

## CHAPTER 34 - BOARD OF FUNERAL SERVICE

### SUBCHAPTER 34A - BOARD FUNCTIONS

#### SECTION .0100 - GENERAL PROVISIONS

##### **21 NCAC 34A .0101 AGENCY NAME AND ADDRESS**

The name of the agency promulgating the rules in this Chapter is the North Carolina Board of Funeral Service. As used in these Rules, the word "Board" shall refer to this agency. The office of the Board is located at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina 27605.

*History Note:* Authority G.S. 90-210.22; 90-210.23(a);  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. July 1, 2004; November 1, 2001; December 1, 1993; July 1, 1991; October 1, 1983;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

##### **21 NCAC 34A .0102 PURPOSE OF BOARD**

*History Note:* Authority G.S. 90-210.23(a),(i);  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. August 1, 2004; May 1, 1993; July 1, 1991;  
Repealed Eff. August 1, 2012.

##### **21 NCAC 34A .0103 PETITION FOR NOMINATION**

##### **21 NCAC 34A .0104 VOTING RECORDS**

*History Note:* Authority G.S. 90-210.23(a); 90-210.122(c); 90-210.134(a);  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. January 1, 2009; August 1, 2004; July 1, 1991; September 1, 1979;  
Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.

##### **21 NCAC 34A .0105 PUBLIC INSPECTION OF MATERIALS**

*History Note:* Authority G.S. 90-210.23(a),(i);  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. August 1, 1988; September 1, 1979;  
Repealed Eff. August 1, 2012.

##### **21 NCAC 34A .0106 REQUESTS FOR REASONS FOR ADOPTION OF RULE**

##### **21 NCAC 34A .0107 REQUESTS FOR PROMULGATION: AMENDMENT OR REPEAL**

*History Note:* Authority G.S. 90-210.23(a); 150B-11(1); 150B-12(e); 150B-20;  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. July 1, 2004; August 1, 1988;  
Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.

##### **21 NCAC 34A .0108 REQUESTS FOR DECLARATORY RULING**

(a) For the purpose of dealing with a request by a person aggrieved for a declaratory ruling, pursuant to G.S. 150B-4, the following procedures shall apply:

- (1) The request shall be in writing on a form provided by the Board, dated and verified by the person submitting the same, and shall be submitted in person or by mail to the office of the Board.
- (2) The form shall require the individual to submit the name and address of the person submitting the same; his or her license number or numbers if licensed by the Board; his or her current employment; a description of the rule or statute referred to; a statement of any facts the applicability of which to a rule or statute the person is questioning; and a statement of the manner in which the person is aggrieved by the rule or statute or its potential application to him or her.
- (3) Within 30 days after receiving such a request completed form, the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the request. At such meeting the Board shall make a decision by majority vote of those present as to whether to issue the ruling. The Board shall issue a ruling except:
  - (A) when it finds that the person making the request is not a "person aggrieved", as defined in G.S. 150B-2(6); or
  - (B) when it finds, in a request concerning the validity of a rule, that the circumstances are so unchanged since the adoption of the rule in question that a ruling would not be warranted; or
  - (C) when it finds, in a request concerning the validity of a rule, that the rulemaking record shows that the Board considered all specified relevant factors when it adopted the rule in question.

(b) The Board shall, not later than the 60th day after it received such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the Board's ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. If the Board decides to make the ruling, it may make the ruling at the meeting convened to consider the request, or it may defer its ruling until a later date, but not later than the 60th day after the request for a ruling is received. Before making the ruling the Board may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in such notice. Such ruling shall be made by the Board at a meeting at which at least a quorum of its members shall be present and by majority vote of those present.

*History Note:* Authority G.S. 90-210.23(a); 150B-4; Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. January 1, 2009; July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

## **21 NCAC 34A .0109 ADMINISTRATIVE HEARING PROCEDURES**

*History Note:* Authority G.S. 90-210.23(a),(d); 150B-21.6; 150B-38(h); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. July 1, 2004; December 1, 1988; July 1, 1988; Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.

<b>21 NCAC 34A .0110</b>	<b>REQUEST FOR HEARING IN CONTESTED CASE</b>
<b>21 NCAC 34A .0111</b>	<b>GRANTING: DENYING HEARING REQUEST: CONTESTED CASE</b>
<b>21 NCAC 34A .0112</b>	<b>NOTICE OF HEARING IN CONTESTED CASE</b>
<b>21 NCAC 34A .0113</b>	<b>WHO SHALL HEAR</b>
<b>21 NCAC 34A .0114</b>	<b>PETITION FOR INTERVENTION IN CONTESTED CASE</b>
<b>21 NCAC 34A .0115</b>	<b>TYPES OF INTERVENTION</b>
<b>21 NCAC 34A .0116</b>	<b>SUBPOENAS</b>

*History Note:* Authority G.S. 90-210.23(a),(d); 150B-11; 150B-23; 150B-27; 150B-32(a); 150B-34; 150B-36; Eff. February 1, 1976; Readopted Eff. September 27, 1977;

*Repealed Eff. July 1, 1988.*

**21 NCAC 34A .0117      FORM OF SUBPOENA**  
**21 NCAC 34A .0118      FORM OF SUBPOENA TO PRODUCE DOCUMENT OR OBJECT**

*History Note:      Authority G.S. 90-210.23(a);  
                         Eff. February 1, 1976;  
                         Readopted Eff. September 27, 1977;  
                         Amended Eff. August 1, 2004; August 1, 1988;  
                         Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.*

**21 NCAC 34A .0119      FINAL DECISION IN CONTESTED CASE**  
**21 NCAC 34A .0120      PROPOSAL FOR DECISION IN CONTESTED CASE**

*History Note:      Authority G.S. 90-210.23(a),(d); 150B-11; 150B-23; 150B-27; 150B-32(a);  
                         150B-34; 150B-36;  
                         Eff. February 1, 1976;  
                         Readopted Eff. September 27, 1977;  
                         Repealed Eff. July 1, 1988.*

**21 NCAC 34A .0121      NOTICE MAILING LIST**

*History Note:      Authority G.S. 90-210.23(a); 150B-11(1);  
                         Eff. February 1, 1976;  
                         Readopted Eff. September 27, 1977;  
                         Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.*

**21 NCAC 34A .0122      CHARACTER AFFIDAVIT FORM**

Affidavits of good moral character shall be furnished on forms provided by the Board. The affiant shall furnish the name and address of the affiant, the name of the applicant, the length of time the affiant has been acquainted with the applicant, an affirmation of the good moral character of the applicant, certification by a notary public, and other information the Board deems necessary as required by law.

*History Note:      Authority G.S. 90-210.23(a); 90-210.26;  
                         Eff. September 1, 1979;  
                         Amended Eff. August 1, 2004.  
                         Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,  
                         2017.*

**21 NCAC 34A .0123      CONSUMER COMPLAINT FORM**

The Board may provide consumer complaint forms. The complainant shall furnish the names and addresses of all parties involved, a description of the complaint, the signature of the complainant, and other information that the Board deems necessary as required by law.

*History Note:      Authority G.S. 90-210.23(a); 90-210.18(a); 90-210.25(e); 90-210.134(a);  
                         Eff. September 1, 1979;  
                         Recodified from 21 NCAC 34 .0124 Eff. February 7, 1991;  
                         Amended Eff. August 1, 2004;  
                         Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,  
                         2017.*

**21 NCAC 34A .0124      SOLICITATION**

(a) Definitions. As used in this Rule:

- (1) "Licensee" shall mean a person licensed by the Board as a funeral service, funeral director, or embalmer.

- (2) "Real-time communication" shall mean any in-person, live telephone, or real-time electronic contact.
  - (3) "Solicit" shall mean engaging in the act of solicitation.
  - (4) "Solicitation," shall mean any uninvited, intentional contact with an individual for the purpose of procuring the right to provide funeral services or merchandise, either immediately or at a future date when financial gain is a significant motive.
- (b) All licensees of the Board must comply with the following in order to avoid committing solicitation as prohibited by G.S. 90-210.25(e)(1)d:
- (1) A licensee of the Board shall not solicit professional employment from a prospective customer by real-time communication when a significant motive for the licensee's doing so is the licensee's pecuniary gain, unless the person contacted:
    - (A) is a licensee; or
    - (B) has a family, close personal, or prior professional relationship with the licensee.
  - (2) A licensee shall not solicit professional employment from a prospective customer by real-time communication or by written, recorded or electronic communication that is not a real-time communication even when allowed by Parts (b)(1)(A) or (b)(1)(B) of this Rule if:
    - (A) the prospective customer has made known to the licensee a desire not to be solicited by the licensee; or
    - (B) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.
  - (3) Every written, recorded or electronic communication that is not a real-time communication from a licensee soliciting professional employment from a prospective customer known to be in need of funeral services for an imminent or recent death shall include the words "This is an advertisement for funeral services" on the outside envelope, if a written communication sent by mail, and at the beginning of the body of a written or electronic communication in print as large or larger than the licensee's or licensee's business name, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in Parts (b)(1)(A) or (b)(1)(B) of this Rule.
- (c) A licensee shall violate this Rule whenever any agent, employee, or assistant of the licensee violates Subparagraphs (b)(1), (b)(2), or (b)(3) of this Rule with the knowledge, direction, or consent of the licensee.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(e)(1)d; Eff. April 1, 1987; Recodified from 21 NCAC 34 .0126 Eff. February 7, 1991; Amended Eff. February 1, 2009; July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

## **21 NCAC 34A .0125 FINGERPRINTS**

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1), (2), (3), (4); 90-210.25(e)(1); 90-210.43(f); 90-210.50(a); 90-210.67(b), (c); 90-210.69(a), (c); Eff. August 2, 1993; Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.*

## **21 NCAC 34A .0126 COMPLAINTS; PRELIMINARY DETERMINATIONS**

- (a) A person who believes that any person, firm or corporation is in violation of any provision of G.S. 90, Article 13A, 13D, 13E, or 13F or Title 21, Chapter 34, of the North Carolina Administrative Code, may file a written complaint with the Board's staff. If the accused is subject to the jurisdiction of the Board, the complaint shall be handled pursuant to this Rule.
- (b) A complaint shall be handled initially by the Board's Executive Director, or staff designated by him or her. If a complaint on its face appears to be outside the jurisdiction of the Board, the Executive Director or his or her staff designees may forward the complaint to the Board's disciplinary committee without following the procedures of Paragraphs (c) through (e) of this Rule and may forward the matter to any federal or state agency with the appropriate jurisdiction.

(c) The Executive Director or his or her staff designees shall notify the accused of the complaint in writing. Such notice shall be served by hand or by certified mail, return receipt requested; shall state the allegations as contained in the complaint, or may enclose a copy of the complaint; and shall contain a request that the accused submit a response in writing within 10 days from the date the notice of the complaint is received by the accused.

(d) If the accused responds to the allegations, the Executive Director or his or her staff designees shall forward a summary of the response, or the response itself, to the person who filed the complaint and give him or her 15 days to respond. Following a receipt of a rebuttal by the complainant or after 15 days without having received a rebuttal and any additional investigation deemed necessary by the Executive Director or his or her staff designees, the matter shall then be referred to the disciplinary committee.

(e) If the accused does not respond to the allegations, the Executive Director or his or her staff designees shall investigate the allegations and refer the complaint and any other available evidence to the Board's disciplinary committee for review.

(f) In accordance with Paragraphs (d) through (e) of this Rule, the disciplinary committee shall review the complaint file. The disciplinary committee may request additional investigation of a file or make a preliminary determination to recommend that the Board take one of the following actions:

- (1) that the complaint be dismissed because of insufficient grounds to believe one or more licensees has violated any law or regulation of the Board or other grounds requiring dismissal;
- (2) that a letter of caution be issued;
- (3) that the case be compromised pursuant to G.S. 90-210.25(e)(1), 90-210.123(g), or 90-210.69(c);
- (4) that the case be set for a contested case hearing because sufficient grounds exist to believe one or more licensees may have violated a law or regulation of the Board justifying disciplinary action;  
or
- (5) Any other action the Board may take that is authorized by law.

(g) The Board may accept or reject, in whole or in part, the recommendations of the disciplinary committee.

*History Note:* Authority G.S. 90-210.23(a),(d); 90-210.25(e); 90-210.69(a),(c); 90-210.80; 90-210.123(g); 90-210.134(a);  
Eff. October 1, 1993;  
Amended Eff. February 1, 2009; July 1, 2004; August 1, 1998; November 1, 1994;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

## **21 NCAC 34A .0127 FILING OF DOCUMENTS**

Any document that does not require a fingerprint card or the payment of a fee, or that does not pertain to elections to the N.C. Crematory Authority or to a resident traineeship, may be filed with the Board by U.S. mail, private courier service, facsimile, or hand delivery. All other documents must be filed by U.S. mail, private courier service, or hand delivery. Documents shall be considered filed on the date of receipt or, if sent by U.S. mail or private courier service, on the date of postmark or date stamp used by the private courier respectively.

*History Note:* Authority G.S. 90-210.23(a);  
Eff. January 1, 2009;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

## **SECTION .0200 - FEES AND OTHER PAYMENTS**

### **21 NCAC 34A .0201 FEES AND OTHER PAYMENTS**

(a) Fees for funeral service shall be as follows:

Establishment permit	
Application	\$250.00
Annual renewal	\$200.00
Late renewal fee	\$100.00
Establishment and embalming facility reinspection fee	\$100.00
Courtesy card	
Application	\$ 75.00
Annual renewal	\$ 50.00

Out-of-state licensee		
Application		\$200.00
Embalmer, funeral director, funeral service		
Application, North Carolina resident		\$150.00
Application, non-resident		\$200.00
Annual renewal		
Embalmer		\$ 75.00
Funeral Director		\$ 75.00
Total fee, embalmer and funeral director, when both are held by same person		\$ 100.00
Funeral service		\$ 100.00
Inactive status		\$ 30.00
Reinstatement fee		\$ 50.00
Resident trainee permit		
Application		\$ 50.00
Voluntary change in supervisor		\$ 50.00
Annual renewal		\$ 35.00
Late renewal		\$ 25.00
Duplicate License certificate		\$ 25.00
Chapel registration		
Application		\$150.00
Annual renewal		\$100.00
Late renewal		\$ 75.00
(b) Fees for crematories shall be as follows:		
License		
Application		\$400.00
Annual renewal		\$150.00
Late renewal fee		\$ 75.00
Crematory reinspection fee		\$100.00
Per-cremation fee		\$ 10.00
Late filing or payment fee for each cremation		\$ 10.00
Late filing fee for cremation report, per month		\$ 75.00
Crematory Manager Permit		
Application		\$150.00
Annual renewal		\$ 40.00
(c) Fees for preneed funeral contract regulation shall be as follows:		
Preneed funeral establishment license		
Application		\$150.00
Annual renewal		\$150.00
Late renewal fee		\$100.00
Reinspection fee		\$100.00
Preneed sales license		
Application		\$ 20.00
Annual renewal		\$ 20.00
Late renewal fee		\$ 25.00
Preneed contract filings		
Filing fee for each contract		\$ 20.00
Late filing or payment fee for each contract		\$ 25.00
Late filing fee for each certificate of performance		\$ 25.00
Late filing fee for annual report		\$150.00
(d) Fees for Transportation Permits		
Application		\$125.00
Annual renewal		\$ 75.00
Late fee		\$ 50.00

*History Note:* Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a); Eff. September 1, 1979;

*Amended Eff. January 1, 1991; July 1, 1988; January 1, 1988; October 1, 1983;  
Recodified from 21 NCAC 34 .0123 Eff. February 7, 1991;  
Amended Eff. December 1, 1993; August 2, 1993; May 1, 1993, July 1, 1991;  
Temporary Amendment Eff. October 1, 1997;  
Amended Eff. August 20, 2014; March 1, 2004; August 1, 1998;*

**21 NCAC 34A .0202      WORTHLESS CHECKS**

- (a) Any person, firm or corporation submitting to the Board a check which is dishonored and returned shall be charged a processing fee in the maximum amount per check as permitted by the North Carolina law in effect at the time.
- (b) Until the worthless check has been made good and the processing fee and any applicable late payment penalties have been paid, any license, permit, authority or privilege which as been issued or given based on the worthless check shall be invalid.
- (c) All documents delivered by the Board requesting payment of fees shall contain a notice of the processing fee as required by North Carolina law.

*History Note:      Authority G.S. 90-210.23(a); 25-3-512; 150B-11;  
Eff. October 1, 1983;  
Amended Eff. July 1, 1988;  
Recodified from 21 NCAC 34 .0125 Eff. February 7, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,  
2017.*

**21 NCAC 34A .0203      REPORT TO GENERAL ASSEMBLY**

*History Note:      Authority G.S. 90-210.23(a); 93B-2(d);  
Eff. September 1, 2010;  
Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.*