

CHAPTER 12 - GENERAL CONTRACTORS

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

SUBCHAPTER 12A – GENERAL PROVISIONS

SECTION .0100 - ORGANIZATION AND RESPONSIBILITIES OF BOARD

21 NCAC 12A .0101 IDENTIFICATION

The State Licensing Board for General Contractors, hereinafter referred to as the "North Carolina Licensing Board for General Contractors" or "the Board," is located in Raleigh, North Carolina; its mailing address is 5400 Creedmoor Road, Raleigh, North Carolina 27612. The Board website is www.nclbnc.org.

History Note: Authority G.S. 87-2;
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. December 1, 1985; January 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0101 Eff. January 2, 2020.

21 NCAC 12A .0102 GENERAL PURPOSE OF BOARD

(a) The purpose of the Board is to regulate persons who engage in activities which constitute the practice of general contracting as defined in G.S. 87-1 in order to safeguard the life, health and property of the people of North Carolina as well as promote the public welfare.

(b) The Board regulates the practice of general contracting by:

- (1) determining the qualifications of persons seeking to enter the practice of general contracting and granting to those persons who have met the statutory requirements the privilege of entering the practice of general contracting;
- (2) enforcing the provisions of the North Carolina General Statutes pertaining to general contractors; and
- (3) enforcing the Board's Rules, which are designed to ensure a high degree of competence in the practice of general contracting.

History Note: Authority G.S. 87-1; 87-2;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0102 Eff. January 2, 2020.

21 NCAC 12A .0103 STRUCTURE OF BOARD

(a) Officers. Annually, during the April meeting, the Board shall elect from its members a Chairman and Vice-Chairman. The Chairman shall preside over all meetings of the Board and perform other duties as he or she may be directed to do by the Board. The Vice-Chairman shall function as Chairman if the Chairman is unavailable.

(b) Secretary-Treasurer. In addition to those duties and responsibilities required of him or her by G.S. 87-8, the Secretary-Treasurer, referred to as "Secretary-Treasurer" or "Executive Director," as the Board's Chief Administrative Officer, has the responsibility and power to:

- (1) employ the clerical and legal services necessary to assist the Board in carrying out the requirements of the North Carolina General Statutes;
- (2) purchase or rent whatever office equipment, stationery, or other miscellaneous articles as are necessary to keep the records of the Board;

- (3) make expenditures from the funds of the Board by signing checks, or authorizing the designee of the Secretary-Treasurer to sign checks, for expenditures after the checks are signed by the Chairman or Vice-Chairman; and
 - (4) do such other acts as may be required of him or her by the Board.
- (c) Official Meetings of the Board.
- (1) Regular Meetings. Regular meetings shall be held during January, April, July and October of each year at the Board's office or at any other place so designated by the Board.
 - (2) Special Meetings. Special meetings shall be called and conducted in accordance with Article 33C of Chapter 143 of the North Carolina General Statutes.
 - (3) Notice of Meetings. Notice of all official meetings of the Board shall be given pursuant to Article 33C of Chapter 143 of the North Carolina General Statutes.

*History Note: Authority G.S. 87-2; 87-4; 87-6; 87-7;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. April 1, 2014; August 1, 2002; January 1, 1992; May 1, 1989; January 1, 1983;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
 Amended Eff. April 1, 2018;
 Recodified from 21 NCAC 12 .0103 Eff. January 2, 2020.*

SECTION .0200 - LICENSING REQUIREMENTS

21 NCAC 12A .0201 DEFINITIONS

The following definitions shall apply to the Rules in this Chapter:

- (1) Completion: As used in G.S. 87-1(b), "completion" occurs upon issuance of a certificate of occupancy by the permitting authority with jurisdiction over the project.
- (2) Cost of the undertaking: As used in G.S. 87-1(a), "cost of the undertaking" means the final price of a project, excluding the cost of land, as evidenced by the contract and any subsequent amendments, or in the absence of a contract, permit records, invoices, and cancelled checks.
- (3) Misconduct: As used in G.S. 87-11, "misconduct" includes allowing an unlicensed person or entity to use a license or examination credential on an undertaking where a license is required. Misconduct also includes allowing a licensed person or entity to use a license or examination credential on an undertaking for which the user does not hold proper classification or limitation. Misconduct also includes dishonest or fraudulent conduct by a qualifier related to the attendance of a continuing education class described in G.S. 87-10.2.
- (4) Personally: As used in G.S. 87-14(a)(1), "personally" means the physical presence of the owner of the property and excludes the use of a power of attorney.
- (5) Solely for occupancy: As used in G.S. 87-1(b), "solely for occupancy" is restricted to the family of a person, the officers and shareholders of a firm or corporation, and guests and social invitees where no consideration is received. For purposes of G.S. 87-1(b)(2), "family" is defined as a spouse or other family member living in the same household.
- (6) Value: As used in G.S. 87-10(a1), "value" means the same as "cost of the undertaking."

*History Note: Authority G.S. 87-1, 87-10, 87-10.2, and 87-14;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. January 1, 1983;
 Repealed Eff. May 1, 1989;
 Codifier approved agency's waiver request to reuse rule number;
 Eff. September 1, 2019;
 Recodified from 21 NCAC 12 .0201 Eff. January 2, 2020;
 Amended Eff. July 1, 2021.*

21 NCAC 12A .0202 CLASSIFICATION

- (a) A general contractor shall be certified in one of the following five classifications:

- (1) **Building Contractor.** This classification covers all building construction and demolition activity including: commercial, industrial, institutional, and all residential building construction. It includes installation of solar panels; parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, and gutters; storm drainage, retaining or screen walls, and hardware and accessory structures; and indoor and outdoor recreational facilities including natural and artificial surface athletic fields, running tracks, bleachers, and seating. It also covers work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine and Freshwater Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos), and S(Wind Turbine).
- (2) **Residential Contractor.** This classification covers all construction and demolition activity pertaining to the construction of residential units that are required to conform to the Residential Building Code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements; and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos). This classification also covers the installation of solar panels on residential units that are required to conform to the residential building code.
- (3) **Highway Contractor.** This classification covers all highway construction activity including: demolition, grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to a principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. It also includes installation and erection of guard rails, fencing, signage, and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; and work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine and Freshwater Construction), S(Railroad Construction), and H(Grading and Excavating).
- (4) **Public Utilities Contractor.** This classification includes demolition and operations that are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(b)(3). The Board shall issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(b)(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).
- (5) **Specialty Contractor.** This classification covers all construction operation and performance of contract work outlined as follows:
 - (A) **H(Grading and Excavating).** This classification covers the digging, moving, and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation may be executed with the use of hand and power tools and machines used for these types of digging, moving, and material placing. It covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. It also includes clearing and grubbing, and erosion control activities.
 - (B) **S(Boring and Tunneling).** This classification covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface, including the bracing and compacting of such passageways to make them safe for the purpose intended. It includes preparation of the ground surfaces at points of ingress and egress.
 - (C) **PU (Communications).** This classification covers the demolition and installation of the following:
 - (i) all types of pole lines, and aerial and underground distribution cable for telephone systems;
 - (ii) aerial and underground distribution cable for cable TV and master antenna TV systems capable of transmitting R.F. signals;
 - (iii) underground conduit and communication cable, including fiber optic cable; and

- (iv) microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.
- (D) S(Concrete Construction). This classification covers the construction, demolition, and installation of foundations, pre-cast silos, and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots, and highways.
- (E) PU(Electrical-Ahead of Point of Delivery). This classification covers the construction, installation, alteration, maintenance, or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated, and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers. This classification includes the construction of solar arrays.
- (F) PU(Fuel Distribution). This classification covers the construction, installation, alteration, maintenance, or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals, and slurries through pipeline from one station to another. It includes all excavating, trenching, and backfilling in connection therewith. It covers the installation, replacement, and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). This classification covers demolition and construction work on water and sewer mains, water service lines, and house and building sewer lines, as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations, and pumping stations. It includes pavement patching, backfill, and erosion control as part of construction.
- (H) PU(Water Purification and Sewage Disposal). This classification covers the demolition and performance of construction work on water and wastewater systems; water and wastewater treatment facilities; and all site work, grading, and paving of parking lots, driveways, sidewalks, curbs, and gutters that are ancillary to such construction of water and wastewater treatment facilities. It covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of the work on water and wastewater treatment facilities.
- (I) S(Insulation). This classification covers the installation, alteration, or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. It does not include the insulation of mechanical equipment, and lines and piping that are ancillary to the building.
- (J) S(Interior Construction). This classification covers the installation and demolition of acoustical ceiling systems and panels, load bearing and non-load bearing partitions, lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets, and millwork. It includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine and Freshwater Construction). This classification covers all marine and freshwater demolition and construction and repair activities and all types of marine and freshwater construction and demolition in deep-water installations and in harbors, inlets, sounds, bays, channels, canals, rivers, lakes, ponds, or any navigable waterway; it covers dredging, construction, and installation of pilings, piers, decks, slips, docks, and bulkheads. It does not include other structures that may be constructed on docks, slips, and piers.
- (L) S(Masonry Construction). This classification covers the demolition and installation, with or without the use of mortar or adhesives, of the following:
 - (i) brick, concrete block, gypsum partition tile, pumice block, or other lightweight and facsimile units and products common to the masonry industry;
 - (ii) installation of fire clay products and refractory construction; and

- (iii) installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). This classification covers the demolition, building, construction, and repair of railroad lines including:
 - (i) the clearing and filling of rights-of-way;
 - (ii) shaping, compacting, setting, and stabilizing of road beds;
 - (iii) setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences, and gates; and
 - (iv) construction and repair of tool sheds and platforms.
- (N) S(Roofing). This classification covers the installation, demolition, and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" for purposes of this Subparagraph includes cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing including torch down roof systems. Any insulation material installed as a component of a torch down roofing system shall be included as work covered under this classification.
- (O) S(Metal Erection). This classification covers:
 - (i) the field fabrication, demolition, erection, repair, and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment, and structure; and
 - (ii) the layout, assembly and erection by welding, bolting, riveting, or fastening in any manner metal products as curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.
- (P) S(Swimming Pools). This classification covers the construction, demolition, service, and repair of all swimming pools. It includes:
 - (i) excavation and grading;
 - (ii) construction of concrete, gunite, fiberglass, metal-walled with liner, steel-walled with liner, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) installation of all equipment including pumps, filters, and chemical feeders. It does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities. This specialty is required only when the cost of asbestos activities as described herein are equal to or exceed thirty thousand dollars (\$30,000).
- (R) S(Wind Turbine). This classification covers the construction, demolition, installation, and repair of wind turbines, wind generators, and wind power units. It includes assembly of blades, generator, turbine structures, and towers. It also includes ancillary foundation work, field fabrication of metal equipment, and structural support components.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examinations for the classification requested by the applicant. The license granted to an applicant who meets the qualifications for all of the classifications set forth in the rules of this Section shall be designated "unclassified."

History Note: Authority G.S. 87-1; 87-4; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. June 1, 1994; June 1, 1992; May 1, 1989; January 1, 1983;
Temporary Amendment Eff. February 18, 1997;
Amended Eff. April 1, 2014; June 1, 2011; September 1, 2009; April 1, 2004; April 1, 2003;
August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. September 1, 2019; April 1, 2018;
Recodified from 21 NCAC 12 .0202 Eff. January 2, 2020;
Amended Eff. December 1, 2023; January 1, 2023; January 1, 2022.

21 NCAC 12A .0203 LIMITATION OF LICENSE

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
Repealed Eff. May 1, 1989;
Recodified from 21 NCAC 12 .0203 Eff. January 2, 2020.

21 NCAC 12A .0204 LICENSE LIMITATIONS; ELIGIBILITY

- (a) All licenses shall have an appropriate limitation as set forth in this Rule.
- (b) Limited License. The applicant for a limited license shall:
- (1) meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) have current assets that exceed the total current liabilities by at least seventeen thousand dollars (\$17,000) or have a total net worth of at least eighty thousand dollars (\$80,000);
 - (3) pass the examination which shall contain subject matter related to the specific contracting classification chosen by the applicant with a score as set out in Rule .0404 of this Chapter; and
 - (4) if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within five years prior to the filing of the application, provide to the Board an agreed-upon procedures report on a form provided by the Board or an audited financial statement with a classified balance sheet as part of the application. This requirement shall not apply to shareholders of an applicant that is a publicly traded corporation.
- (c) Intermediate License. The applicant for an intermediate license shall:
- (1) meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) have current assets that exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000), as reflected in an agreed-upon procedures report on a form provided by the Board or an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
 - (3) pass the examination which shall contain subject matter related to the specific contracting classification chosen by the applicant with a score as set out in Rule .0404 of this Chapter.
- (d) Unlimited License. The applicant for an unlimited license shall:
- (1) meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) have current assets that exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000), as reflected in an agreed-upon procedures report on a form provided by the Board or an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
 - (3) pass the examination which shall contain subject matter related to the specific contracting classification chosen by the applicant with a score as set out in Rule .0404 of this Chapter.
- (e) Surety Bonds. In lieu of demonstrating the level of working capital as required in Subparagraphs (c)(2) and (d)(2) of this Rule or net worth under Subparagraph (b)(2) of this Rule, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the

applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital as required by Subparagraphs (c)(2) and (d)(2) of this Rule. The applicant shall submit proof of a surety bond meeting the requirements of this Rule with the application form and subsequent annual license renewal forms. The applicant shall maintain the bond in the amount of one hundred seventy-five thousand dollars (\$175,000) for a limited license, five hundred thousand dollars (\$500,000) for an intermediate license, and one million dollars (\$1,000,000) for an unlimited license. The bond shall list the State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract, breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board within 30 days in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided.

(f) Financial statements, accounting, and reporting standards. Financial statements submitted by applicants to the Board shall be no older than twelve months from the date of submission. Financial statements shall conform to United States "generally accepted accounting principles" (GAAP). The Board may require non-GAAP financial statements from applicants wherein the only exception to GAAP is that such presentation is necessary to ascertain the working capital or net worth of the particular applicant. Examples of the circumstances when non-GAAP presentation may be necessary to ascertain the working capital or net worth of the applicant shall be when the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent" on personal financial statements and when the only exception to GAAP is that the particular applicant is not combined with a related entity into one financial statement pursuant to AICPA Financial Interpretation 46R (ASC 810). The terminologies, working capital, balance sheet with current and fixed assets, current and long term liabilities, and any other accounting terminologies, used herein shall be construed in accordance with GAAP Standards as promulgated by the Financial Accounting Standards Board (FASB). The terminologies, audited financial statement, unqualified opinion, and any other auditing terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" (GAAS) as promulgated by the American Institute of Certified Public Accountants (AICPA).

*History Note: Authority G.S. 87-1; 87-4; 87-10; 87-15.1;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
ARRC Objection March 19, 1987;
Amended Eff. May 1, 1989; August 1, 1987;
Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989;
Amended Eff. December 1, 1989;
Temporary Amendment Eff. May 31, 1996;
RRC Removed Objection Eff. October 17, 1996;
Amended Eff. August 1, 1998; April 1, 1997;
Temporary Amendment Eff. August 24, 1998;
Amended Eff. April 1, 2014; April 1, 2013; August 1, 2008; April 1, 2006; March 1, 2005; August 1, 2002; April 1, 2001; August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. September 1, 2019; April 1, 2018;
Recodified from 21 NCAC 12 .0204 Eff. January 2, 2020.*

21 NCAC 12A .0205 QUALIFIER

(a) The qualifier for the applicant shall be a responsible managing employee, officer, or member of the personnel of the applicant. A person may serve as a qualifier for no more than two licenses. A qualifier's examination credentials shall archive if the qualifier does not serve as a qualifier for an active licensee for a period of four consecutive years. Once a qualifier's examination credentials archive, he or she shall retake the examination and earn a passing grade in accordance with Rule .0404 of this Chapter to serve as a qualifier.

(b) Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee that has been disciplined by the Board.

(c) A licensee shall notify the Board in writing in the event a qualifier ceases to be connected with the licensee. The notice shall include the date on which the qualifier was last connected with the licensee and shall be submitted no later than 10 days after the date of separation. A qualifier shall also be required to notify the Board in writing in such circumstances. After such notice is filed with the Board in writing, or the Board determines that the qualifier is no longer connected with the licensee, and if there are no additional qualifiers for the licensee, the license shall be invalidated in accordance with G.S. 87-10.

(d) Persons associated with a firm or corporation may take the required examination on behalf of the firm or corporation as described in G.S. 87-10. A partner may take an examination on behalf of a partnership.

(e) "Responsible managing" as used in G.S. 87-10 means a person who is engaged in the work of the applicant a minimum of 20 hours per week or a majority of the hours operated by the applicant, whichever is less. If the person described herein is not an owner, officer, or partner of the applicant or licensee, the person must be a W-2 employee.

(f) "Members of the personnel" as used in G.S. 87-10 means a person who is a responsible managing employee of the applicant or licensee. A member of the personnel must be a W-2 employee and shall not be an independent contractor of the applicant or licensee.

(g) An applicant or licensee may have more than one qualifier. If one person associated with the applicant fails, and another passes, the license shall be granted to that applicant. A license shall be issued only in the classification held by a qualifier who has passed an examination in that classification.

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-11(a);
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2014; July 1, 2008; April 1, 2006; August 1, 2000; June 1, 1994; June 1, 1992; May 1, 1989; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. September 1, 2019; September 1, 2018; April 1, 2018;
Recodified from 21 NCAC 12 .0205 Eff. January 2, 2020.

21 NCAC 12A .0206 JOINT VENTURE

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Repealed Eff. May 1, 1989;
Recodified from 21 NCAC 12 .0206 Eff. January 2, 2020.

21 NCAC 12A .0207 JOINT VENTURE

A joint venture may practice general contracting in North Carolina if every principal or member of the joint venture is licensed to practice general contracting in North Carolina with the appropriate classification and at least one principal has the appropriate limitation, or if the joint venture obtains a general contracting license in its own name in accordance with G.S. 87-10 and these Rules. If an LLC is a joint venturer, all members and managers of the LLC shall be licensed to practice general contracting in North Carolina with the appropriate classification and limitation.

History Note: Authority G.S. 87-1; 87-10;
Eff. June 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0207 Eff. January 2, 2020.

21 NCAC 12A .0208 CONSTRUCTION MANAGEMENT

(a) The phrase "undertakes to superintend or manage" as used in G.S. 87-1 to describe a person, firm, or corporation deemed to be a general contractor means that the person, firm, or corporation shall be responsible for superintending

or managing the construction of an entire project, and either contracts directly with subcontractors to perform the construction for the project or is compensated for superintending or managing the project based upon the cost of the project or the time taken to complete the project. The person, firm, or corporation shall hold a general contracting license in the classifications and limitation applicable to the construction of the project.

(b) The phrase "undertakes to superintend or manage" described in Paragraph (a) of this Rule shall not include the following:

- (1) an architect or engineer licensed in North Carolina who is supervising the execution of design plans for the project owner and who does not contract directly with subcontractors to perform the construction for the project; or
- (2) subject to the conditions stated within this Subparagraph and Paragraph (c), any person, firm, or corporation retained by an owner of real property as a consultant, agent, or advisor to perform development-related functions, including:
 - (A) assisting with site planning and design;
 - (B) formulating a development scheme;
 - (C) obtaining zoning and other entitlements;
 - (D) tenant selection and negotiation;
 - (E) interfacing and negotiating with the general contractor, engineer, architect, other construction and design professionals, and other development consultants with whom the land owner separately contracts, including, negotiating contracts on the owner's behalf, assisting with scheduling issues, ensuring that any disputes between such parties are resolved to the owner's satisfaction, and otherwise ensuring that such parties are proceeding in an efficient, coordinated manner to complete the project;
 - (F) providing cost estimates, bids, and budgeting;
 - (G) monitoring the progress of development activities performed by other parties;
 - (H) arranging and negotiating governmental incentives and entitlements; and
 - (I) selecting and sequencing sites for development.

(c) The exclusions set forth in Subparagraph (b)(2) shall not apply, however, unless the following conditions are satisfied:

- (1) the owner has retained a licensed general contractor or licensed general contractors to construct the entire project or to directly superintend and manage all construction work in which the person, firm, or corporation has any involvement and that would otherwise require the use of a licensed general contractor; and
- (2) the use of the person, firm, or corporation will not impair the general contractor's ability to communicate directly with the owner and to verify the owner's informed consent and ratification of the directions and decisions made by the person, firm, or corporation to the extent that such directions or decisions affect the construction activities otherwise requiring the use of a licensed general contractor. For the purposes of this Subparagraph, the general contractor shall be entitled to make a written demand for written verification from the owner of any directions given or decisions made by such a person, firm, or corporation on the owner's behalf. In that regard, if the general contractor delivers a written request directly to the owner asking that the owner confirm in writing that the owner desires that the general contractor perform consistent with a direction or decision made by such person, firm, or corporation:
 - (A) the general contractor shall not be obligated to follow such direction or decision in question until such time as the owner provides written verification of the direction or decision; and
 - (B) if the third party person, firm, or corporation whose direction or decision is being questioned by the general contractor attempts to itself provide the confirmation requested from the owner by the general contractor as provided above, such person, firm, or corporation shall be deemed to be "undertaking to superintend or manage" as described in Paragraph (a) of this Rule.

*History Note: Authority G.S. 87-1; 87-4;
Eff. May 1, 1995;
Amended Eff. June 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;*

Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0208 Eff. January 2, 2020.

21 NCAC 12A .0209 ASSUMED NAME APPLICATION

- (a) Any application made pursuant to G.S. 87-10 shall be accompanied by a Certificate of Assumed Name filed in accordance with Chapter 66, Article 14A of the General Statutes. Applications submitted to the Board on behalf of corporations, limited liability companies, and partnerships shall be accompanied by a copy of any documents required to be filed with the North Carolina Secretary of State's office, such as Articles of Incorporation or Certificate of Authority.
- (b) All licensees shall comply with the requirements of G.S. 66-71.4 and shall notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.
- (c) No applicant or licensee shall use or adopt an assumed name used by any other licensee, or any name so similar to an assumed name used by another licensee that could confuse or mislead the public.
- (d) No applicant or licensee that is a legal entity registered with the North Carolina Secretary of State shall use or adopt an assumed name of a separate legal entity registered with the North Carolina Secretary of State.

History Note: Authority G.S. 66-71.4; 87-1; 87-4; 87-10;
Eff. August 1, 2000;
Amended Eff. April 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. September 1, 2018;
Recodified from 21 NCAC 12 .0209 Eff. January 2, 2020;
Amended Eff. March 1, 2022.

21 NCAC 12A .0210 BUILDING PROJECTS

If a building project is performed pursuant to G.S. 87-1.1, the total amount of work to be performed by all licensed general contractors shall not exceed 25% of the total bid price. A licensed general contractor shall hold the applicable classifications and limitation for the work undertaken by such licensed general contractor.

History Note: Authority G.S. 87-1.1; 87-4;
Eff. April 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0210 Eff. January 2, 2020;
Amended Eff. March 1, 2022.

21 NCAC 12A .0211 MULTIUNIT BUILDINGS

- (a) If a project consists of the construction or alteration of one or more buildings that fall under the requirements of the North Carolina Building Code, all structures and units on the same parcel of land shall be considered as a single project.
- (b) If a project consists of the construction or alteration of one or more buildings that fall under the requirements of the North Carolina Residential Code, only structures and units on the same parcel of land shall be considered as one project.
- (c) The North Carolina State Building Code standards are hereby incorporated by reference, including subsequent amendments and editions. The current Code may be found online at http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Codes_-_Current_and_Past&user=State_Building_Codes.

History Note: Authority G.S. 87-1; 87-4; 87-10;
Eff. August 11, 2009;
Amended Eff. April 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0211 Eff. January 2, 2020.

21 NCAC 12A .0212 PERMITS AND INSPECTIONS

(a) A licensee shall obtain all necessary building permits from the local Code Enforcement Agency before commencing any work for which a building permit is required. After obtaining the necessary building permits, a licensee shall obtain all required inspections and assure that all inspections required by codes adopted by the N.C. Building Code Council are passed by the local Code Enforcement Official or a designee. Absent a written acknowledgement by a local Code Enforcement Official, a licensee shall not be relieved of his, her, or its responsibility to complete all required inspections until a certificate of compliance or the equivalent is obtained from the local Code Enforcement Agency.

(b) A licensee shall not allow a building permit to be obtained or allow his, her, or its license number to appear on a building permit application unless:

- (1) the licensee is the owner of the property; or
- (2) the licensee has an agreement with the property owner or his or her designee to perform work described in the building permit.

(c) Failure to comply with this Rule shall constitute misconduct as described in G.S. 87-11.

History Note: Authority G.S. 87-1; 87-11; 87-14; 160A-417; 160D-1110;
Eff. July 1, 2021.

SECTION .0300 - APPLICATION PROCEDURE

21 NCAC 12A .0301 GENERAL

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0301 Eff. January 2, 2020.

21 NCAC 12A .0302 REQUEST

History Note: Authority G.S. 87-1; 87-10; 150B-19(5);
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 2006; December 1, 1995; June 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0302 Eff. January 2, 2020.

21 NCAC 12A .0303 APPLICATION FOR LICENSURE

(a) General. Applications for licensure shall contain the following:

- (1) the Social Security Number of examinees and qualifiers and tax identification numbers for corporate applicants;
- (2) the applicant's contact information;
- (3) the name of business under which the licensee will be operating, if any;
- (4) requested designation of license limitation and classifications;
- (5) statements and supporting documentation about all crimes of which the applicant has been convicted;
- (6) certified copies of court records reflecting information regarding all crimes of which the applicant and qualifiers have been convicted;

- (7) statements and supporting documentation indicating whether the applicant or qualifiers has any disciplinary history with the Board or any other occupational licensing, registration, or certification agency;
 - (8) statements and supporting documentation establishing financial responsibility as required by G.S. 87-10(a) and Rule .0204 of this Subchapter;
 - (9) letters of reference as prescribed in Rule .0308 of this Subchapter; and
 - (10) the application fee as set forth in Rule .0304 of this Subchapter.
- (b) Criminal Background Check. In addition to the requirements set forth above, all new applicants shall consent to criminal background checks to be performed by a third-party vendor identified by the Board. The cost of the background check shall be paid directly to the vendor. The qualifiers of all new applicants shall submit to the background check. Additionally, the following individuals shall submit to the background check, based upon the entity or person applying for the license:
- (1) Sole proprietor license: The sole proprietor;
 - (2) Corporation: The president;
 - (3) Limited liability company: All managers and members;
 - (4) Partnerships (including limited liability partnerships): All partners.
- (c) Reciprocity. Applicants based on reciprocity shall submit with the application form a copy of the applicant's license in the other state, certified by the other state licensing board as being a copy of a valid license. Applicants shall have taken and passed the exam offered in the state from which they are seeking reciprocity, or an examination offered by the National Association of State Contractors Licensing Agencies (NASCLA). Applicants shall also be required to take and pass the Board's North Carolina law, rule, and building code examination prior to licensure.

*History Note: Authority G.S. 87-1; 87-4; 87-10;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. May 1, 1989;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
 Amended Eff. September 1, 2019; April 1, 2018;
 Recodified from 21 NCAC 12 .0303 Eff. January 2, 2020;
 Amended Eff. January 1, 2023; March 1, 2022.*

21 NCAC 12A .0304 FEES

- (a) The Board shall charge the following fees related to license applications:
- (1) Application for limited license: \$75.00;
 - (2) Application for intermediate license: \$100.00;
 - (3) Application for unlimited license: \$125.00;
 - (4) Application for increase in limitation: \$100.00 for increase to intermediate license and \$125.00 for increase to unlimited license; and
 - (5) Late renewal: \$10.00 per month for every month or part after the first day of January.
- (b) The Board shall charge the following fees related to continuing education:
- (1) Course Sponsor:
 - (A) Initial review: \$25.00 per credit hour requested; and
 - (B) Subsequent annual review: \$10.00 per credit hour requested.
 - (2) Qualifier Completion: \$4.00 per credit hour per qualifier who completes an approved continuing education course. This fee shall be paid by the course sponsor.
- (c) All fees charged by the Board shall be non-refundable.

*History Note: Authority G.S. 87-1; 87-10; 87-10.2(i);
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. January 1, 1983;
 Repealed Eff. May 1, 1989;
 Codifier approved agency's waiver request to reuse rule number;
 Eff. April 1, 2018;
 Recodified from 21 NCAC 12 .0304 Eff. January 2, 2020;*

*Temporary Amendment Eff. January 7, 2020;
Amended Eff. September 1, 2020.*

21 NCAC 12A .0305 FILING ADDRESS

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0305 Eff. January 2, 2020.*

21 NCAC 12A .0306 FILING DEADLINE

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. June 1, 1994; June 1, 1992;
Repealed Eff. April 1, 2001;
Recodified from 21 NCAC 12 .0306 Eff. January 2, 2020.*

21 NCAC 12A .0307 NOTICE OF APPROVAL

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Repealed Eff. August 1, 2000;
Recodified from 21 NCAC 12 .0307 Eff. January 2, 2020.*

21 NCAC 12A .0308 CHARACTER REFERENCES

(a) Each applicant shall submit to the Board three written evaluations of the applicant as to the character reference's knowledge of and experience with the applicant. If the applicant is a legal entity, character references shall be submitted for all individuals who sign the application on behalf of the applicant including the qualifier. If the applicant is a sole proprietorship, character references shall be for the applicant itself.

(b) All character references shall include:

- (1) name of the person submitting the reference;
- (2) mailing address, phone number, and email address of the person submitting the reference;
- (3) date of the reference; and
- (4) information regarding the reference's knowledge of and experience with the applicant or person about whom the reference is being provided.

(c) Character references shall be completed and dated no more than 12 months prior to the date the reference is submitted to the Board.

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. September 1, 2019;
Recodified from 21 NCAC 12 .0308 Eff. January 2, 2020;
Amended Eff. December 1, 2023.*

21 NCAC 12A .0309 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for License to Practice General Contracting;
- (2) submission of a license fee in accordance with G.S. 87-10;
- (3) providing documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); and
- (4) providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for License to Practice General Contracting;
- (2) submission of a license fee in accordance with G.S. 87-10;
- (3) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2);
- (5) providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed; and
- (6) is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

*History Note: Authority G.S. 87-4; 93B-15.1;
Eff. April 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0309 Eff. January 2, 2020.*

SECTION .0400 - EXAMINATION

21 NCAC 12A .0401 GENERAL

*History Note: Authority G.S. 87-1; 87-10; 87-15.1;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Repealed Eff. May 1, 1989;
Recodified from 21 NCAC 12 .0401 Eff. January 2, 2020.*

21 NCAC 12A .0402 SUBJECT MATTER

(a) Examinations for licensure shall ascertain the following:

- (1) The criteria set out in G.S. 87-10(b); and
- (2) The qualifiers's knowledge of the practice of general contracting within the specific classification(s) he or she is seeking to be qualified as described in Rule .0202 of this Chapter.

(b) As a part of the Board's examination process, all applicants, including those seeking reciprocity from other jurisdictions, shall be tested on the Board's laws and rules.

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2000; June 1, 1994; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018;*

*Codifier approved agency's waiver request to reuse rule number;
Eff. September 1, 2019;
Recodified from 21 NCAC 12 .0402 Eff. January 2, 2020.*

21 NCAC 12A .0403 NUMBER OF EXAMINATIONS TAKEN

An applicant must take one different examination for each classification of general contracting for which the applicant seeks licensure.

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0403 Eff. January 2, 2020.*

21 NCAC 12A .0404 PASSING GRADE

Persons taking the examination shall receive a score of at least 70 in order to pass the examination.

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
Repealed Eff. May 1, 1989;
Codifier approved agency's waiver request to reuse rule number;
Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0404 Eff. January 2, 2020.*

21 NCAC 12A .0405 EXAMINATION SCHEDULE

Upon approval of the application by the Board, applicants will be notified as to the instructions for scheduling the required examination or examinations. Applicants may receive details from the examinations provider concerning the actual date, time and location to report for the examination or examinations requested.

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2000; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0405 Eff. January 2, 2020.*

21 NCAC 12A .0406 FILING DEADLINE

21 NCAC 12A .0407 RE-EXAMINATION

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
Repealed Eff. May 1, 1989;
Recodified from 21 NCAC 12 .0406 and .0407 Eff. January 2, 2020.*

21 NCAC 12A .0408 PERSON TAKING EXAMINATION

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;*

Amended Eff. April 1, 2006; September 1, 1992; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0408 Eff. January 2, 2020.

21 NCAC 12A .0409 REVIEW WORKSHOP CHARGE

History Note: Authority G.S. 87-10; 150B-19(5)d;
Eff. June 1, 1992;
Repealed Eff. April 1, 2004;
Recodified from 21 NCAC 12 .0409 Eff. January 2, 2020.

21 NCAC 12A .0410 FAILING EXAMINATION

History Note: Authority G.S. 87-10;
Eff. December 1, 1995;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0410 Eff. January 2, 2020.

SECTION .0500 - LICENSE

21 NCAC 12A .0501 LICENSE GRANTED

- (a) License numbers shall be included on all contracts and bids.
- (b) If a licensee files Articles of Dissolution or the N.C. Department of the Secretary of State withdraws the licensee's Certificate of Authority, the Board shall archive the license.
- (c) A licensee shall notify the Board within 30 days of a change in ownership or a filing with the N.C. Department of the Secretary of State that amends or changes the corporate structure of the licensed entity.

History Note: Authority G.S. 87-1; 87-10; 87-12;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. September 1, 2019; April 1, 2018;
Recodified from 21 NCAC 12 .0501 Eff. January 2, 2020;
Amended Eff. January 1, 2022.

21 NCAC 12A .0502 TEMPORARY LICENSE

The Board shall issue a temporary license only as required by G.S. 93B-15.1.

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0502 Eff. January 2, 2020.

21 NCAC 12A .0503 RENEWAL OF LICENSE

- (a) Applications for renewal of license shall contain the following:

- (1) the Social Security Number of the applicant and qualifier(s) and tax identification number for corporations, LLCs, or partnerships;
 - (2) the applicant's contact information;
 - (3) the name of business under which licensee will be operating, if any;
 - (4) information regarding any changes made in the status of the licensee's business, since the initial application or last renewal was submitted to the Board, whichever is later;
 - (5) confirmation of license limitation and classifications;
 - (6) information about all crimes of which the applicant has been convicted since the initial application or last renewal was submitted to the Board, whichever is later;
 - (7) documentation regarding all crimes referenced above;
 - (8) information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration, or certification agency since the initial application or last renewal was submitted to the Board, whichever is later;
 - (9) an attestation that the applicant maintains continued financial responsibility pursuant to Rule .0204 of this Chapter;
 - (10) if applicable, proof that the surety bond is maintained in compliance with Rule .0204 of this Chapter;
 - (11) if necessary, proof of completion of continuing education requirements; and
 - (12) the application fee and any accrued late fees as set forth in Rule .0304 of this Chapter.
- (b) A licensee shall submit an audited financial statement as evidence of continued financial responsibility in accordance with Rule .0204 of this Chapter if the Board finds that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities based upon the information provided in the renewal application.
- (c) A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an agreed-upon procedures report on a form provided by the Board or an audited financial statement with a classified balance sheet as part of any application for renewal.
- (d) A corporate license shall not be renewed unless it is in good standing with the N.C. Department of the Secretary of State.
- (e) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines, for paying renewal fees, and for meeting any other requirement or conditions related to the maintenance or renewal of the license issued by the Board. The applicant shall furnish to the Board a copy of the military orders or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue.
- (f) If a licensee's status is invalid for reasons other than those set forth in G.S. 87-10.2(h) and the licensee requests to renew his, her, or its license, the licensee must submit proof of completion of six elective hours of continuing education for each year not previously renewed and for the current license year and two mandatory hours for the current year.

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-10.2; 87-12; 87-13; 93B-15;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 ARRC Objection March 19, 1987;
 Amended Eff. May 1, 1989; August 1, 1987;
 Temporary Amendment Eff. June 28, 1989 for a period of 155 Days to Expire on December 1, 1989;
 Amended Eff. December 1, 1989;
 RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment;
 Amended Eff. September 1, 1992;
 Temporary Amendment Eff. May 31, 1996;
 Amended Eff. April 1, 2014; June 1, 2011; June 1, 2003; April 1, 2003; August 1, 2002; April 1, 1997;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
 Amended Eff. September 1, 2019; April 1, 2018;
 Recodified from 21 NCAC 12 .0503 Eff. January 2, 2020;

*Temporary Amendment Eff. January 2, 2020;
Amended Eff. July 1, 2021; September 1, 2020.*

21 NCAC 12A .0504 INCREASE IN LIMITATION

(a) General. A person, firm, or corporation holding a valid license to engage in the practice of general contracting in North Carolina may apply for a different limitation by making application for such different limitation with the Board. The application shall contain the following:

- (1) the Social Security Number of individual applicant, qualifier(s), and tax identification number for corporations, LLCs, or partnerships;
- (2) the applicant's contact information;
- (3) the exact name of the business as reflected on the previously issued license that is subject to the limitation increase application;
- (4) information regarding any changes made in the status of the licensee's business since the initial application or last renewal was submitted to the Board, whichever is later;
- (5) confirmation of license limitation and classifications;
- (6) requested limitation;
- (7) an audited financial statement prepared in accordance with Rule .0204 of this Chapter;
- (8) if applicable, proof that the surety bond is maintained in compliance with Rule .0204 of this Chapter; and
- (9) the application fee as set forth in Rule .0304 of this Chapter.

(b) Eligibility. An applicant shall be eligible for a new limitation if he or she possesses the qualifications necessary in accordance with Rule .0204 of this Chapter, except that he or she shall not be required to take a written exam.

*History Note: Authority G.S. 87-1; 87-4; 87-10;
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989; January 1, 1983;
Temporary Amendment Eff. June 28, 1989, for a period of 155 days to expire on December 1, 1989;
Amended Eff. August 1, 2000; December 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0504 Eff. January 2, 2020.*

21 NCAC 12A .0505 MAINTAINING CURRENT ADDRESS; NOTIFICATION

(a) All licensees, applicants, and qualifiers shall notify the Board of any change in mailing address, phone number, or email address within 30 days from the date of the change. Notice shall be given in writing or through the Board's website portal for licensees.

(b) Notification from the Board shall be deemed received if mailed to the address provided by the licensee and shown in the records of the Board.

*History Note: Authority G.S. 87-8;
Eff. June 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0505 Eff. January 2, 2020.*

21 NCAC 12A .0506 CHARGE FOR STATUS OF LICENSURE

The Board shall charge persons requesting a verified copy of all or part of its roster of licensed contractors a fee to cover the cost of copying and mailing.

*History Note: Authority G.S. 87-8; 87-13; 150B-19(5);
Eff. June 1, 1992;
Amended Eff. May 1, 2006; May 1, 1995;*

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0506 Eff. January 2, 2020.

21 NCAC 12A .0507 FUND SUSPENSION

In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2, the Board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

History Note: Authority G.S. 87-4; 93B-2;
Eff. June 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0507 Eff. January 2, 2020.

21 NCAC 12A .0508 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

(a) Any licensee who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license, shall file with the Board a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or disposition in the case. The Criminal Conviction Disciplinary Action Reporting Form is available on the Board's website at www.ncibgc.org or upon request to the Board. In the Form, the licensee shall set forth the following:

- (1) full legal name of individual reporting the conviction or conciliation;
- (2) physical and mailing address;
- (3) license number;
- (4) telephone number;
- (5) email address;
- (6) date of birth; and
- (7) description of the criminal conviction and disciplinary action, including the jurisdiction and file number.

(b) For the purposes of reporting under this Rule, the individuals required to report the above-listed information are the same as those required to submit to a criminal background check and identified in Rule .0303 of this Subchapter.

History Note: Authority G.S. 87-10;
Eff. March 1, 2022.

SECTION .0600 - RULE-MAKING PROCEDURES

- 21 NCAC 12A .0601 PETITIONS**
21 NCAC 12A .0602 NOTICE
21 NCAC 12A .0603 HEARINGS
21 NCAC 12A .0604 EMERGENCY RULES
21 NCAC 12A .0605 DECLARATORY RULINGS

History Note: Authority G.S. 150A-12; 150A-12(d); 150A-13; 150A-16; 150A-17;
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Repealed Eff. January 1, 1983;
Recodified from 21 NCAC 12 .0601-.0605 Eff. January 2, 2020.

21 NCAC 12A .0606 RULE-MAKING

History Note: Authority G.S. 150A-11; 150A-14;

Eff. January 1, 1983;
Amended Eff. December 1, 1985;
Repealed Eff. September 1, 1988;
Recodified from 21 NCAC 12 .0606 Eff. January 2, 2020.

21 NCAC 12A .0607 WAIVER

The Board may waive any rule in this Chapter that is not statutorily required if a licensee, qualifier, continuing education course provider, or continuing education course instructor submits a written request. Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

History Note: Authority G.S. 87-10.2(j); 150B-19;
Emergency Adoption Eff. April 24, 2020;
Temporary Adoption Eff. July 24, 2020;
Eff. July 1, 2021.

SECTION .0700 – BOARD DISCIPLINARY PROCEDURES

21 NCAC 12A .0701 IMPROPER PRACTICE

(a) Complaint. Any person who believes that a licensed general contractor is in violation of the provisions of G.S. 87-11 may file a complaint with the Board against a licensee, qualifier, or both by setting forth in writing those charges and swearing to their authenticity. The complaint shall be submitted to the Board and include the complainant's contact information, project location, and name of the licensee, qualifier, or both.

(b) Preliminary or Threshold Determination:

- (1) A complaint filed in accordance with G.S. 87-11(a1) shall be forwarded to a staff investigator for investigation. Within 30 days, the Board shall forward a written notice of the complaint to the licensee and qualifier(s) against whom the charge is made. The notice shall request a response from the licensee and qualifier(s). The Board shall send notice of the charge and of the alleged facts or alleged conduct by first class mail to the last known address and by email to the address of the licensee and qualifier(s).
- (2) After the investigation is complete, the charge shall be referred to the review committee. The review committee shall consist of the following individuals:
 - (A) one member of the Board;
 - (B) the Secretary-Treasurer or his designee; and
 - (C) a staff person agreed upon by the individuals listed above.
- (3) Based upon the complaint and investigation, the review committee shall recommend to the Board that:
 - (A) The charge be dismissed;
 - (B) When the charge is admitted as true by the licensee and qualifier(s), the Board accept the licensee's and qualifier(s)' admission of guilt and order the licensee and qualifier(s) not to commit in the future the act or acts admitted by him to have been violated and not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or
 - (C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11. Prior to the charge's being heard and determined by the Board, it may be resolved by consent order.

History Note: Authority G.S. 87-4; 87-11; 150B-3; 150B-38;

Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2014; June 1, 2011; April 1, 2006; April 1, 2003; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0701 Eff. January 2, 2020.

21 NCAC 12A .0702 UNLICENSED PRACTICE

(a) Complaint. Any person who believes that a person, firm, or corporation is in violation of the acts specified in G.S. 87-13 may file a complaint against that person, firm, or corporation. The complaint shall be filed with the Board and include the complainant's contact information, project location, and name of alleged violator.

(b) Preliminary or Threshold Determination:

- (1) A complaint filed in accordance with G.S. 87-13 shall be forwarded to a staff investigator for investigation. Board staff shall investigate the charge to determine whether there is probable cause to believe that a party against whom a charge has been brought violated the provisions of G.S. 87-13.
- (2) After the investigation is complete, the charge shall be referred to the review committee. The review committee shall consist of the following individuals:
 - (A) one member of the Board;
 - (B) the Secretary-Treasurer or his designee; and
 - (C) a staff person agreed upon by the individuals listed above.
- (3) Based upon the complaint and investigation, if the review committee determines that probable cause exists that a person, firm, or corporation is practicing general contracting without a license, it shall recommend to the Board that injunctive relief be sought. If the Board concurs with the review committee's recommendation, the investigation shall be forwarded to Board counsel to seek injunctive relief. If the review committee does not believe that the person, firm, or corporation is practicing general contracting without a license, it shall recommend to the Board dismissal of the complaint. Once dismissed, the Board shall notify the complainant.

History Note: Authority G.S. 87-1; 87-4; 87-13; 87-13.1;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2014; June 1, 2011; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0702 Eff. January 2, 2020.

21 NCAC 12A .0703 FEE FOR SUBMITTAL OF BAD CHECK

(a) The Board shall charge the maximum processing fee allowed by G.S. 25-3-506 if a check submitted to the Board is returned by a financial institution because of insufficient funds or because the drawer did not have an account at that bank.

(b) Until such time as the drawer of the bad check has paid the prescribed fee, the drawer shall not be eligible to take an examination, review an examination, obtain a license, or have the license renewed. For the purpose of this Rule, "prescribed fee" shall mean the sum of:

- (1) the maximum processing fee allowed by G.S. 25-3-506;
- (2) the renewal or application fee, whichever is applicable; and
- (3) the late payment fee described in G.S. 87-10(e).

(c) Any license that has been issued or renewed based on a check which is returned to the Board shall be invalid until such time as the drawer has paid the prescribed fee. The invalidity of the license or renewal shall commence on the date of the issuance of the license or renewal.

(d) Payment of the prescribed fee to the Board shall be made in the form of a cashier's check, money order, credit card, or debit card.

(e) In the event the drawer of the bad check fails to pay the prescribed fee, during which time the license or renewal lapses for four years, the license shall not be renewed and the licensee for whom the check was to benefit shall fulfill all requirements of a new applicant set forth in G.S. 87-10 and Rules .0303 and .0503 of this Chapter.

History Note: Authority G.S. 25-3-506; 87-4; 87-10;
Eff. January 1, 1983;
Amended Eff. April 1, 2014; April 1, 2003; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0703 Eff. January 2, 2020.

SECTION .0800 - CONTESTED CASES

21 NCAC 12A .0801	GENERAL RULES
21 NCAC 12A .0802	OPPORTUNITY FOR LICENSEE OR APPLICANT TO HAVE HEARING
21 NCAC 12A .0803	NOTICE OF CONTEMPLATED BOARD ACTION: REQUEST FOR HEARING
21 NCAC 12A .0804	REQUEST FOR HEARING
21 NCAC 12A .0805	GRANTING HEARING REQUEST
21 NCAC 12A .0806	NOTICE OF HEARING
21 NCAC 12A .0807	WHO SHALL HEAR CONTESTED CASES
21 NCAC 12A .0808	PLACE OF HEARING
21 NCAC 12A .0809	INTERVENTION
21 NCAC 12A .0810	HEARING OFFICERS
21 NCAC 12A .0811	CONDUCT OF CONTESTED CASE
21 NCAC 12A .0812	DISCOVERY
21 NCAC 12A .0813	DEPOSITIONS
21 NCAC 12A .0814	CONDUCT OF HEARING
21 NCAC 12A .0815	DECISION OF BOARD

History Note: Authority G.S. 1A-1; Rule 24; 1A-1; Rules 26 through 33; 87-10; 87-11; 87-15.1; 150A-3; 150A-23; 150A-23(a); 150A-24 through 150A-33; 150A-36; 150A-37;
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Repealed Eff. January 1, 1983;
Recodified from 21 NCAC 12 .0801-.0815 Eff. January 2, 2020.

21 NCAC 12A .0816 ADMINISTRATIVE HEARING

History Note: Authority G.S. 150A-11; 150A-14;
Eff. January 1, 1983;
Amended Eff. December 1, 1985;
Repealed Eff. September 1, 1988;
Recodified from 21 NCAC 12 .0816 Eff. January 2, 2020.

21 NCAC 12A .0817 RIGHT TO HEARING

History Note: Authority G.S. 87-11(b); 150B-11; 150B-38;
Eff. September 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0817 Eff. January 2, 2020.

21 NCAC 12A .0818 REQUEST FOR HEARING

(a) A person aggrieved as defined by G.S. 150B-2 may submit a request for a hearing pursuant to G.S. 150B-38 before the Board in writing to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request shall contain the following information:

- (1) name and address of the aggrieved person;
- (2) a statement of the action taken by the Board that is challenged; and
- (3) a statement of the way in which the aggrieved person has been aggrieved.

(b) Upon receipt of a request for a hearing, the Board shall acknowledge the request and schedule a hearing.

History Note: Authority G.S. 87-4; 87-11; 150B-38;
Eff. September 1, 1988;
Amended Eff. June 1, 2011; August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0818 Eff. January 2, 2020.

21 NCAC 12A .0819 GRANTING OR DENYING HEARING REQUEST

(a) The Board shall decide whether to grant a request for a hearing.

(b) The denial of request for a hearing shall be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing shall be signified by the issuing of a notice as required by G.S. 150B-38(b).

History Note: Authority G.S. 87-11(b); 150B-38;
Eff. September 1, 1988;
Amended Eff. July 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0819 Eff. January 2, 2020.

21 NCAC 12A .0820 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall comply with G.S. 150B-38(b).

(b) Based upon information received, if the Board determines that the public health, safety, or welfare requires emergency action, it may issue an order summarily suspending a license or exam credentials. Upon service of the order, the licensee or qualifier to whom the order is directed shall cease the practice of general contracting in North Carolina. The Board shall give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

History Note: Authority G.S. 87-4; 87-11(b); 150B-3(c); 150B-38;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0820 Eff. January 2, 2020.

21 NCAC 12A .0821 WHO SHALL HEAR CONTESTED CASES

All administrative hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 87-11(b); 150B-38; 150B-40;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0821 Eff. January 2, 2020.

21 NCAC 12A .0822 INFORMAL PROCEDURES

The Board and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

History Note: *Authority G.S. 87-11(b); 150B-41;*
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
2016;
Recodified from 21 NCAC 12 .0822 Eff. January 2, 2020.

21 NCAC 12A .0823 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of case).

(b) The petition must include the following information:

- (1) The name and address of petitioner;
- (2) The business or occupation of petitioner, where relevant;
- (3) A full identification of the hearing in which petitioner is seeking to intervene;
- (4) The statutory or non-statutory grounds for intervention;
- (5) Any claim or defense in respect of which intervention is sought; and
- (6) A summary of the arguments of evidence petitioner seeks to present.

(c) The person desiring to intervene shall serve copies of the petition on all parties to the case.

(d) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary, which are imposed on the intervenor.

(e) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

History Note: *Authority G.S. 87-11(b); 150B-38;*
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
2016;
Recodified from 21 NCAC 12 .0823 Eff. January 2, 2020.

21 NCAC 12A .0824 TYPES OF INTERVENTION

(a) Intervention of Right. A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.

(b) Permissive Intervention. A petition to intervene permissibly as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:

- (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearing; and
- (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.

(c) The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

History Note: *Authority G.S. 87-11(b); 150B-38;*
Eff. September 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
2016;
Recodified from 21 NCAC 12 .0824 Eff. January 2, 2020.

21 NCAC 12A .0825 DISQUALIFICATION OF BOARD MEMBERS

History Note: *Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-40;*
Eff. October 1, 1988;
Expired Eff. August 1, 2016 pursuant to G.S. 150B-21.3A;

Recodified from 21 NCAC 12 .0825 Eff. January 2, 2020.

21 NCAC 12A .0826 FAILURE TO APPEAR

Should a party fail to appear at a scheduled hearing, the Board may proceed with the hearing and make its decision in the absence of the party, provided that the party has been given notice in accordance with G.S. 150B-38 and unless otherwise directed by law. The Board may order a continuance in order to give the party another opportunity to appear as determined on a case by case basis and upon good cause shown.

History Note: Authority G.S. 87-4; 87-11(b); 150B-38; 150B-40; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018; Recodified from 21 NCAC 12 .0826 Eff. January 2, 2020.

21 NCAC 12A .0827 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall:

- (1) be made in writing to the Board;
- (2) identify any document sought;
- (3) include the full name and home or business address of all persons to be subpoenaed; and
- (4) if known, the date, time, and place for responding to the subpoena.

The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain the following:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour, and location of the hearing in which the witness is commanded to appear;
- (4) a particularized description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued;
- (6) the date of issue;
- (7) the signature of the presiding officer or his designee; and
- (8) a "return of service." The "return of service" form as filled out, shall show:
 - (A) the name and capacity of the person serving the subpoena;
 - (B) the date on which the subpoena was delivered to the person directed to make service;
 - (C) the date on which service was made;
 - (D) the person on whom service was made;
 - (E) the manner in which service was made; and
 - (F) the signature of the person making service.

(c) Subpoenas shall be served in a manner set forth in Rule 45 of the N.C. Rules of Civil Procedure.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Written objections shall comply with Rule 45 of the N.C. Rules of Civil Procedure.

(e) The party who requested the subpoena may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness with filing the response with the Board.

(f) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(g) Promptly after the close of such hearing, a majority of the Board members with voting authority will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

History Note: Authority G.S. 87-11(b); 150B-38; 150B-39; 150B-40; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;

*Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0827 Eff. January 2, 2020.*

21 NCAC 12A .0828 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses from the hearing room to preserve the integrity of the testimony presented at the hearing. At the request of a party, witness, or the Board, a witness shall appear by videoconference, via live face-to-face video. Requests to appear by videoconference are to be directed to the Board or the Board's attorney not less than two business days prior to the date of the hearing.

*History Note: Authority G.S. 87-11(b); 150B-38; 150B-40;
Eff. September 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0828 Eff. January 2, 2020;
Amended Eff. December 1, 2023.*

21 NCAC 12A .0829 FINAL DECISION

In all cases heard by the Board, the Board shall issue a final written decision within 60 days following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

*History Note: Authority G.S. 87-4; 87-11(b); 150B-38; 150B-42;
Eff. September 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0829 Eff. January 2, 2020.*

21 NCAC 12A .0830 PROPOSALS FOR DECISIONS

(a) If an administrative law judge hears a contested case pursuant to G.S. 150B-40(e), a party may file written exception and alternative finding of facts and conclusions of law to the "proposal for decision" issued by the administrative law judge. The written exceptions and alternative findings of facts and conclusions of law shall be received by the Board within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions shall be written and refer specifically to pages of the record or otherwise identify the occurrence to which exception is taken. The exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions shall bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case).

(c) Pursuant to G.S. 150B-40(e), any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, Board staff shall issue notice to all parties designating time and place for such oral argument.

(e) The Board's final decision shall be a part of the record, a copy shall be given to all parties, and shall be the "final agency decision" for the right to judicial review. The final written decision shall be issued by the Board within 60 days from the date oral arguments were presented to the Board. If there are no oral arguments presented, the final written decision shall be issued within 60 days of the date on which the Board rendered its decision.

*History Note: Authority G.S. 87-4; 87-11(b); 150B-38; 150B-40;
Eff. September 1, 1988;
Amended Eff. July 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018;
Recodified from 21 NCAC 12 .0830 Eff. January 2, 2020.*

SECTION .0900 – HOMEOWNERS RECOVERY FUND

21 NCAC 12A .0901 DEFINITIONS

The following definitions apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article 1A, Chapter 87 of the General Statutes:

- (1) "Constructing or altering" means contracting for the construction or alteration of a single-family residential dwelling unit.
- (2) "Dishonest conduct" means conduct described in G.S. 87-15.5(3).
- (3) "Incompetent conduct" means conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.
- (4) "Owner or former owner" means a person who contracted with a general contractor for the construction or purchase of a single-family residential dwelling unit. "Owner or former owner" does not include a person who is a spouse, child, parent, grandparent, sibling, partner, associate, officer, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, the term does not include general contractors or any financial or lending institution, or any owner or former owner of a single-family residential dwelling unit that has been the subject of an award from the Homeowners Recovery Fund resulting from the same dishonest or incompetent conduct. "Owner or former owner" does not include the owner or former owner of real property who purchased, owned, constructed, altered, or contracted for construction or alteration of a single-family residential dwelling unit without intending to occupy the single-family residential dwelling unit as a residence.
- (5) "Substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof whereupon the owner can use the same for its intended use.
- (6) "Separately owned residence" means a building whose construction is governed by the residential building code adopted by the Building Code Council pursuant to G.S. 143-138.

*History Note: Authority G.S. 87-4; 87-15.6;
Eff. January 4, 1993;
Amended Eff. April 1, 2014; July 1, 2008; April 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0901 Eff. January 2, 2020.*

21 NCAC 12A .0902 MANAGEMENT OF FUND

(a) The Secretary-Treasurer, as the Board's Chief Administrative Officer, shall:

- (1) Establish a special account of the Board for those monies collected pursuant to G.S. 87-15.6(b);
- (2) Make expenditures from the fund as authorized by G.S. 87-15.7(b) by signing checks for expenditures after the checks are signed by the Chairman.

(b) Until such time as the fund initially reaches two hundred fifty thousand dollars (\$250,000.00), or at any time thereafter that the fund has insufficient assets in excess of two hundred fifty thousand dollars (\$250,000.00) to pay outstanding claims, the Secretary-Treasurer shall not disburse any payments to an applicant for recovery. Any applicant who is awarded payment from the fund, however, shall hold a vested right for payment once the fund reaches a sufficient level. Authorized payments which cannot be made due to lack of funds will be paid as funds become available, beginning with those payments which have been unsatisfied for the longest period of time.

(c) Monies forwarded to the Board pursuant to G.S. 87-15.6(b) for deposit into the fund shall be accompanied by a verified statement signed by the city or county inspector on a form provided by the Board. The form shall require information concerning the number of permits issued by the reporting inspections department from which the recovery fund fee was collected and the total dollar amount due to the fund for that particular quarter.

*History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0902 Eff. January 2, 2020.*

21 NCAC 12A .0903 APPLICATION FOR PAYMENT

(a) Homeowners meeting the requirements of G.S. 87-15.8 who wish to file for reimbursement from the Homeowners Recovery Fund shall provide the following information on an application prescribed by the Board:

- (1) the applicant's name and address,
- (2) the amount of the claim,
- (3) a description of the acts of the general contractor which constitute the grounds for the claim, and
- (4) a statement that the applicant has exhausted all civil remedies or the general contractor has filed for bankruptcy.

Requests for the application form shall be directed to the Board at the address shown in Rule .0101 of this Chapter.

(b) If the applicant has exhausted all civil remedies pursuant to G.S. 87-15.8(3)(a), the application shall include certified copies of the complaint, judgment, and return of execution marked as "unsatisfied."

(c) If the applicant is claiming against a general contractor that was a corporation dissolved no later than one year after the date of discovery by the applicant of the facts constituting the dishonest or incompetent conduct, then the applicant shall include certified copies of documents evidencing the dissolution.

(d) If the applicant has been precluded from filing suit, obtaining a judgment, or otherwise proceeding due to the bankruptcy of the general contractor, then the applicant shall submit a certified copy of the bankruptcy petition, any proof of claim, and documents from the bankruptcy court or trustee certifying that the applicant has not and will not receive any payment from the bankruptcy proceeding.

(e) If the applicant is claiming against the estate of a deceased general contractor, then the applicant shall submit a statement from the administrator of the estate certifying that the applicant has not and will not receive any payment from the estate.

(f) If the applicant includes copies of a judgment and return of execution marked as unsatisfied, the applicant must demonstrate that the writ of execution was filed in the following counties:

- (1) where the project at issue was located;
- (2) where the contractor's last known principal place of business was located; and
- (3) if the contractor was a licensee of the Board, the county in which the last address provided to the Board was located.

*History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Amended Eff. March 1, 2005; August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. September 1, 2019;
Recodified from 21 NCAC 12 .0903 Eff. January 2, 2020.*

21 NCAC 12A .0904 FILING DEADLINE AND SERVICE

(a) Applicants seeking recovery from the fund shall be forever barred unless application is made within one year after termination of all proceedings, including appeals, in connection with an unsatisfied judgment obtained against a general contractor. Claims based upon the bankruptcy, death, or dissolution of the general contractor shall be forever barred unless application is made within three years from the date of discovery by the applicant of the facts constituting the dishonest or incompetent conduct or within six years of substantial completion of the construction or alteration of the residence in question, whichever comes first.

(b) Applications shall be filed at the address shown in Rule .0101 of this Chapter. The Board shall serve a copy of the application upon the general contractor who allegedly caused the loss. Service shall be accomplished by certified mail, return receipt requested, or other methods authorized by G.S. 150B-38(c).

*History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Amended Eff. April 1, 2007; August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0904 Eff. January 2, 2020.*

21 NCAC 12A .0905 MULTIPLE CLAIMS

- (a) Any time the Board has notice of more than one application or potential claim for payment from the fund arising out of the conduct of a single general contractor, the Board may, in its discretion, direct that all applications filed before a date determined by the Board, be consolidated for hearing.
- (b) When consolidation is appropriate, the Board shall issue to the general contractor, the applicants and potential claimants, an Order of Consolidation setting forth the deadline for filing all applications to be consolidated. On or before the deadline, the Board may, in its discretion, either extend the deadline or issue to the general contractor and all applicants notice of the time, date and place set for a hearing on the consolidated applications.
- (c) Claims for which the Board has received no notice or for which no application has been filed prior to the deadline set forth in the Order of Consolidation shall not be considered by the Board until after the completion of all proceedings relating to the consolidated applications and payment thereon.

*History Note: Authority G.S. 87-15.6; 87-15.7;
Eff. January 4, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0905 Eff. January 2, 2020.*

21 NCAC 12A .0906 PROCESSING OF CLAIM APPLICATION

- (a) Staff shall refer a filed application for a claim to the Recovery Fund Review Committee. The Recovery Fund Review Committee is a committee made up of the following individuals:
 - (1) one member of the Board;
 - (2) the legal counsel of the Board; and
 - (3) the Secretary-Treasurer.
- (b) Within 30 days after service of a copy of the application upon the general contractor, the general contractor may file a response to the application setting forth answers and defenses. Responses shall be filed with the Board and copies shall be served on the applicant.
- (c) The Committee shall dismiss a claim if an applicant fails to respond to an inquiry from the Committee or its representative within six months of receipt of the inquiry.
- (d) After all preliminary evidence has been received, the Committee shall make a recommendation regarding the disposition of the application. From the evidence, it shall recommend to the Board that:
 - (1) the application be dismissed as meritless; or
 - (2) the application and charges contained therein be presented to the Board for a hearing and determination by the Board on the merits of the application.
- (e) The Committee shall give notice of the recommendation to the applicant and the general contractor within 10 days of the Committee's decision. The Committee is not required to notify the parties of the reasons for its recommendation. The decision of the Board is final.

*History Note: Authority G.S. 87-4; 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Amended Eff. April 1, 2014; April 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0906 Eff. January 2, 2020.*

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.*

21 NCAC 12A .0908 ORDER DIRECTING PAYMENT FROM FUND

After any hearing, the Board may find that an applicant should be paid from the fund and the Board may enter an Order requiring payment from the fund in whatever sum the Board deems appropriate in accordance with the limitations contained in Rule .0910 of this Chapter. All payments are a matter of privilege and not of right.

*History Note: Authority G.S. 87-15.5; 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Recodified from 21 NCAC 12 .0908 Eff. January 2, 2020.*

21 NCAC 12A .0909 SETTLEMENT OF CLAIMS

The claim or claims forming the basis of an application for recovery from the fund may be compromised and settled by the applicant and the general contractor after the filing of the application. The parties shall notify the Board immediately of any such settlement. Payment of the claim, in whole or in part, by the general contractor as part of a settlement will result in the claim no longer being a "reimbursable loss" as defined by G.S. 87-15.5(6)(b), and the claim will be dismissed by the Board.

*History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;*

Recodified from 21 NCAC 12 .0909 Eff. January 2, 2020.

21 NCAC 12A .0910 LIMITATIONS; PRO RATA DISTRIBUTION

(a) Payments from the fund for an approved application shall not exceed an amount equal to 10 percent of the total amount in the fund at the time the application is approved by the Board. All applications considered by the Board at the same meeting shall be subject to the same limitation.

(b) Consequential damages, multiple or punitive damages, civil or criminal penalties or fines, incidental damages, special damages, interest, and court costs shall not constitute monetary losses.

*History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8;
Eff. March 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
2016;
Recodified from 21 NCAC 12 .0910 Eff. January 2, 2020.*

21 NCAC 12A .0911 SUBROGATION OF RIGHTS

When the Board has paid from the fund any sum to the applicant, the Board shall be subrogated to the rights of the applicant and the applicant shall assign to the Board all of his rights, title, and interest in the claim to the extent of the amount paid from the fund.

*History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.9;
Eff. January 4, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
2016;
Recodified from 21 NCAC 12 .0911 Eff. January 2, 2020.*

21 NCAC 12A .0912 ACTIONS AGAINST GENERAL CONTRACTOR

Nothing contained in these Rules shall prohibit or limit the authority of the Board to take disciplinary action against its licensees or to seek injunctive relief against those persons who have engaged in the unauthorized practice of general contracting. Stipulations made between the general contractor and the applicant as part of settlement or compromise of any claim shall not be binding on the Board in any disciplinary proceeding or action for injunction.

*History Note: Authority G.S. 87-11; 87-13; 87-13.1; 87-15.6;
Eff. January 4, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
2016;
Recodified from 21 NCAC 12 .0912 Eff. January 2, 2020.*