

LCB File No. R163-09

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

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

COMPLAINTS SEEKING RECOVERY

NAC 624.730 Definitions. (NRS 624.100, 624.560) As used in NAC 624.730 to 624.770, inclusive, unless the context otherwise requires, the words and terms defined in NAC 624.735 and 624.740 have the meanings ascribed to them in those sections.

(Added to NAC by Contractors' Bd. by R068-01, eff. 11-8-2001)

NAC 624.735 “Claimant” defined. (NRS 624.100, 624.560) “Claimant” means an injured person who files a complaint seeking recovery pursuant to NRS 624.400 to 624.560, inclusive, and NAC 624.730 to 624.770, inclusive.

- a) *A person who performs the duties of a contractor as defined in NRS 624.020, obtains the permit for the construction, remodeling, repair or improvement, of a single-family residence in his or her own name, fails to comply with the provisions of NRS 624.031 to request an exemption or assumes the duties and responsibilities of a General Building Contractor is not a qualified claimant.*
- b) *A person who secures the permit or employs any person on a construction project is acting in the capacity of a contractor and is not a qualified claimant.*

(Added to NAC by Contractors' Bd. by R068-01, eff. 11-8-2001)

NAC 624.740 “Complaint seeking recovery” defined. (NRS 624.100, 624.560) “Complaint seeking recovery” means a complaint filed with the Board by an injured person pursuant to NRS 624.400 to 624.560, inclusive, and NAC 624.730 to 624.770, inclusive, seeking a monetary recovery from the Recovery Fund.

(Added to NAC by Contractors' Bd. by R068-01, eff. 11-8-2001)

NAC 624.NEW “Single-family residence” defined. *“Single-family residence” is any residence which is classified as a single-family residence by the local county assessor’s office.*

NAC 624.NEW “Actual Damages” defined. *“Actual Damages” means the total amount actually paid to the contractor; or the amount actually paid to a sub-contractor to resolve a lien claim on the property; or the amount of loss as determined by the Board, not to exceed the statutory limits defined in NRS 624.510.*

- a) *No more than the maximum individual award as defined in NRS 624.510 shall be made on any individual residence or to any individual person.*
- b) *The Board has complete discretion to determine the order, amount and manner of payment of approved awards from the fund.*

- c) *All payments are a matter of privilege and not right and no person has a right to reimbursement from the fund as a third party beneficiary or otherwise.*

NAC 624.NEW “Natural person” defined. “Natural Person” means any individual or family trust and does not include any firm, association, Limited Liability Company, joint venture, corporation, partnership group or combinations.

NAC 624.NEW “Occupied by the owner” defined. “Occupied by the owner” means a single-family residence, titled in the claimant’s name with the county assessor’s office and physically occupied by the claimant at the time the contract is signed or occupied by the claimant within ninety (90) days of when the certificate of occupancy is issued for the single-family residence. Proof of occupancy is provided through drivers licensing and motor vehicle registration records, voter registration records, utility records and banking records. Claimants must reside in the residence a minimum of 180 days per year.

NAC 624.NEW “Contracts for Qualified Services” defined. “Contracts for Qualified Services” means any written or oral contract for the performance of Qualified Services as defined pursuant to NRS 624.440 or sales contracts or purchase agreements, for the construction, remodeling, repair or improvement of a single-family residence, by a contractor or developer

NAC 624.NEW “Claims” defined. “Claims” are defined as:

- a. *Claims filed pursuant to the provisions and definitions of NRS 624.400 through 624.560 inclusive and NAC 624.730 through 770 inclusive.*
- b. *Claims are only for “Qualified Services” as defined pursuant to NRS 624.440 and do not include payment of settlement agreements, mediation or arbitration awards, loans or warranty agreements.*

NAC 624.745 Accompanying document required. (NRS 624.100, 624.560) The Board will not make an award on a complaint seeking recovery unless the complaint seeking recovery is accompanied by a certified copy of a civil judgment or a certified copy of a final decision and order issued by the Board or its designee.

- a) *Claimants submitting a claim under the provisions of NRS 624.490 shall be granted awards based upon the actual damages as determined by the Board.*
- b) *Judgments must be supported by an itemized list of actual economic damages incurred by the homeowner, a description of repairs which are reasonable and necessary to correct the workmanship and estimates by licensed contractors of the reasonable cost to make the repairs.*

(Added to NAC by Contractors’ Bd. by R068-01, eff. 11-8-2001)

NAC 624.750 Claim: Form and contents; prerequisites to approval; changes in information; action by Executive Officer of Board; closing and reopening. (NRS 624.100, 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 payable to the contractor, subcontractor or supplier that support the claim;

(g) Proof of any cash payment that supports the claim and a signed receipt from the contractor, subcontractor or supplier, if applicable; and

(h) A copy of a perfected lien, if applicable.

(i) The Board will reimburse a homeowner for liens which are valid or perfected as determined by the Board, or have been paid by the claimant,

3. The Board will not approve a complaint seeking recovery until 30 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.

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

4. The Executive Officer of the Board or his designee may request additional information or documentation to support the complaint.

5. The Executive Officer of the Board will issue a subpoena pursuant to NRS 624.170, if appropriate, upon the request of a claimant to assist the claimant in obtaining appropriate documentation pursuant to this section.

6. The Executive Officer of the Board or his designee may require a claimant to obtain and submit an itemized bid from a contractor licensed in this State for an estimate of the cost to complete a repair of the original work. The estimate must include only the cost of the repair or replacement of the original work and must not include any enhancement, improvement or upgraded service or material.

(a) Awards from the Residential Recovery Fund may not exceed the total amount actually paid to the contractor, nor exceed the statutory provisions of NRS 624.510.

7. A claim that includes:

(a) A false or altered document;

(b) A document, billing, receipt or estimate that is found to include an enhancement, improvement, upgraded service or material; or

(c) Work or repair that is outside the scope of the original contract; or

(d) Substandard workmanship which has not been validated by the Board; or

(e) A single-family residence constructed, remodeled, repaired or improved for rent or lease within one (1) year from the date the work was completed; or

(f) No written billing, contract or invoice from the contractor for the project; or

(g) Claims filed by third parties; or

(h) Claims resulting from settlement agreements, arbitration or mediation awards or civil law suite which have not resulted in formal court judgments;

will be automatically denied by the Executive Officer of the Board or his designee and will not be considered by the Board or a committee appointed pursuant to NAC 624.755.

8. The Board may deny a claim if the Board finds the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.

9. The Board will not approve a payment from the Residential Recovery Fund until the claimant has provided complete documentation of the claim, as determined by the Executive Officer of the Board or his designee.

10. The Executive Officer of the Board or his designee will advise the claimant by certified mail that the requirements of subsection 4 of NRS 624.500 are being tolled pending receipt of additional documentation to support the claim if the claim cannot be investigated and processed within 6 months after receipt of the claim. The letter from the Executive Officer of the Board or his designee will include an identification of the specific documents that the Board is requesting and a period within which the documents must be produced.

11. If, within 6 months after filing a claim or within the period specified pursuant to subsection 9, a claimant cannot provide adequate documentation to support the claim, the claim will be closed. A claim may be reopened upon receipt by the Board of all the documents the Executive Officer of the Board or his designee has requested from the claimant.

12. A claim submitted more than six (6) months from the date it was originally closed or is beyond the statute of limitations as defined in NRS 624.480 may not be re-opened.

(Added to NAC by Contractors' Bd. by R068-01, eff. 11-8-2001; A by R201-03, 1-22-2004)

NAC 624.760 Determination; final order. (NRS 624.100, 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.

3. The Board may issue two-party checks payable to the claimant and the contractor as deemed appropriate by the Committee.

(Added to NAC by Contractors' Bd. by R068-01, eff. 11-8-2001)