

## 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.

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

The purpose and function of the Board are to examine, license and regulate the practice of funeral service, the operation of crematories, the sale of preneed funeral contracts in North Carolina, and the operation of Mutual Burial Associations, pursuant to the authority granted by Articles 13A, 13D, 13E, and 13F, Chapter 90, General Statutes of North Carolina.

*History Note:* Authority G.S. 90-210.23(a); 90-210.69(a); 90-210.134(a);  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. August 1, 2004; May 1, 1993; July 1, 1991.

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

All petitions for nomination of a person to the North Carolina Crematory Authority must be submitted on forms provided by the Board. The nominee shall furnish the name of the nominee and the signatures of three crematory operators.

*History Note:* Authority G.S. 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.

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

The Board shall maintain records for elections to the North Carolina Crematory Authority to show that a ballot was mailed to each crematory licensee and to show whether a ballot-enclosing envelope has been returned. Voting records shall include the name, address, and license number of the crematory operator, a record of whether and when the ballot has been mailed, and a record of whether and when the ballot-enclosing envelope has been returned.

*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.

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

All rules and all other written statements of policy or interpretations formulated, adopted or used by the Board in the discharge of its functions and all final orders, decisions and opinions, together with all materials which were before the Board at the time the final order, decision or opinion was made, are available for public inspection at the office of the Board during regular office hours.

*History Note:* Authority G.S. 90-210.23(a),(i); 150B-11(1),(2);  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. August 1, 1988; September 1, 1979.

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

For the purpose of dealing with a request by an interested person for a statement of reasons for adoption of a rule pursuant to G.S. 150B-12(e), an "interested person" shall be defined as any person affected by the rule. The request shall be in writing and dated and signed by the person submitting the same and shall be submitted in person or by mail to the office of the Board. It shall include a description of the rule referred to, and it may include any arguments or data the person believes to be relevant in connection with his request. The Board shall, not later than 15 days following the adoption of the rule or 15 days following the receipt of the request, whichever is later, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request, informing him as to the principal reasons for and against the adoption of the rule, incorporating therein the Board's reasons for overruling the consideration urged against its adoption.

*History Note:*      *Authority G.S. 90-210.23(a); 150B-11(1); 150B-12(e);  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. August 1, 1988.*

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

For the purpose of dealing with a petition of any person requesting an agency to adopt a rule, pursuant to G.S. 150B-20, the following procedures shall apply:

- (1) The petition shall be in writing and dated and verified by the petitioner and shall be submitted in person or by mail to the office of the Board.
- (2) The petition shall contain the name and address of the petitioner; his license number or numbers if licensed by the Board; his current employment; a description of the existing rule sought to be amended or repealed; a statement of the proposed rule or amendment to a rule; an argument in support of the petition; and a statement of how the proposed rule, amendment or repeal of a rule would affect the petitioner, if at all.
- (3) Within the time limits prescribed by G.S. 150B-20 the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the petition. At such meeting the Board shall decide, by majority vote of those present, whether to deny the petition or to initiate rule-making proceedings in accordance with G.S. 150B-21.1, G.S. 150B-21.1A, and G.S. 150B-21.2. Rule-making shall be initiated if the Board concludes, based on a study of the facts involved, that the public interest will be served thereby. The Board shall consider all of the contents of the submitted petition, plus any additional information it deems relevant. The Board shall, within the time limits prescribed by G.S. 150B-20, deposit in the United States mail, postage prepaid, a written statement addressed to the petitioner informing him as to whether the Board denied or approved the petition. If the decision is to deny the petition, such written statement shall include the Board's reasons for the denial. If the decision is to approve the petition, the Board shall proceed to issue notices of proposed rule-making within the time limits prescribed by G.S. 150B-20.

*History Note:*      *Authority G.S. 90-210.23(a); 150B-20;  
Eff. February 1, 1976;  
Readopted Eff. September 27, 1977;  
Amended Eff. July 1, 2004; August 1, 1988.*

#### **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.

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

The following rules establishing procedures for contested cases, adopted by the Office of Administrative Hearings and contained in Title 26, Chapter 3 of the North Carolina Administrative Code, are hereby incorporated by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h): .0101(1), .0105, .0106, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0119, .0120, .0121, .0122 and .0125. This incorporation is made under G.S. 150B- 21.6 and applies to the listed rules in 26 NCAC 03 as amended as of January 1, 2004. References in such rules to the Office of Administrative Hearings shall be deemed for this purpose to be references to the Board, and the presiding officer for board hearings shall have the powers and duties given in such rules to the administrative law judge. Copies of the rules adopted by reference are on file in the Board's office and may be obtained there.

*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.

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

*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**

All subpoenas shall be issued on forms provided by the Board. The subpoena shall furnish the name of the contested case; the name of the person subpoenaed; the date, time, and place to appear; the name of the person or persons applying for the subpoena; and any other information the Board deems necessary as determined by law. The form shall be signed and dated by an authorized representative of the Board and the party serving the subpoena, if applicable.

*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.*

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

All subpoenas to produce documents or objects shall be issued on forms provided by the Board. The subpoena shall furnish name of the contested case; the name of the person subpoenaed; the date, time, and place to appear; a description of the documents or objects to bring; the name of the person or persons applying for the subpoena; and any other information the Board deems necessary as required by law. The subpoena shall be signed and dated by an authorized representative of the Board and the party serving the subpoena, if applicable.

*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.*

**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**

Any person or agency desiring to be placed on the mailing list for board rulemaking notices may file such request in writing with the Board office, furnishing his or its name and mailing address. The letter of request should state those subject areas within the authority of the Board for which notice is requested. The Board may require reasonable postage and stationery costs to be paid by persons receiving such notices.

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

**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.

#### **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.

#### **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.

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

The Board shall require applicants for registration as resident trainees and for licensure to submit to a fingerprint check; provided, however, the Board may waive this requirement for an applicant for licensure who previously submitted to a fingerprint check as an applicant for registration as a resident trainee.

*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.

## **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.

## **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.*

**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	\$150.00
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	\$ 40.00
Funeral Director	\$ 40.00
Total fee, embalmer and funeral director, when both are held by same person	\$ 60.00
Funeral service	\$ 60.00
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	\$ 40.00
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. 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 has 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.

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

- (a) No later than October 31 of each calendar year, the Board shall file the reports required by G.S. 93B-2. If the Board fails to timely file a report, all funds received after October 31 shall be deposited into an escrow account with a financial institution, as such term is defined in G.S. 90-210.60(2), until the report has been filed. The Board may resume the expenditure of funds in accordance with G.S. 93B-2 immediately upon depositing the report into the custody of the U.S. Postal Service as certified mail return receipt requested.
- (b) Any period of suspension under G.S. 93B-2(d) shall have no effect upon the right of a license or permit applicant to the issue or renewal of any license or permit upon meeting all legal requirements; provided, however, that this Rule shall not impose any duty upon the Board to issue any license or permit outside its normal operating procedures.

*History Note:* Authority G.S. 90-210.23(a); 93B-2(d);  
Eff. September 1, 2010.

