

Petition for Declaratory Statement before the Department of Business and Professional Regulation.

Petitioner: Robert R. Sheppard

Licensed Home Inspector HI# 3289

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Statutory References: 468 XV FSS, Florida Administrative Code 61-30

How 468 XV FSS and Florida Administrative Code 61-30 affect the petitioner:

1. Florida Statute 468.8311(3) defines “Home Inspector” as “any person who provides or offers to provide home inspection services for a fee or other compensation”. The petitioner is a licensed Home Inspector under FSS 468 XV current with the Department who provides Home Inspection Services to consumers under licensure issued by the Department. (underlining is the petitioner’s)
 - a. 468.8311 Definitions.—As used in this part, the term: (3) “Home inspector” means any person who provides or offers to provide home inspection services for a fee or other compensation.

The petitioner is substantially effected due to the requirement for licensure and continuing education in sections 61-30.102(2)(a) License Requirements and 61-30.503 (5)(c) Course Approval, Prelicensure and Continuing Education. The petitioner is required by the Department, in order to renew his Home Inspector license, to obtain a minimum of 2 hours of “hurricane mitigation training shall include training on the completion of the “Uniform Mitigation Verification Inspection Form”, OIR-B1 1802 (rev. 01/12), incorporated by reference in rule 690-170.0155, F.A.C. (eff. 2/1/12)” approved by the Department and per 61-30.805(2)(b) has meet the requirements of “relates to the practice of home inspection services as defined in Section 468.8311(4), F.S..

- b. 61-30.102 License Requirements. The Department of Business and Professional Regulation shall issue a license to an applicant who complies with subsection (2) or (3) and complies with the following: (a) Provide proof of completion of a course of study approved by the department in home inspection services of not less than 120 hours which includes all eight components of a home as set forth in Section 468.8313(2), F.S. Department approved courses of study may be found <http://www.myfloridalicense.com/dbpr/servop/testing/documents/home.insp.pre.pdf>.
 - c. 61-30.503 Course Approval, Prelicensure and Continuing Education. (1) Prelicensure and continuing education courses shall be valid for purposes of the licensure and continuing education requirement only if such courses have received approval from the Home Inspection Unit before the course is offered. (2) The department shall approve education courses for two years from the date approved when the following requirements are met: (5)(c) The required two (2) hours of instruction regarding

hurricane mitigation training shall include training on completion of the “Uniform Mitigation Verification Inspection Form,” OIR-B1-1802 (Rev. 01/12), incorporated by reference in Rule 690-170.0155, F.A.C. (eff. 2/1/12).

- d. 61-30.503(2)(b) Course Approval, Prelicensure and Continuing Education. (b) The course provider shall submit to the department the following for course approval before the course is offered: an application, a detailed course outline describing the course’s content and subject matter, and a written statement that explains in detail how the course relates to the practice of home inspection services as defined in Section 468.8311(4), F.S.

The Petitioner is required to pay for, through time and monetary investment, continuing education for 2 hours of wind mitigation training on the completion of the Uniform Mitigation Verification Inspection Form/OIR-B1 1802 per F.A.C. 61-30.503(5)(c) that is required by the Department and approved by the Department in Home Inspection Services. These approved courses seldom, if at all, involve 2 hour training segments and usually involve 4-6 hours of training not including time for travel. This approved continuing education credit is a requirement by the Department for the petitioner to renew his Home Inspector license regardless of if the petitioner even provides these Home inspection Services to consumers. These continuing education courses cost the petitioner time and money to attend and complete, not to mention time away from family and the added loss of business revenue to attend these courses that the Department has previously stated do not also meet the definition of Home Inspection Services as defined in 468.8311(4), Florida Statute 2014.

2. The petitioner seeks a clarification on the Departments position on insurance inspections as “do not also meet the definition of home inspection services” detailed in Declaratory Statement DS 2014-156 #17 submitted by Petitioner Jon Tremper when being performed by a Home Inspector (see 2.a below). Home Inspection Services is specifically addressed in FSS 468.8311 Definitions under Home Inspector as “any person who provides or offers to provide home inspection services for a fee or other compensation”. Specifically, can the Department show when/where insurance inspections exempt Home Inspectors, defined as persons offering to provide Home Inspection Services, from the statutory obligation of the Administrative Code requirements of licensure as a Home Inspector under FSS 468 XV, requiring courses completed and approved by the Department for home inspection services, being as these inspections are not considered as meeting the definition of “Home Inspection Services” by the Department yet are a required by the Department to renew the petitioner’s Home Inspector license?
 - a. Declaratory Statement response from the Department DS 2014-156: #17. Finally, if the petitioner intended for the petition to be treated as a petition to initiate rulemaking, the Department noted that it has adopted the standards of practice for the performance of home inspection services, as defined in section 468.8311(4), Florida Statutes (2014), that are provided by licensed home inspectors in the state of Florida. The Department further notes that it does not have the statutory authority to promulgate standards of practice rules for the performance of wind mitigation inspections or 4-point inspections to the extent that these inspections do not also meet the definition of home inspections services as defined in section 468.8311(4), Florida Statutes (2014).
3. Home Inspection Services is defined in FSS 468.8311(4) Definitions as follows:

- a. 468.8311(4) “Home Inspection Services” means a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

FSS 468.8311(4) does not state or imply that all 8 systems and components must be inspected to meet the definition of Home Inspection Services provided by a Home Inspector, as “home” is defined in FSS 468.8311(2) as “the term does not include common areas of condominiums or cooperatives”.

Specifically, when the petitioner is performing an inspection of a condominium unit, the following systems and components would not be part of the Home Inspection Services as defined in FSS 468.8311(2) or 468.8311(4) as they would be considered “common areas”:

- a. Roof covering
- b. Exterior components
- c. Site conditions that affect the structure
- d. Structure

These systems and components would be classified as “common areas”, and therefore not covered as part of Home Inspection Services although listed in the requirement FSS 468.8311(4). Each specific section of the Florida Administrative Code 61-30.801 through 61-30.811 Standards of Practice is defined by its’ own individual section for the purposes of exclusion if agreed to or excluded by the inspector with the client prior to contracting for or commencing a Home Inspection as detailed in the FSS 468.8321:

- a. 468.8311 Definitions.—As used in this part, the term: (2) “Home” means any residential real property, or manufactured or modular home, which is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.
- b. 468.8321 Disclosures.—Prior to contracting for or commencing a home inspection, a home inspector shall provide to the consumer a copy of his or her license to practice home inspection services in this state and a written disclosure that contains the scope and any exclusions of the home inspection. History.—s. 2, ch. 2007-235.

At the point of exclusion of the listed systems and components for the common areas of a condominium, as required by FSS 468.8311(2), would the home inspector no longer be viewed as performing a “home Inspection” or providing “Home Inspection Services” by the Department as the home inspector did not inspect all 8 systems and components listed in the definition of Home Inspection Services? Also, would the Home Inspector no longer be viewed as providing “Home Inspection Services” if the Home Inspector provided an OIR-B1 1802 Uniform Mitigation Verification Inspection form with the home inspection in accordance with the required home inspection services training approved by the Department?

Also, can the Department provide statutory or Administrative Code reference that requires a Home Inspector, defined as providing Home Inspection Services, to inspect all 8 listed systems and

components of the Florida Administrative Code 61-30.802 through 61-30.811 Standards of Practice to be considered as meeting the definition of “Home Inspection Services”? The petitioner notes further that “home” is clearly defined in 468.8311(2) as pertaining to “residential properties” that may or may not include all 8 sections of the Florida Administrative Code 61-30.802 through 61-30.811. This further underscores that sections of 61-30.802 through 61-30.811 can, and in some cases is required, to be excluded as the home inspectors licensure prevents him from inspecting “common areas of condominiums cooperatives”.

4. Section 3 of this Declaratory request notes that FSS 468.8311(4) does not require or imply that all 8 provisions of the Florida Administrative Code 61-30.802 through 61-30.811 Standards of Practice, including 61-30.801 General, be inspected to qualify as meeting the definition of Home Inspection Services, that each individual section listed can be separated individually for the purposes of defining “home” under FSS 468.8311(2). As such, the Home Inspector could include or exclude any combination of the listed Standards or Practice from the Florida Administrative Code 61-30.802 through 61-30.811, inclusive of 61-30.801 General, and still qualify as providing “Home Inspection Services” as a Home Inspector if disclosed to or agreed by the paying client “prior to contracting for or commencing a home inspection” in accordance with FSS 468.8321.

Insurance inspections follow this very standard while being performed by the licensed Home Inspector, each individually inspected system or component has a listed Standard of practice under the Florida Administrative Code 61-30.801 through 63-30.811. Wind Mitigation inspections cover 61-30.802 Structure & 61-30.805 Roof Covering, while 4-point inspections cover 61-30.805 Roof Covering, 61-30.803 Electrical systems, 61-30.806 Plumbing Systems, and 61-30.804 HVAC systems. Each individual system and component of insurance inspections is covered in the Home Inspectors’ Standards of Practice and has specific requirements for inspecting when operating with a Home Inspector license. The purpose of licensure by the Department is specifically addressed in FSS 468.83(2):

- a. 468.83 Home inspection services licensing program; purpose.—
 - (1) There is created within the department the home inspection services licensing program.
 - (2) The Legislature recognizes that there is a need to require the licensing of home inspectors and to ensure that consumers of home inspection services can rely on the competence of home inspectors, as determined by educational and experience requirements and testing. Therefore, the Legislature deems it necessary in the interest of the public welfare to regulate home inspectors in this state.History.—s. 2, ch. 2007-235; s. 15, ch. 2010-106; s. 7, ch. 2010-176.

Section 61-30.801(7)(a,b,c) General is specific in referencing how and what details inspection services, it states unequivocally that the Home Inspector can excluded systems and components from the inspection “if agreed upon in writing by the inspector and client”. Also, that the Home Inspector can include “other services” in addition to those required by these standards of practice. All other services provided by a Home Inspector must be “in addition to” the required standards of practice.

- b. 61-30.801 Standards of Practice, General.
 - (7) These Standards of Practice do not limit inspectors from:
 - (a) Including other inspection services, in addition to those required by these Standards of Practice;
 - (b) Specifying repairs, provided the inspector is appropriately qualified;
 - (c) Excluding systems and components from the inspection if agreed upon in writing by the inspector and client.

For the Department to remove or classify insurance inspections as not meeting the definition of “Home Inspection Services” exposes the public to an unregulated practice while giving the presumption that the qualified inspector under FSS 627.711, operating with a Home Inspector license, is functioning within the requirements and regulation of that license to protect the public. If the Home Inspector presents himself as licensed under FSS 468 XV, the general public should be protected under the very regulation and minimum reporting requirements licensure provides. FSS 468.83(1) states that the Home Inspection Services Licensing Program was created within the Department, and as such the Department requires the petitioner to obtain specific training for the purposes of completing the OIR-B1 1802 Wind mitigation Verification Inspection form per FSS 468.905(5)(c) to renew his license as a Home Inspector who, per FSS 468.8311(3), provides Home Inspection Services. In the interest of the public welfare, and to ensure that consumers of Home Inspection Services can rely on the competence of Home Inspectors, as determined by education and experience requirements and testing.

- a. FSS 627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.— (2)(a) The Financial Services Commission shall develop by rule a uniform mitigation verification inspection form that shall be used by all insurers when submitted by policyholders for the purpose of factoring discounts for wind insurance. In developing the form, the commission shall seek input from insurance, construction, and building code representatives. Further, the commission shall provide guidance as to the length of time the inspection results are valid. An insurer shall accept as valid a uniform mitigation verification form signed by the following authorized mitigation inspectors:
 1. A home inspector licensed under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam;
5. This request for Declarative Statement is not to be construed as an appeal for the aforementioned Department response to DS 2014-156, but as a Declarative Statement request for the Department to clarify its’ position on insurance inspections as not meeting the definition of “home inspection services” while the department requires specific training and continuing education requirements for insurance inspection(s) of the petitioner to renew his license at substantial monetary cost and time investment. Also, that those courses must be approved by the Department per 61-30.102(2)(a) as providing “proof of completion of a course of study approved by the Department in home inspection services”, of which 61-30.503(5)(c) meets for pre-licensure and continuing education of Home Inspection Services. And, that per 61-30.503(b), all approved courses by the Department for continuing education and pre-licensure must have a “written statement that explains in detail how the course relates to the practice of home inspection services as defined in Section 468.8311(4), F.S.” All courses submitted to the Department, approved by the Department, must relate to the practice of home inspection services as defined in 468.8311(4) to qualify as continuing education for both pre-licensure and continuing education.
 - a. 61-30.503(2)(b) Course Approval, Prelicensure and Continuing Education. (b) The course provider shall submit to the department the following for course approval before the course is offered: an application, a detailed course outline describing the course’s content and subject matter, and a written statement that explains in detail how the course relates to the practice of home inspection services as defined in Section 468.8311(4), F.S.

- b. 61-30.503(5)(c) The required two (2) hours of instruction regarding hurricane mitigation training shall include training on completion of the “Uniform Mitigation Verification Inspection Form,” OIR-B1-1802 (Rev. 01/12), incorporated by reference in Rule 69O-170.0155, F.A.C. (eff. 2/1/12).

Examples of Department approved insurance inspection courses, that the Department has approved as meeting the requirements of relating “to the practice of home inspection services as defined in section 468.8311(4)” as required in the Florida Administrative Code 61-30.503(5)(c) to qualify as “approved continuing education and prelicensure courses” are as follows:

- a. 4-Point and roof Certification Course #0000341
- b. Hurricane Mitigation/Home Inspector Course #0000199

6. The petitioner is a licensed Home Inspector per 468 XV and therefore meets the definition of “providing home inspection services” when operating with a Home Inspector license per 468.8311(2). The petitioner further requests that the Department clarify the legal obligations of a licensed Home Inspector to the requirements of FSS 468 XV and Florida Administrative Code 61-30 when performing insurance inspections with a Home Inspector license, and to provide legal statute that exempts a license Home Inspector from the requirements of 468 XV and F.A.C. 61-30 when performing insurance inspections that detail listed sections of 61-30 to the fact that the Departments position is that these inspections do not “*meet the definition of home inspection services*”. Also, that nothing prevents the Home Inspector from providing “other inspection services” as long as they are “in addition to” the required standards of practice per 61-30.801(7) (a)(b)(c).

It is the petitioner’s position, through interpretation of FSS 468 XV and the Florida Administrative Code 61-30, that as a licensed Home Inspector by the Department, any inspection performed by the petitioner, as a Home Inspector, would qualify as “home inspection services” per FSS 468.8311(2) and per the continuing education and prelicensure requirements of 61-30.102(2)(b) and (5)(c) that states all approved courses must “relate to the practice of home inspection services”. Furthermore, that the completion of approved courses of study in home inspection services, of which 2 hours of training for the OIR-B1 1802 is listed as required by the Department for the petitioner to maintain licensure as a Home Inspector, does meet the requirements of licensure as a Home Inspector by the Department for continuing education under “home inspection services” and therefore falls under the definition of home inspection services per 468.8311(4).

The petitioner is required to attend and pay for approved continuing education courses for home inspection services that the Department has previously stated do not also meet the definition of home inspection services as defined in 468.8311(4), the statement as such should be clarified to state that insurance inspections do meet the definition of home inspection services under 468.8311(4) or the requirement for home inspectors to attain approved continuing education for insurance inspections that do not meet the definition of home inspection services should be removed under section 61-30.805(5)(c) by rule of 61-30.102(a) that requires Home Inspectors to “Provide proof of completion of a course of study approved by the department in home inspection services” and 61-30.503(2)(b) which requires all

courses approved by the Department to “relate to the practice of home inspection services”. With this as reference, the following facts are presented:

- a. A Florida licensed Home Inspector, licensed by the Department, is defined as a person who offers to provide home inspection services for a fee or other compensation.
- b. That home inspection services are defined as providing limited visual inspections of listed components and systems contained in 61-30.801 through 61-30.811 that can be excluded individually by section for the purposes of defining “home” in relation to home inspection services.
- c. That all continuing education courses approved by the Department for home inspectors is required to relate to the practice of home inspection services as defined in 468.8311(4) to be approved, including insurance inspection courses currently approved by the Department for home inspectors.
- d. The Department has previously stated that it “has adopted the standards of practice for the performance of home inspection services, as defined in section 468.8311(4), Florida Statutes (2014), that are provided by licensed home inspectors in the state of Florida” which matches the definition of home inspector per 468.8311(2) and meets the definition of a person who provides home inspection services defined under 468.8311(4), including insurance inspections, via Department approved insurance inspection courses that the Department has accepted and approved as relating to the practice of home inspection services as required in 61-30.503(2)(b).
- e. It is required per 61-30.503(2)(b) that all courses providers submit to the Department a written statement that explains in detail how the course relates to the practice of home inspection services as defined in section 468.8311(4), FS. This includes the currently approved courses for insurance inspections that the Department has already approved as meeting this requirement.

The Departments options for response are as follows:

1. To state that home inspectors are in fact defined as providing home inspection services, that all continuing education and prelicensure courses approved by the Department for home inspectors relate to the practice of home inspections services defined in 468.8311(4) as required by 61-30.503(2)(b). That insurance inspections, as part of approved prelicensure and continuing education, relate to the practice of home inspections services and as such classifies insurance inspections completed by the petitioner, as a home inspector, as meeting the definition of home inspections services as defined in 468.8311(4) when offered by a licensed home inspector.
2. To state that all approved courses by the Department for continuing education and prelicensure in insurance inspections, including section 61-30.503(5)(c), did not meet the requirement of 61-30.503(2)(b) in relation to the practice of home inspection services and were falsely approved. This would invalidate an unknown number of currently license home inspectors that achieved licensure and continuing education via Department approved insurance inspection courses, including 61-30.503(5)(c), that the Department previously stated “did not also meet the definition of home inspection services as defined in 468.8311(4), Florida Statute 2014”, but is required for course approval per 61-30.805(2)(b).
3. To remove the requirement for home inspectors to attain continuing education and prelicensure education that the Department has stated “do not also meet the definition of home inspection services as defined in section 468.8311(4), Florida Statutes 2014”. Specifically 61-30.503(5)(c) and all currently approved insurance inspection courses approved by the Department that provide prelicensure and continuing education for home inspectors.

