishing remedies if a person submits a check or draft to the Real Estate Division of the Department of Business and Industry under certain circumstances and that check or draft is dishonored by the drawee; establishing a fee for an investigation of the background of any person who applies for a certificate as an inspector; requiring an applicant for a certificate who takes an examination to complete the examination within certain time limits and under certain testing conditions; establishing procedures for an applicant with a disability to obtain special accommodations concerning time limits and testing conditions for examinations; requiring an applicant for a certificate as an inspector to take and pass an examination; establishing a fee for such an examination; and providing other matters properly relating thereto.

Section 1. Chapter 645D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *If a person submits a check or draft to the Division to obtain a certificate, approval, accreditation or other type of authorization to engage in an activity for which*

authorization is required pursuant to this chapter, or chapter 645D of NRS, and the check or draft is returned to the Division because the person had insufficient money or credit with the drawee to pay the check or draft or because the person stopped payment on the check or draft:

(a) The certificate, approval, accreditation or other type of authorization obtained by the person from the Division is automatically invalidated; or

(b) If the person has not obtained the certificate, approval, accreditation or other type of authorization from the Division, the Division may refuse to issue or reinstate the authorization.

2. In accordance with NRS 353C.115 and section 1 of LCB File No. R121-03, which was adopted by the State Controller pursuant thereto and filed with the Secretary of State on February 4, 2004, the Division will charge a person, for each check or draft returned to the Division because the person had insufficient money or credit with the drawee to pay the check or draft or because the person stopped payment on the check or draft, a fee of \$25 or such other amount as may subsequently be required by NRS 353C.115 and section 1 of LCB File No. R121-03.

Sec. 3. 1. *The Division will charge and collect, from each person who applies for a certificate, a fee for any investigation of the person's background undertaken pursuant to NRS 645D.180.*

2. The fee will not exceed the actual cost to conduct the investigation.

Sec. 4. 1. *The Division, or an agent designated by the Division, will maintain an applicants' handbook concerning any examination required by NAC 645D.250.*

2. An applicant for a certificate may obtain a handbook at any office of the Division. There is no charge for the handbook.

Sec. 5. 1. *An applicant for a certificate who takes an examination required by NAC 645D.250 must complete the examination within the time limit, and under the testing conditions, established by the Division or the agent designated by the Division.*

2. An applicant with a disability may request special accommodations in the matter of a time limit or the testing conditions for any examination. Such a request must be:

(a) In writing;

(b) Received a reasonable time before the scheduled examination; and

(c) Supported by adequate evidence.

3. The Division, or the agent designated by the Division, will grant a request for special accommodations if the accommodations requested:

(a) Are reasonable;

(b) Are feasible; and

(c) Do not impair the integrity of the examination process.

4. As used in this section, “disability” has the meaning ascribed to it in section 3 of the Americans with Disabilities Act of 1990, Public Law 101-336, 104 Stat. 329.

Sec. 6. NAC 645D.150 is hereby amended to read as follows:

645D.150 ~~{1. The}~~ *In addition to the information required by NRS 645D.170, an application for a certificate ~~[as an inspector provided by the Division requires]~~ must include* the following information:

~~{(a)}~~ *1. Two completed fingerprint cards ~~;~~*
~~—(b)}~~ *of the applicant;*

2. One recent photograph of the applicant;

~~{(c)}~~ *The social security number of the applicant;*

~~—(d) His place of business;~~

~~—(e)] and~~

3. A document which proves that the applicant has:

~~[(1)]~~ (a) Error and omissions insurance of at least \$100,000; and

~~[(2)]~~ (b) Liability insurance of at least \$100,000. ~~]; and~~

~~—(f) Such other pertinent information as the Division may require.~~

~~—2.—An application for a certificate is valid for 1 year after the date it is filed with the Division. The Division may require an applicant to complete a supplemental form provided by the Division to ensure that all the information required by the Division is current.]~~

Sec. 7. NAC 645D.160 is hereby amended to read as follows:

645D.160 ~~[(1)]~~ The fee for *an* application for a certificate is nonrefundable.

~~[(2.—If the Division rejects an application for the issuance or renewal of a certificate, it will refund the fee submitted for the issuance or renewal of the certificate.)]~~

Sec. 8. NAC 645D.250 is hereby amended to read as follows:

645D.250 1. *An applicant for a certificate must take and pass an examination administered by the Division or an agent designated by the Division.*

2. The examination must test the applicant on his knowledge and understanding of:

(a) The subjects applicable to the type of certificate for which he is applying;

(b) Chapter 645D of NRS and any regulations adopted pursuant thereto; and

(c) *The provisions of* NAC 645D.460 to 645D.580, inclusive.

~~[(2)]~~ 3. Separate examinations will be given for certification as a residential inspector, general inspector and master inspector.

~~[(3)]~~ 4. A scaled score of 75 must be achieved to pass each test.

~~[4.]~~ 5. Each of the examinations will consist of questions covering the subjects set forth in subsection ~~[1.]~~ 2.

6. *The Division will only accept the results of an examination taken during the year immediately preceding the date of the application for a certificate.*

7. *An applicant must pay a fee of \$100 each time he takes an examination.*

Sec. 9. NAC 645D.270 is hereby amended to read as follows:

645D.270 1. ~~[The examination for a certificate as an inspector will be at least 4 hours, but not more than 8 hours.~~

~~—2.— The times may be different for the examination for each type of certificate.~~

~~—3.— The Division will establish the time for each examination and notify the applicants before the closing day for applications.~~

~~—4.— Test books and answer sheets will not be returned to the applicants.~~

~~—5.— Examinations]~~ *An applicant shall not retain any test book, answer sheet or other examination material.*

2. *Except as otherwise provided in NRS 645D.130, an examination* must not be made public.

Sec. 10. NAC 645D.290 is hereby amended to read as follows:

645D.290 1. An application for a certificate ~~[as an inspector]~~ will be denied ~~[or the results of an examination will be invalidated, or both,]~~ if, *during the examination*, the applicant:

(a) Uses or possesses any unfair methods or notes ; ~~[during the examination;]~~

(b) Gives or receives aid of any kind ; ~~[during the examination;]~~ or

(c) Fails to obey instructions . ~~[during the examination.~~

~~—2.— Silent,]~~

2. *An applicant may use a silent, cordless, electronic ~~calculators may be used by the applicants~~ calculator* during the examination ~~[]~~ *if the calculator does not have:*

(a) *The capability to print a paper tape; or*

(b) *A keyboard that contains the alphabet.*

Sec. 11. NAC 645D.260, 645D.275, 645D.280 and 645D.430 are hereby repealed.

TEXT OF REPEALED SECTIONS

645D.260 Authorization to take written examination; examination given by person other than Division. (NRS 645D.120)

1. An applicant for a certificate as an inspector may not take the written examination for certification until the Division authorizes him in writing to appear for the examination. An applicant will not receive such authorization unless his application is on file with the Division.

2. The applicant must:

(a) Take the examination prescribed by the Division at the time and place set forth in the written authorization sent to him; or

(b) If the examination will be given to the applicant by a person other than the Division, notify the Division of the date and time of his examination. The results of such an examination must be mailed directly to the Division from the person administering the examination.

645D.275 Postponement. (NRS 645D.120)

1. If an applicant postpones his examination and notifies the Division at least 30 days before the date of the examination, the fee for the examination may be applied to a subsequent examination that the applicant wishes to take.

2. An examination may be postponed only once.

645D.280 Reexamination; withdrawal; period for acceptance of results. (NRS 645D.120)

1. An applicant for a certificate who fails an examination may apply for reexamination on a form furnished by the Division not less than:

(a) Thirty days after the date of his first failed examination; or

(b) Sixty days after the date of his second failed examination.

2. If an applicant for a certificate fails an examination on a third or subsequent occasion, he is not eligible to take an examination again until 1 year after the date of his last failed examination and must submit a new application for examination together with all required fees and materials.

3. If an applicant, after filing an application for examination, withdraws and requests the Division to postpone action on the application for reasons acceptable to the Division, the applicant may apply for the next examination.

4. The Division will only accept results of an examination taken during the year immediately preceding the date of the application for a certificate.

645D.430 Dishonor of check. (NRS 645D.120) A certificate may be cancelled, suspended or revoked, or the holder of the certificate may be charged a processing fee, if any check given to the Division is not honored by the financial institution upon which it is drawn.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R012-04**

The Real Estate Division of the Department of Business and Industry adopted regulations assigned LCB File No. R012-04 which pertain to chapter 645D of the Nevada Administrative Code on February 24, 2004.

Notice date: 1/20/2004
Hearing date: 2/24/2004

Date of adoption by agency: 2/24/2004
Filing date: 4/6/2004

INFORMATIONAL STATEMENT

- 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.**

Notice of the proposed regulations were posted on the Real Estate Division website and in various other public locations where both the public and other interested persons would have access to that information. The Division conducted a public workshop on February 6, 2004, which was video-linked between our Carson City office and our Las Vegas office. Public comment was also solicited at the public hearing on February 24, 2004.

- 2. The number of persons who:**

Attended workshops:	2
Attended hearing:	0
Submitted written comments:	1

- 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.**

Affected businesses were able to comment in the public workshop and hearing or in writing and those comments are attached hereto.

- 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 Division did not see a need for changing any part of the regulation, since there were no comments made by the public in opposition to the proposals.

- 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:**

Business which it is to regulate:

(1) Both adverse and beneficial effects: and

Adverse effects: A person seeking to obtain a certificate under this chapter will have some additional fees to pay for background investigation and for the examination.

Beneficial effects: The fact that the examination will be given by an examination service will provide better availability of the exam and flexibility in scheduling an exam.

(2) Both immediate and long-term effects.

Immediate effects: The immediate effect will be that the applicants will have some additional fees to pay.

Long-term effects: The long-term effect should be better flexibility for the applicant to take the examination. The long-term effect of the background investigation fee will mean that the Division will be able to process a background check on every applicant and therefore will not certify individuals that do not qualify due to prior criminal records.

Public:

(1) Both adverse and beneficial effects: and

Adverse effects: There are no known adverse effects to the public by the adoption of this regulation.

Beneficial effects: Due to the fact that persons with criminal records are less likely to become certified, the public should be better protected by these regulations.

(2) Both immediate and long-term effects:

Immediate effects: There are no known immediate effects to the public.

Long-term effects: The anticipation is that the long-term effects will result in more qualified inspectors and the public should not be harmed by the work conducted by under-educated inspectors. Additionally, there will be a lesser likelihood that a criminal would be certified.

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

Cost of handbook production. Cost of educating the public and regulated licensees regarding the new regulation. Cost of regulation review.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the

duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There is no other state, federal or other governmental agency's regulations, which the proposed regulations duplicate or overlap.

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

N/A

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

Section 2 establishes the authority for the Division to charge a fee for every check returned for insufficient funds. The fee proposed is \$25.00. It is estimated that the Division receives 75 returned checks per year, thereby resulting in revenue in the amount of \$1,875.00, this amount reflects the number of checks for the entire agency, not specifically from licensees and applicants of this chapter.

Section 3 proposes that the Division may charge the fee for the investigation of the background of an applicant or licensee in the amount of the actual cost. This fee will be collected from the applicant or licensee and will be payable directly to the agency conducting the investigation. Currently the Division receives a general fund appropriation to conduct random investigations on applicants or licensees. By allowing the Division the ability to collect a fee for this investigation from each applicant or licensee the Division will be able to conduct an investigation on every applicant or licensee and will not longer need the general fund appropriation.

Section 8 establishes a fee for the examination required to become certified. This \$100 fee will be charged to each applicant when they register for the examination. By charging this fee the Division may utilize the services of an examination service that it has already contracted with. At this time the examination service charges \$49.00 for every examination administered. Therefore, revenue of \$51 per examination will be generated and forwarded to the general fund. The estimate of examinations per year is 165 therefore resulting in an annual revenue of \$8,415.00.