

21 NCAC 12A .0907 HOMEOWNERS RECOVERY FUND HEARING

(a) If it is determined by the Recovery Fund Review Committee that the Board should conduct a hearing on an application, the Board shall give the applicant and general contractor notice of hearing not less than 15 days before the hearing. Notice of hearing to the general contractor shall be sufficient if mailed to the last known address of the general contractor at least 15 days prior to the date of the hearing. This notice shall contain the following information:

- (1) The name, position, address and telephone number of a person at the offices of the Board to contact for further information or discussion;
- (2) The date, time, and place for a pre-hearing conference, if any; and
- (3) Any other information being relevant to informing the parties as to the procedure of the hearing.

(b) All homeowners recovery fund hearings shall be conducted by the Board or a panel consisting of a majority of the members of the Board.

(c) The provisions of 21 NCAC 12 .0825 governing disqualification of Board members shall also govern hearings conducted pursuant to this Section.

(d) Should a party fail to appear at a hearing, the Board may proceed with the hearing and make its decision in the absence of the party, provided that the party has given proper notice.

(e) Any party may be a witness and may present witnesses on the party's behalf at the hearing. The Board staff may also present evidence and participate at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

(f) At the hearing, the applicant shall be required to show:

- (1) He has suffered a reimbursable loss as defined in G.S. 87-15.5(6) and Rule .0901(c) of this Chapter in the construction or alteration of a single-family dwelling unit owned or previously owned by that person, provided, that if there have been findings entered in a contested civil action relevant to the issue of whether the applicant has suffered a reimbursable loss, then such findings shall be presumed as established for purposes of this Section subject to rebuttal by the general contractor;
- (2) He did not, directly or indirectly, obtain the building permit in his own name or did use a general contractor;
- (3) He has made application within one year after the termination of all judicial proceedings, including appeals, in connection with the unsatisfied judgment or within the period prescribed in Rule .0904(a) of this Chapter for claims based upon the automatic stay provisions of Section 362 of the U.S. Bankruptcy Code;
- (4) He has diligently pursued his remedies against the general contractor and on any applicable bond, surety agreement or insurance contract, and attempted execution on the judgments against all judgment debtors without success.

(g) The general contractor shall be permitted to participate in the hearing as a party and shall have recourse to all appropriate means of defense, including the examination of witnesses.

*History Note: Authority G.S. 87-15.5; 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0907 Eff. January 2, 2020.*