

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

<b>FILED</b>	
Department of Business and Professional Regulation AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	<b>4/1/2013</b>
File #	<b>2013-01723</b>

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2011-042494

MARK A. CRAMER

**DS 2011-058**

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Professions (Division) issues this Declaratory Statement under section 120.565, Florida Statutes (2011).

PRELIMINARY STATEMENT

On July 1, 2011, the Division received a Petition for Declaratory Statement from Mark A. Cramer (Cramer), a licensed home inspector, seeking an opinion to determine:

- (1) Does the referenced exemption (Section 468.841(1)(d), Florida Statutes) allow a licensed home inspector, when operating within the scope of licensure, to inspect, sample, and identify visible mold, assuming that any visible mold discovered during the home inspection is less than 10 square feet in area?
- (2) Does the referenced exemption allow a licensed home inspector, operating within the scope of licensure, to offer and advertise mold testing,

sampling, and inspections so long as he or she does not hold themselves forth as a mold assessor, assuming they have no prior knowledge of conditions in the home?

- (3) Can any person, licensed or not, offer to perform mold testing, sampling, and inspections, assuming they do not hold themselves out as a "mold assessor," assuming they have no prior knowledge of conditions in the home?

Cramer did not request a hearing.

The Division acknowledged receipt of the petition on August 24, 2011, informing Cramer that it was in receipt of the Petition for Declaratory Statement. Notice of receipt of the petition was published in the Florida Administrative Weekly on September 9, 2011. No comments have been received.

#### FINDINGS OF FACT

The following findings of fact are based on the attached information and petition submitted by Cramer. The Division takes no position on the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. Cramer is a licensed home inspector in the State of Florida, having been issued license number HI69.

2. Prior to the licensure requirements of Chapter 468 Parts XV and XVI, Florida Statutes, home inspectors offered mold

inspection services to home buyers as part of the home inspection.

3. These traditional mold inspection services include screening inspections to determine the presence or absence of mold in the home.

4. Cramer wants to verify whether these practices are still acceptable under the current laws.

#### CONCLUSIONS OF LAW

5. The Division has jurisdiction to enter this order pursuant to Sections 468.83(1) and 120.565, Florida Statutes.

6. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

7. Pursuant to Section 120.565(1), Florida Statutes, "[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." Petitioner has standing as a licensed home

inspector to petition for a declaratory statement to questions 1 and 2 asked in the Petition for Declaratory Statement.

8. As it relates to question 3 of his Petition, Petitioner does not have standing to petition for a declaratory statement pertaining to applicability of a statutory provision as it applies to the general public. Therefore, this Declaratory Statement shall address only the questions set forth in the Petition that apply to the Petitioner's particular set of circumstances.

9. Rule 28-105.001, Florida Administrative Code (2011), provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

10. Section 468.83(1), Florida Statutes, creates within the Department the home inspection services licensing program.

11. Section 468.84(1), Florida Statutes, creates within the Department the mold related services licensing program.

12. Section 468.83(2), Florida Statutes, provides:

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.

13. Section 468.8311(3), Florida Statutes, states, "'home inspector' means any person who provides or offers to provide 'home inspection services' for a fee or other compensation."

14. Section 468.8311(4), Florida Statutes, states, "'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 home."

15. Section 468.832(1)(f), Florida Statutes, provides that certain acts constitute grounds for which disciplinary actions may be taken, including "[a]dvertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content."

16. Section 468.841(1)(d), Florida Statutes, exempts certain persons from complying with any provision of this part relating to mold assessment as follows:

Persons or business organizations acting within the scope of respective licenses required under chapter 471, part I of chapter 481, chapter 482, chapter 489,

or part XV of this chapter, are acting on behalf of an insurer under part VI of chapter 626, or are persons in the manufactured housing industry who are licensed under chapter 320, except when any such persons or business organizations hold themselves out for hire to the public as a "certified mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," "professional mold assessor," or any combination thereof stating or implying licensure under this part.

17. Section 468.8411(3), Florida Statutes, states "Mold Assessment means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet."

18. Section 468.8419(1)(b), Florida Statutes, states "[a] person may not... perform or offer to perform any mold assessment unless the person has complied with the provisions of this part."


19. Based upon the foregoing, Petitioner may inspect, sample, and identify visible mold, assuming the visible mold discovered during the home inspection is less than 10 square feet in area.

20. Based upon the foregoing, Petitioner, as a licensed home inspector, may advertise mold testing, sampling, and inspections, so long as he does not use the terms "certified

mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," "professional mold assessor," or any combination thereof stating or implying licensure as a mold assessor.

ORDERED that 1) Petitioner may inspect, sample, and identify visible mold, assuming the visible mold discovered during the home inspection is less than 10 square feet in area, and 2) Petitioner is allowed to advertise mold testing, sampling, and inspections within the scope of licensure as a home inspector, so long so long as he does not use the terms "certified mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," "professional mold assessor," or any combination thereof stating or implying licensure as a mold assessor.

DONE and ORDERED this 28 day of March, 2013.

  
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G.W. Harrell, Director  
Department of Business and  
Professional Regulation  
Division of Professions  
1940 North Monroe Street  
Tallahassee, FL 32399-1030  
Phone: (850) 717-1403

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Mark A. Cramer, 492 20<sup>th</sup> Avenue, Indian Rocks Beach, Florida 33785, on this 2<sup>nd</sup> day of April, 2011.



Agency Clerk





**Mark Cramer**

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/1/2011
File #	

**DS 2011-058**

## **Inspection Services, Inc.**

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Professional Home and Building Inspection and Consulting Services Since 1989

*Certified Member #12085  
American Society of Home Inspectors®  
State Certified Contractor #CRC042482  
Florida Licensed Home Inspector #HI69*

### **PETITION FOR DECLARATORY STATEMENT BEFORE THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

Mark A Cramer HI69  
492 20<sup>th</sup> Ave.  
Indian Rocks Beach, FL  
[Mcramer1@tampabay.rr.com](mailto:Mcramer1@tampabay.rr.com)  
727-595-4211

CC: Wayne Bertsch, Florida Home Inspectors Council  
101 S. Monroe Street, Tallahassee, FL 32301  
(850) 251-1835 [wayne@wayneoh.com](mailto:wayne@wayneoh.com)

As a licensed home inspector under Chapter 468, PART XV, Florida

*492 Twentieth Avenue, Indian Rocks Beach FL 33785-2970  
Phone (727) 595-4211 Fax (866) 865-9076 e-mail [mark@BestTampalnspector.com](mailto:mark@BestTampalnspector.com)*

2

Statutes, I would like to operate within the boundaries of Florida Law, and more importantly not perform unlicensed activity as referred to in Chapter 468, PART XVI, Florida Statutes.

Traditionally, some home inspectors have offered mold inspection services to homebuyers. These are not "mold assessments" as defined in the statutes, but rather screening inspections to determine the presence of absence of mold in the home.

I wish to request a declaratory statement regarding Mold Related Services Licensure **468.841 Exemptions.- (1)(d)**.

Given that **486.8411 (4)** defines mold assessment as applying to "*mold growth of greater than 10 square feet*", how does the Department interpret the statute:

1. Does the referenced exemption allow a licensed home inspector, when operating under the scope of his or her license, to inspect for the presence or absence of mold, and/or sample and identify the presence of mold, assuming that any visible mold discovered during the home inspection is less than 10 square feet in area?
  
2. Does the reference exemption allow a licensed home inspector, when operating under the scope of his or her license, to offer and advertise mold testing, mold sampling, mold inspections, assuming they are not holding themselves forth as a "mold assessor" assuming they have no prior knowledge of conditions in the home?
  
3. Can any person, licensed or not, offer to perform mold testing, mold sampling, mold inspections, assuming they are not holding themselves forth as a "mold assessor" assuming they have no prior knowledge of conditions in the home?

Thank you in advance for your time and favorable consideration,

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Cramer', with a stylized flourish at the end.

Mark A. Cramer  
President  
Mark Cramer Inspection Services Inc.