



**North Carolina Licensing Board
for General Contractors**

**2008
Laws and
Regulations
Applicable to
General
Contracting in
the State of
North Carolina**

- **North
Carolina
General
Contractor
Licensing
Statutes**
- **Homeowners
Recovery
Fund
Laws**
- **Regulations
for
Contractors**
- **North
Carolina
Administrative
Code**



North Carolina Licensing Board for General Contractors

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INTRODUCTION

In 1925 the North Carolina General Assembly established the authority of the North Carolina Licensing Board for Contractors, amending Chapter 318 of the Public Laws, designed for the purpose of safeguarding life, health and property and to promote public welfare. The licensing statutes which govern the North Carolina Licensing Board for General Contractors prescribe certain standards for persons, firms and corporations who enter into contracts for construction work in this state. The practice act providing specific regulatory authority over general contractors is found under N.C. General Statute §87, Article 1. Current laws in North Carolina define general contractors as persons, firms or corporations who enter into contracts for construction projects costing \$30,000 or more.

The Board provides this publication free of charge to enhance public awareness and to inform the general public of

the Board's purpose and function. Published in this book are the current North Carolina General Statutes applicable to the practice of general contracting, Chapter 87, Article 1 and 1A. Also included are references to general statutes pertaining to other important aspects of the construction industry in this state, and the rules and regulations of this agency set forth under the N.C. Administrative Code (Title 21, Chapter 12). This publication supersedes previous editions or printings of these Articles and rules.

Other informative publications are provided by the Board upon request and without charge. Specific questions concerning the foregoing laws, rules and regulations applicable to the practice of general contracting should be referred to the Board office in Raleigh, North Carolina.

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GENERAL CONTRACTORS

LIMITATIONS

- LIMITED – Up to \$500,000.00 on any single project
- INTERMEDIATE – Up to \$1,000,000.00 on any single project
- UNLIMITED – Not restricted as to the value of any single project

CLASSIFICATIONS

- Building**
- Residential**
- Highway**
- Public Utilities**
- Specialty**
- Unclassified** – (includes all of the above classifications)

EXAMINATIONS and LICENSURE (N.C. G.S. 87-10)

A qualifying examination *is not an occupational license*, and does not grant the holder of such examination the authority to practice general contracting. Individuals may be licensed by their personal examinations or the examination of a responsible managing employee. Partnerships and corporations are licensed by examination of a responsible managing officer or member of the personnel of the applicant. If the qualifying party leaves, however, the licensee must replace the qualifying party within ninety (90) days or the license is canceled.

Licensees should not allow unlicensed persons, firms or corporations to use the general contractor's license with the licensee's permission. Although licensed general contractors may have an ownership interest in an unlicensed entity, the unlicensed contractor may not use a general contractor's license for any reason. Violators of the general contractor laws and regulations may be disciplined by the Licensing Board for General Contractors for allowing the use of a license by an unlicensed person or other entities. Appropriate sanctions may include suspension or revocation of license.

Licenses must be renewed annually by December 31 for the following year, or the license *expires*. If a license is not renewed within sixty (60) days following expiration, then it becomes "invalid," and the contractor becomes, in effect, unlicensed. Reexamination is required if a license is not renewed for two (2) years following expiration. After a lapse of two years, no renewal shall be effected and all requirements for a new license must be fulfilled, in accordance with G.S. 87-10.

This publication may not be sold for profit. This publication contains rules and general statutes which may be amended periodically – all such current amendments may not be reflected in this publication.

AN ACT TO REGULATE THE PRACTICE OF GENERAL CONTRACTING

§87-1. “General contractor” defined; exceptions.

For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars (\$30,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a “general contractor” engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plant equipment, radial brick chimneys, and monuments.

This section shall not apply to any person or firm or corporation who constructs or alters a building on land owned by that person, firm or corporation provided such building is intended solely for occupancy by that person and his family, firm, or corporation after completion; and provided further that, if such building is not occupied solely by such person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not intend such building solely for occupancy by that person and his family, firm, or corporation.

This section shall not apply to any person engaged in the business of farming who constructs or alters a building on land owned by that person and used in the business of farming, when such building is intended for use by that person after completion.

§87-1.1 Exception for licensees under Article 2 or 4.

G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the General Statutes, G.S. 87-43 shall not apply to a licensee under Article 2 of this Chapter of the General Statutes, and G.S. 87-21(a)(5) shall not apply to a licensee under Article 4 of this Chapter of the General Statutes when the licensee is bidding and contracting directly with the owner of a public building project if: (i) a licensed general contractor performs all work that falls within the classifications in G.S. 87-10(b) and the State Licensing Board of General Contractor’s rules; and (ii) the total amount of the general contracting work so classified does not exceed a percentage of the total bid price pursuant to rules established by the Board; and (iii) a licensee with the appropriate license under Article 2 or Article 4 of this Chapter performs all work that falls within the classifications in Article 2 and Article 4 of this Chapter.

§87-1.2 Exception for specified Department of Transportation contractors.

The letting of contracts for the types of projects specified in G.S. 136-28.14 shall not be subject to the licensing requirement of this Article.

§87-2. Licensing Board; organization.

There is created the State Licensing Board for General Contractors consisting of nine members appointed by the Governor for staggered five-year terms. Five of the members shall be general contractors, one member shall be a registered engineer who practices structural engineering, and three shall be public members. Of the general contractor members, one shall have as the larger part of his business the construction of highways; one shall have as the larger part of his business the construction of public utilities; one shall have as the larger part of his business the construction of buildings; and two shall have as a larger part of their businesses the construction of residences, one of whom shall be the holder of an unlimited general contractor’s license. The public members shall have no ties with the construction industry and shall represent the interests of the public at large. Members shall serve until the expiration of their respective terms and until their successors are appointed and qualified. Vacancies occurring during a term shall be filled by appointment of the Governor for the remainder of the unexpired term. The Governor may remove any member of the Board for misconduct, incom-

petency, or neglect of duty. No Board member shall serve more than two complete consecutive terms.

- §87-3. **Members of the Board to take oath.** Each member of the Board shall, before entering upon the discharge of the duties of his office, take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said Board and to uphold the Constitution of North Carolina and the Constitution of the United States.
- §87-4. **First meeting of the Board; officers; secretary-treasurer and assistants.** The said Board shall, within 30 days after its appointment by the Governor, meet in the City of Raleigh, at a time and place to be designated by the Governor, and organize by electing a chairman, a vice-chairman, and a secretary-treasurer, each to serve for one year. Said Board shall have power to make such bylaws, rules and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The secretary-treasurer shall give bond in such sum as the Board shall determine, with such security as shall be approved by the Board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands. The secretary-treasurer need not be a member of the Board, and the Board is hereby authorized to employ a full-time secretary-treasurer, and such other assistants and make such other expenditures as may be necessary to the proper carrying out of the provisions of this Article. Payment of compensation and reimbursement of expenses of Board members shall be governed by G.S. 93B-5.
- §87-5. **Seal of the Board.** The Board shall adopt a seal for its own use. The seal shall have the words "North Carolina Licensing Board for General Contractors" and the secretary shall have charge, care and custody thereof.
- §87-6. **Meetings; notice; quorum.** The Board shall meet twice each year, once in April and once in October, for the purpose of transacting such business as may properly come before it. At the April meeting in each year the Board shall elect officers. Special meetings may be held at such times as the Board may provide in the bylaws it shall adopt. Due notice of each meeting and the time and place thereof shall be given to each member in such manner as the bylaws may provide. Five members of the Board shall constitute a quorum.
- §87-7. **Records of Board; disposition of funds.** The secretary-treasurer shall keep a record of the proceedings of the said Board and shall receive and account for all moneys derived from the operation of this Article. Any funds remaining in the hands of the secretary-treasurer to the credit of the Board after the expenses of the Board for the current year have been paid shall be paid over to the Greater University of North Carolina for the use of the School of Engineering through the North Carolina Engineering Foundation. The Board has the right, however, to retain at least ten percent (10%) of the total expense it incurs for a year's operation to meet any emergency that may arise. As an expense of the Board, said Board is authorized to expend such funds as it deems necessary to provide retirement and disability compensation for its employees.
- §87-8. **Records; roster of licensed contractors; report to Governor.** The secretary-treasurer shall keep a record of the proceedings of the Board and a register of all applicants for license showing for each the date of application, name, qualifications, place of business, place of residence, and whether license was granted or refused. The books and register of this Board shall be **prima facie** evidence of all matters recorded therein. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the secretary of the Board during the month of March of each year; the roster shall be printed by the Board out of funds of the Board as provided in G.S. 87-7, with copies being made available to contractors and members of the public, at cost, upon request, or furnished without cost, as directed by the Board. On or before the last day of March of each year the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of the report, together with a complete statement of the receipts and expenditures of the Board, attested by the affidavits of the chairman and the secretary, and a copy of the roster of licensed general contractors.

§87-9. Compliance with Federal Highway Act, etc.; contracts financed by federal road funds; contracts concerning water or waste water systems.

Nothing in this Article shall operate to prevent the Department of Transportation from complying with any act of Congress and any rules and regulations pursuant thereto for carrying out the provisions of the Federal Highway Act, or shall apply to any person, firm or corporation proposing to submit a bid or enter into contract for any work to be financed in whole or in part with federal aid road funds in such a manner as will conflict with any act of Congress or any such rules and regulations promulgated pursuant thereto.

Neither shall anything in this Article prevent the State of North Carolina or any of its political subdivisions or their contractors from complying with any act of Congress and any rules and regulations promulgated pursuant thereto for carrying out the provisions of any federal program to assist in the planning, financing, or construction of drinking water or waste water processing, collection, and disposal systems and facilities.

§87-9.1. Ownership of real property; equipment; liability insurance.

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase or rent equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees.

§87-10. Application for license; examination; certificate; renewal.

(a) Anyone seeking to be licensed as a general contractor in this State shall file an application for an examination on a form provided by the Board, at least 30 days before any regular or special meeting of the Board. The Board may require the applicant to pay the Board or a provider contracted by the Board an examination fee not to exceed one hundred dollars (\$100.00) and pay to the Board a license fee not to exceed one hundred twenty-five dollars (\$125.00) if the application is for an unlimited license, one hundred dollars (\$100.00) if the application is for an intermediate license, or seventy-five dollars (\$75.00) if the application is for a limited license. The fees accompanying any application or examination shall be nonrefundable. The holder of an unlimited license shall be entitled to act as general contractor without restriction as to value of any single project; the holder of an intermediate license shall be entitled to act as general contractor for any single project with a value of up to one million dollars (\$1,000,000); the holder of a limited license shall be entitled to act as general contractor for any single project with a value of up to five hundred thousand dollars (\$500,000); and the license certificate shall be classified in accordance with this section. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity and financial responsibility, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony involving moral turpitude, relating to building or contracting, or involving embezzlement or misappropriation of funds or property entrusted to the applicant: Provided, no applicant shall be refused the right to an examination except in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall conduct an examination, either oral or written, of all applicants for a license to ascertain, for the classification of license for which the applicant has applied: (i) the ability of the applicant to make a practical application of the applicant's knowledge of the profession of contracting; (ii) the qualifications of the applicant in reading plans and specifications, knowledge of relevant matters contained in the North Carolina State Building Code, knowledge of estimating costs, construction, ethics, and other similar matters pertaining to the contracting business; (iii) the knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction, and liens; and (iv) the applicant's knowledge of requirements of the Sedimentation Pollution Control Act of 1973, Article 4 of Chapter 113A of the General Statutes, and the rules adopted pursuant to that Article. If the results of the examination of the applicant shall

be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in said certificate, which may be limited into five classifications as follows;

- (1) Building contractor, which shall include private, public, Commercial, industrial and residential buildings of all types.
- (1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138.
- (2) Highway contractor.
- (3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:
 - a. Water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations, and pumping stations.
 - b. Water and wastewater treatment facilities and appurtenances thereto.
 - c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the customer.
 - d. Public communication distribution facilities.
 - e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor qualifies.
- (4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

(b1) Public utilities contractors constructing water service lines and house and building sewer lines as provided in sub-subdivision a. of subdivision (3) of subsection (b) of this section shall terminate said lines at a valve, box, meter or man-hole or cleanout at which the facilities from the building may be connected. Public utilities contractors constructing fire service mains for connection to the fire sprinkler systems shall terminate those lines at a flange, cap, plug, or valve inside the building one foot above the finished floor. All fire service mains shall comply with the NFPA standards for fire service mains as incorporated into and made applicable by Volume V of the North Carolina Building Code.

(c) If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of 90 days thereafter, and then be canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the rules to be promulgated by the Board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this Article.

(d) Anyone failing to pass this examination may be reexamined at any regular meeting of the Board upon payment of an examination fee. Anyone requesting to take the examination a third or subsequent time shall submit a new application with the appropriate examination and license fees.

(e) A certificate of license shall expire on the thirty-first day of December following its issuance or renewal and shall become invalid 60 days from that date unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board. The fee shall not exceed one hundred twenty-five dollars (\$125.00) for an unlimited license, one hundred dollars (\$100.00) for an intermediate license, and seventy-five dollars (\$75.00) for a limited license. No later than November 30 of each year, the Board shall mail written notice of the amount of the renewal fees for the upcoming year to the last address of record for each general contractor licensed pursuant to this Article. Renewal applications shall be accompanied by evidence of continued financial responsibility satisfactory to the Board. Renewal applications received by the Board after January shall be accompanied by a late payment of ten dollars (\$10.00) for each month or part after January. After a lapse of two years no renewal shall be effected and the applicant shall fulfill all requirements of a new applicant as set forth in this section.

§87-10.1. Licensing of nonresidents.

(a) Definitions. The following definitions apply in this section:

- (1) Delinquent income tax debt. The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation—Defined in G.S. 55 1-40.
- (3) Foreign entity—A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company—Defined in G.S. 57C 1-03.
- (5) Foreign partnership—Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. If the Secretary of Revenue determines that any nonresident individual or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their certificates of license. The Board shall not renew the certificate of license of such nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement.

§87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.

(a) The Board shall have the power to refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency, or misconduct in the practice of his or her profession, or willful violation of any provision of this Article. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a) Any person may prefer charges of fraud, deceit, negligence, or misconduct against any general contractor licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reissue a license to any person, firm, or corporation whose license has been revoked: Provided, five or more members of the Board vote in favor of such reissuance for reasons the Board may deem sufficient.

The Board shall immediately notify the Secretary of State of its findings in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars (\$5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article.

§87-12. Certificate evidence of license.

The issuance of a certificate of license or limited license by this Board shall be evidence that the person, firm, or corporation named therein is entitled to all the rights and privileges of a licensed or limited licensed general contractor while said license remains unrevoked or unexpired. A licensed general contractor holding a license which qualifies him for work as described in G.S. 87-10 shall be authorized to perform the said work without any additional occupational license, notwithstanding the provisions of any other occupational licensing statute. A license issued by another occupational licensing board having jurisdiction over any work described in G.S. 87-10 shall qualify such licensee to perform the work for which the license qualifies him without obtaining the license from the General Contractors Licensing Board. Nothing contained herein shall operate to relieve any general contractor from the necessity of compliance with other provisions of the law requiring building permits and construction in accordance with appropriate provisions of the North Carolina State Building Code.

§87-13. Unauthorized practice of contracting; impersonating contractor; false certificate; giving false evidence to Board; penalties.

Any person, firm, or corporation not being duly authorized who shall contract for or bid upon the construction of any of the projects or works enumerated in G.S. 87-1, without having first complied with the provisions hereof, or who shall attempt to practice general contracting in the State, except as provided for in this Article, and any person, firm, or corporation presenting or attempting to file as his own the licensed certificate of another or who shall give false or forged evidence of any kind to the Board or to any member thereof in maintaining a certificate of license or who falsely shall impersonate another or who shall use an expired or revoked certificate of license, and any architect or engineer who recommends to any project owner the award of a contract to anyone not properly licensed under this Article, shall be deemed guilty of a Class 2 misdemeanor. And the Board may, in its discretion, use its funds to defray the expense, legal or otherwise, in the prosecution of any violations of this Article. No architect or engineer shall be guilty of a violation of this section if his recommendation to award a contract is made in reliance upon current written information received by him from the appropriate Contractor Licensing Board of this State which information

		erroneously indicates that the contractor being recommended for contract award is properly licensed.
§87-13.1.	Board may seek injunctive relief.	Whenever the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. The court may award the Board its reasonable costs associated with the investigation and prosecution of the violation.
§87-14.	Regulations as to issue of building permits.	Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town or county in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading or any improvement or structure where the cost thereof is to be thirty thousand dollars (\$30,000) or more, shall, before he be entitled to the issuance of such permit, furnish satisfactory proof to such inspector or authority that he or another person contracting to superintend or manage the construction is duly licensed under the terms of this Article to carry out or superintend the same, and that he has paid the license tax required by the Revenue Act of the State of North Carolina then in force so as to be qualified to bid upon or contract for the work for which the permit has been applied, and that he has in effect Workers' Compensation insurance as required by Chapter 97 of the General Statutes; and it shall be unlawful for such building inspector or other authority to issue or allow the issuance of such building permit unless and until the applicant has furnished evidence that he is either exempt from the provisions of this Article or is duly licensed under this Article to carry out or superintend the work for which permit has been applied; and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit; and further that the applicant has in effect Workers' Compensation insurance as required by Chapter 97 of the General Statutes. Any building inspector or other such authority who is subject to and violates the terms of this section shall be guilty of a Class 3 misdemeanor and subject only to a fine of not more than fifty dollars (\$50.00).
§87-15.	Copy of Article included in specifications, bid not considered unless contractor licensed.	All architects and engineers preparing plans and specifications for work to be contracted in the State of North Carolina shall include in their invitations to bidders and in the specifications a copy of this Article or such portions thereof as are deemed necessary to convey to the invited bidder, whether he be a resident or nonresident of this State and whether a license has been issued to him or not, the information that it will be necessary for him to show evidence of a license before his bid is considered.
§87-15.1.	Reciprocity of licensing.	To the extent that other states which provide for the licensing of general contractors provide for similar action, the Board in its discretion may grant licenses of the same or equivalent classification to general contractors licensed by other states, without written examination upon satisfactory proof furnished to the Board that the qualifications of such applicants are equal to the qualifications of holders of similar licenses in North Carolina and upon payment of the required fee.
§87-15.2.	Public awareness program.	The Board shall establish and implement a public awareness program to inform the general public of the purpose and function of the Board.
§87-15.3.	Identity of complaining party confidential.	Once a complaint has been filed with the Board against a licensee or an unlicensed general contractor, the Board may, in its discretion, keep the identity of a complaining party confidential and not a public record within the meaning of Chapter 132 of the General Statutes until a time no later than the receipt of the complaint by the full Board for a disciplinary hearing or injunctive action.
§87-15.4.	Builder designations created.	(a) A licensee who successfully completes the educational requirements for accredited builder or accredited master builder, as established by the North Carolina Builders Institute (Institute), shall be designated by the Board as a 'North Carolina Certified Accredited Residential Builder' or 'North Carolina Certified Accredited Master Residential Builder,' respectively. The Institute shall provide to the Board written certification of those licensees who have successfully completed the requirements for the designations. The certification shall remain in

effect as long as: (i) the licensee's license is in effect pursuant to G.S. 87-10; and (ii) the licensee completes at least eight hours of continuing education each calendar year as certified by the Institute.

(b) The Board shall approve for designation a licensee who has successfully completed a course of study, deemed by the Board to be equivalent to the educational requirements under subsection (a) of this section, offered by a community college or by another provider, and who completes the requisite number of hours of continuing education required by the Board.

(c) The Board may use all powers granted to it under this Article to enforce the provisions of this section and ensure that the designations created by this section are conferred upon and used only by a licensee who complies with the provisions of this section and any rules adopted by the Board.

SECTION 2. Any individual currently licensed by the State Licensing Board of General Contractors (Board) who has successfully completed the requirements of G.S. 87-15.4, as enacted by Section 1 of this act, before the effective date of this act may be designated by the Board as a "North Carolina Certified Accredited Residential Builder" or "North Carolina Certified Accredited Master Residential Builder" upon submitting to the Board certification from the North Carolina Builders Institute of successful completion of the requirements of G.S. 87-15.4.

§136-28.14. Project contractor licensing requirements.

The letting of contracts under this Chapter for the following types of projects shall not be subject to the licensing requirements of Article 1 of Chapter 87 of the General Statutes:

- (1) Routine maintenance and minor repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas.
- (2) Installation and maintenance of pavement markings and markers, ground mounted signs, guardrail, fencing, and roadside vegetation and plantings.

ARTICLE 1A. HOMEOWNERS RECOVERY FUND

§87-15.5. Definitions.

The following definitions apply in this Article:

- (1) Applicant.—The owner or former owner of a single-family residential dwelling unit who has suffered a reimbursable loss and has filed an application for reimbursement from the Fund.
- (2) Board.—The State Licensing Board for General Contractors.
- (3) Dishonest conduct.—Fraud or deceit in either of the following:
 - a. Obtaining a license under Article 1 of Chapter 87 of the General Statutes.
 - b. The practice of general contracting by a general contractor.
- (4) Fund.—The Homeowners Recovery Fund.
- (5) General contractor.—A person or other entity who meets any of the following descriptions:
 - (a) Is licensed under Article 1 of Chapter 87 of the General Statutes.
 - (b) Fraudulently procures any building permit by presenting the license certificate of a general contractor.
 - (c) Fraudulently procures any building permit by falsely impersonating a licensed general contractor.
- (6) Reimbursable loss.—A monetary loss that meets all of the following requirements:
 - (a) Results from dishonest or incompetent conduct by a general contractor in constructing or altering a single-family residential dwelling unit.
 - (b) Is not paid, in whole or in part, by or on behalf of the general contractor whose conduct caused the loss.
 - (c) Is not covered by a bond, a surety agreement, or an insurance contract.
- (7) Single-family residential dwelling unit.—A separately owned residence for use of one or more persons as a housekeeping unit with space for eating, living, and permanent provisions for cooking and sanitation, whether or not attached to other such residences.

§87-15.6. Homeowners Recovery Fund.

(a) The Homeowners Recovery Fund is established as a special account of the Board. The Board shall administer the Fund. The purpose of the Fund is to reim-

burse homeowners who have suffered a reimbursable loss in constructing or altering a single-family residential dwelling unit.

(b) Whenever a general contractor applies for the issuance of a permit for the construction of any single-family residential dwelling unit or for the alteration of an existing single-family residential dwelling unit, a city or county building inspector shall collect from the general contractor a fee in the amount of ten dollars (\$10.00) for each dwelling unit to be constructed or altered under the permit. The city or county inspector shall forward nine dollars (\$9.00) of each fee collected to the Board on a quarterly basis and the city or county may retain one dollar (\$1.00) of each fee collected. The Board shall deposit the fees received into the Fund. The Board may accept donations and appropriations to the Fund. G.S. 87-7 shall not apply to the Fund.

The Board may suspend collection of this fee for any year upon a determination that the amount in the Fund is sufficient to meet likely disbursements from the Fund for that year. The Board shall notify city and county building inspectors when it suspends collection of the fee.

(c) The Board may adopt rules to implement this Article.

§87-15.7. Fund Administration.

(a) The Board shall determine the procedure for applying to the Board for reimbursement from the Fund, for processing applications, for granting requests for reimbursement, and for the subrogation or assignment of the rights of any reimbursed applicant. The Board shall submit annually a report to the State Treasurer accounting for all monies credited to and expended from the Fund.

(b) The Board may use monies in the Fund only for the following purposes:

- (1) To reimburse an applicant's reimbursable loss after approval by the Board.
- (2) To purchase insurance to cover reimbursable losses when the Board finds it appropriate to do so.
- (3) To invest amounts in the Fund that are not currently needed to reimburse losses and maintain adequate reserves in the manner in which State law allows fiduciaries to invest funds.
- (4) To pay the expenses of the Board to administer the Fund, including employment of counsel to prosecute subrogation claims.

§87-15.8. Application for reimbursement.

(a) The Board shall prepare a form to be used to apply for reimbursement from the Fund. Only a person whom the Board determines to meet all of the following requirements may be reimbursed from the Fund:

- (1) Has suffered a reimbursable loss in the construction or alteration of a single-family residential dwelling unit owned or previously owned by that person.
- (2) Did not, directly or indirectly, obtain the building permit in the person's own name or did use a general contractor.
- (3) Has exhausted all civil remedies against the general contractor whose conduct caused the loss and, if applicable, the general contractor's estate, and has obtained a judgment against the general contractor that remains unsatisfied. This requirement is waived if the person is prevented from filing suit or obtaining a judgment against the contractor due to the automatic stay provision of section 362 of the U.S. Bankruptcy Code.
- (4) Has complied with the applicable rules of the Board.

(b) The Board shall investigate all applications for reimbursement and may reject or allow part or all of a claim based on the amount of money in the Fund. The Board shall have complete discretion to determine the order, amount, and manner of payment of approved applications. All payments are a matter of privilege and not of right and no person has a right to reimbursement from the Fund as a third party beneficiary or otherwise. No attorney shall be compensated by the Board for prosecuting an application before it.

§87-15.9. Subrogation for reimbursement made.

The Board is subrogated to an applicant who is reimbursed from the Fund in the amount reimbursed and may bring an action against the general contractor whose conduct caused the reimbursable loss, the general contractor's assets, or the general contractor's estate. The Board may enforce any claims it may have for restitution or otherwise, and may employ and compensate consultants, agents, legal counsel, and others it finds necessary and appropriate to carry out its authority under this section.

Sec. 2 This act becomes effective October 1, 1991, and applies to reimbursable losses caused by the dishonest or incompetent conduct of a general contractor that occurs on or after that date.

§93B-14. Information on applicants for licensure.

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only as follows:

- (1) To the State Child Support Enforcement Program of the Department of Health and Human Services upon its request and for the purpose of enforcing a child support order.
- (2) To the Department of Revenue for the purpose of administering the State's tax laws.

§22C-2. Performance by subcontractor.

Performance by a subcontractor in accordance with the provisions of its contract shall entitle it to payment from the party with whom it contracts. **"Payment by the owner to a contractor is not a condition precedent for payment to a subcontractor and payment by a contractor to a subcontractor is not a condition precedent for payment to any other subcontractor, and an agreement to the contrary is unenforceable."**

§14-401.1. Misdemeanor to tamper with examination questions.

Any person who, without authority of the entity who prepares or administers the examination, purloins, steals, buys, receives, or sells, gives or offers to buy, give, or sell any examination questions or copies thereof of any examination provided and prepared by law shall be guilty of a **misdemeanor**.

LIENS

§44A-12. Filing Claim of lien.

(a) Place of Filing.—All claims of lien against any real property must be filed in the office of the clerk of superior court in each county wherein the real property subject to the claim of lien is located. The clerk of superior court shall note the claim of lien on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien is filed. An additional copy of the claim of lien may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing.—Claims of lien may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

(c) Contents of Claim of Lien to Be Filed.—All claims of lien must be filed using a form substantially as follows:

CLAIM OF LIEN

- (1) Name and address of the person claiming the lien:
- (2) Name and address of the record owner of the real property claimed to be subject to the lien at the time the claim of lien is filed:
- (3) Description of the real property upon which the lien is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)
- (4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:
- (5) Date upon which labor or materials were first furnished upon said property by the claimant:
- (5a) Date upon which labor or materials were last furnished upon said property by the claimant:
- (6) General description of the labor performed or materials furnished and the amount claimed therefor:

Lien Claimant
 Filed this day of19.....

.....
 Clerk of Superior Court

A general description of the labor performed or materials furnished is sufficient. It is not necessary for lien claimant to file an itemized list of materials or a detailed statement of labor performed.

§44A-13. Action to enforce lien.

(a) Where and When Action Instituted.—An action to enforce the lien created by this Article may be instituted in any county in which the lien is filed. No such action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien. If the title to the real property against which the lien is asserted is by law vested in a receiver or trustee in bankruptcy, the lien shall be enforced in accordance with the orders of the court having jurisdiction over the said real property.

(b) Judgment.—Judgment enforcing a lien under this Article may be entered for the principal amount shown to be due, not exceeding the principal amount stated in the claim of lien enforced thereby. The judgment shall direct a sale of the real property subject to the lien thereby enforced.

(c) Notice of Action.—Unless the action enforcing the lien created by this Article is instituted in the county in which the lien is filed, in order for the sale under the provisions of G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming the lien, a notice of lis pendens shall be filed in each county in which the real property subject to the lien is located within 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien. It shall not be necessary to file a notice of lis pendens in the county in which the action enforcing the lien is commenced in order for the judgment entered therein and the sale declared thereby to carry with it the priorities set forth in G.S. 44A-14(a). If neither an action nor a notice of lis pendens is filed in each county in which the real property subject to the lien is located within 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien, as to real property claimed to be subject to the lien in such counties where the action was neither commenced nor a notice of lis pendens filed, the judgment entered in the action enforcing the lien shall not direct a sale of the real property subject to the lien enforced thereby nor be entitled to any priority under the provisions of G.S. 44A-14(a), but shall be entitled only to those priorities accorded by law to money judgments.

§44A-23. Contractor's lien; perfection of subrogation rights of subcontractor.

(a) **First tier subcontractor.**—A first tier subcontractor, who gives notice as provided in this Article, may, to the extent of his claim, enforce the lien of the contractor created by Part 1 of Article 2 of this Chapter. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12. Upon the filing of the notice and claim of lien and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

(b) **Second or third subcontractor.**—

- (1) A second or third tier subcontractor, who gives notice as provided in this Article, may, to the extent of his claim, enforce the lien of the contractor created by Part 1 of Article 2 of the Chapter except when:
 - i. The contractor, within 30 days following the date of the building permit is issued for the improvement of the real property involved, posts on the property in a visible location adjacent to the posted building permit and filed in the office of the Clerk of Superior Court in each county wherein the real property to be improved is located, a completed and signed Notice of Contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed Notice of Subcontract form by the same means of service as described in G.S. 44A-19(d); or
 - ii. After the posting and filing of a signed Notice of Contract and the service of a signed Notice of Subcontract, the contractor serves upon the second or third tier subcontractor' within 5 days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the Notice of Subcontract form set forth herein.

- (2) The form of the Notice of Contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the Clerk of Superior Court shall be the same as charged for filing a Claim of Lien:

NOTICE OF CONTRACT

- (1) Name and address of the Contractor:
(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:
(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):
(4) Name and address of the person, firm or corporation filing this Notice of Contract:

Dated : _____

Contractor

Filed this the _____ day of _____, 19____ .

Clerk of Superior Court

- (3) The form of the Notice of Subcontract to be so utilized under this section shall be substantially as follows:

NOTICE OF SUBCONTRACT

- (1) Name and address of the subcontractor:
(2) General description of the real property where the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):
(3) (i) General description of the subcontractor's contract, including the names of the parties thereto:
(ii) General description of the labor and material performed and furnished thereunder:
(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within 5 days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

Dated: _____

Subcontractor

- (4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a Claim of Lien pursuant to G.S. 44A-12. Upon the filing of the notice and claim of lien and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent.

Sec. 2. The General Statutes Commission shall conduct a study of statutory lien rights of contractors and subcontractors and payment and performance bonds under Articles 2 and 3 of Chapter 44A of the General Statutes and recommend to the General Assembly changes, modifications and revisions to those statutes as deemed appropriate, including, but not limited to, the matters addressed in the Third Edition to Senate Bill 597 (House Committee Substitute, adopted July 4, 1991), of the 1991 Session of the General Assembly and the interpretation of the law as set forth by the North Carolina Supreme Court in **Electric Supply Co. v. Swain Electrical Co.**, 328 NC 651 (1991), and to report its recommendations to the 1993 General Assembly.

Sec. 3. Chapter 44A of the General Statutes is amended by adding a new section to read:

“§44A-35. Attorneys’ fees.

In any suit brought or defended under the provisions of Article 2 or Article 3 of this Chapter, the presiding judge may allow a reasonable attorneys’ fee to the attorney representing the prevailing party. This attorneys’ fee is to be taxed as part of the court costs and be payable by the losing party upon a finding that there was an unreasonable refusal by the losing party to fully resolve the matter which constituted the basis of the suit or the basis of the defense. For purposes of this section, ‘prevailing party’ is a party plaintiff or third party plaintiff who obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a claim or is a party defendant or third party defendant against whom a claim is asserted which results in a judgment of less than fifty percent (50%) of the amount sought in the claim defended. Notwithstanding the foregoing, in the event an offer of judgment is served in accordance with G.S. 1A-1, Rule 68, a ‘prevailing party’ is an offeree who obtains judgment in an amount more favorable than the last offer or is an offeror against whom judgment is rendered in an amount less favorable than the last offer.”

Sec. 4. Section 1 of this act is effective upon ratification and applies to actions filed on or after the date of ratification. Section 2 of this act is effective upon ratification. Section 3 of this act is effective upon ratification and applies to actions filed on or after the date of ratification but before July 1, 1994.

In the General Assembly read three times and ratified this the 22nd day of July, 1992.

§44A-24. False statement a misdemeanor.

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, the such contractor, subcontractor or other person **shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment not to exceed two years or by both such fine and imprisonment in the discretion of the court.** Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

The elements of the offense herein stated are the furnishing of the false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment from an obligor or purchaser, and in any prosecution hereunder it shall not be necessary for the State to prove that the obligor, purchaser, lender or title insurance company relied upon the false statement or that any person was injured thereby.

§44A-26. Bonds required.

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars (\$300,000) a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor with a contract more than fifty thousand dollars (\$50,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

- (1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded the contract.
- (2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor or subcontractor is liable.

§44A-32. Designation of official; violation a misdemeanor.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract.

Each contracting body shall designate an official thereof to require the bonds described by this Article. If the official so designated shall fail to require said bond, he shall be guilty of a misdemeanor.

§160A-417. Permits.

(a) No person shall commence or proceed with

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,

(2) The installation, extension, or general repair of any plumbing system,

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment, without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-distributing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S.113A-54(d)(4) or by a local government pursuant to G.S. 113A-41 for the site of the activity or a tract of land including the site of the activity.

The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.

RULES & REGULATIONS

North Carolina Licensing Board for General Contractors

NORTH CAROLINA ADMINISTRATIVE CODE

Title 21; Chapter 12

**Statutory Authority;
Chapter 87, Section 1-15.9,
and Chapter 150B(3) of the
General Statutes of
North Carolina**

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SECTION .0100 — ORGANIZATION OF BOARD

- .0101 Identification** The North Carolina Licensing Board for General Contractors, hereinafter referred to as “the Board,” is located in Raleigh, North Carolina; its mailing address is Post Office Box 17187, Raleigh, North Carolina 27619.
- .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;

.0103 Structure of Board

- (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.
- (a) **Organization.** The Board consists of nine members who are appointed by the Governor of North Carolina, with its composition in terms of its members being specified in G.S. 87-2.
- (b) **Officers.** Annually, during the April meeting, the Board elects from its members a Chairman and Vice-Chairman. The Chairman shall preside over all meetings of the Board and perform such other duties as he may be directed to do by the Board. The Vice Chairman shall function as Chairman in the absence of the Chairman.
- (c) **Secretary-Treasurer.** In addition to those duties and responsibilities required of him by the North Carolina General Statutes, the Secretary-Treasurer, as the Board's Chief Administrative Officer, specifically 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 by the Board.
- (d) **Meetings of the Board.**
- (1) Regular meetings will be held during January, April, July and October of each year at the main office of the Board or at any other place so designated by the Board.
 - (2) Special Meetings. Special meetings of the Board will be held at the request of the Chairman or any two of the members at the main office of the Board or at any place fixed by the person or persons calling the meeting.
 - (3) Notice of Meetings. Regular meetings of the Board will be held after each Board member is duly notified by the Secretary-Treasurer of the exact date of the meeting. However, any person or persons requesting a special meeting of the Board will, at least two days before the meeting, give notice to the other members of the Board of that meeting by any usual means of communication. Such notice must specify the purpose for which the meeting is called.
 - (4) Quorum. Any five members of the Board which includes either the Chairman or Vice-Chairman shall constitute a quorum.

SECTION .0200 — LICENSING REQUIREMENTS

.0202 Classification

- (a) A general contractor must be certified in one of five classifications. These classifications are:
- (1) **Building Contractor.** This classification covers all building construction activity including but not limited to: commercial, industrial, institutional, and all residential building construction; parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs, gutters, and water and wastewater systems which are ancillary to the aforementioned structures and improvements; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos).
 - (2) **Residential Contractor.** This classification covers all construction activity pertaining to the construction of residential units which 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).
 - (3) **Highway Contractor.** This classification covers all highway construction activity including but not limited to: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility

lines ancillary to the principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. 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 covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).

- (4) **Public Utilities Contractor.** This classification includes those whose operations are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(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). 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 can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. 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. Also includes clearing and grubbing, and erosion control activities.
 - (B) S(Boring and Tunneling). 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. Includes preparation of the ground surfaces at points of ingress and egress.
 - (C) PU(Communications). Covers the 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). Covers the construction 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). 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.
 - (F) PU(Fuel Distribution). 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. Includes all excavating, trenching and backfilling in

- connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). Covers 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. Includes pavement patching, backfill and erosion control as part of such construction.
 - (H) PU(Water Purification and Sewage Disposal). Covers the 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, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. 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 such work on water and wastewater treatment facilities.
 - (I) S(Insulation). 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. Does not include the insulation of mechanical equipment and ancillary lines and piping.
 - (J) S(Interior Construction). Covers the installation of accoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with nontoxic substances.
 - (K) S(Marine Construction). Covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. Does not include structures required on docks, slips and piers.
 - (L) S(Masonry Construction). Covers the 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). Covers the 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). Covers the installation 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" shall be defined for purposes of this Subparagraph to include, among other things, 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.
 - (O) S(Metal Erection). Covers:
 - (i) The field fabrication, 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 or riveting such metal products as, but not limited to, 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). Covers the construction, service and repair of all swimming pools. Includes:
 - (i) Excavation and grading;
 - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) Installation of all equipment including pumps, filters and chemical feeders. 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 of 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 and/or demolition activities.

(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 examination for the classifications in question. If an applicant passes the building, public utilities and highway examinations, the license granted to the applicant will carry with it a designation of “unclassified.”

.0204 Eligibility

- (a) Limited License. The applicant for such a license must:
 - (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000.00); and
 - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
 - (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within seven years prior to the filing of the application. This requirement does not apply to shareholders of an applicant that is a publicly traded corporation.
- (b) Intermediate License. The applicant for such a license must:
 - (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000.00) as reflected in 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) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (c) Unlimited License. The applicant for such a license must:
 - (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000.00) as reflected in 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) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Article 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. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars (\$350,000.00) for a limited license, one million dollars (\$1,000,000.00) for an intermediate license, and two million dollars (\$2,000,000.00) for an unlimited license. The bond shall list 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 or 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 immediately 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. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule will subject the applicant to additional disciplinary action by the Board.

(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S. 87-15.1. However, the applicant must comply with all other requirements of these rules to be eligible to be licensed in North Carolina as a general contractor.

(f) Accounting and reporting standards. Financial statements submitted by applicants to the Board shall conform to United States "generally accepted accounting principles" (GAAP). The Board shall accept non-GAAP financial statements from individual applicants wherein the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent." The Board shall accept non-GAAP financial statements from applicants wherein the only exception to GAAP is that the applicant is not combined with a related entity into one financial statement pursuant to FIN 46R. The terminologies, working capital, balance sheet with current and fixed assets, and current and long term liabilities, used herein shall be construed in accordance with those standards referred to as "generally accepted accounting principles" (GAAP) as promulgated by the Financial Accounting Standards Board (FASB). The terminologies, audited financial statements and unqualified opinion, used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" (GAAS).

**.0205 Filing Deadline/
App Seeking
Qual/Emp/
Another**

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualification by employment of a person who has already passed an examination shall be completed and filed at least 30 days before any regular or special meeting of the Board. At such meeting the Board will consider the application. The regular meetings of the Board are in January, April, July and October of each year.

(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for no more than two licenses. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate classification for more than two years prior to the filing of the application found to be in complete order. 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 license which has been disciplined by the Board.

(c) The holder of a general contractors license shall notify the Board immediately in writing as to the termination date in the event the qualifying individual or individuals cease to be connected with the licensee. After such notice is filed with the Board, or the Board determines that the qualifying individual or individuals are no longer connected with the licensee, the license shall remain in full force and effect for a period of 90 days from the termination date, and then be cancelled, as provided by G.S. 87-10. Holders of a general contractors license are entitled to a reexamination or replacement of the qualifying individual's credentials in accordance with G.S. 87-10, but may not engage in the practice of general contracting for any project whose cost exceeds the monetary threshold set forth in G.S. 87-1 after the license has been cancelled, until another qualifying individual has passed a required examination.

.0207 Joint Venture

A joint venture may practice general contracting in North Carolina if every principal 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.

.0208 Construction Management

(a) The term "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 is responsible for superintending or managing the entire construction 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. Such person, firm, or corporation must hold a general contracting license in the classifications and limitation applicable to the construction of the project.

(b) The term "undertakes to superintend or manage" described in Paragraph (a) of this Rule does not include 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.

.0209 Application

(a) Any application made pursuant to G.S. 87-10, shall be accompanied by a Certificate of Assumed Name when filing is required with the Register of Deeds office in the county in which the applicant is to conduct its business, pursuant to G.S. 66-68. A copy of such certification must be provided with the application to the Board. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships must be accompanied by a copy of any documents (Articles of Incorporation, Certificate of Authority, etc.) filed with the North Carolina Secretary of State's office.

(b) All licensees must comply with the requirements of G.S. 66-68 and must 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.

.0210 Public Building Projects

If a public 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. For the purpose of this rule, a public building project is a building project that is governed by G.S. Chapter 143, Article 8.

SECTION .0300 — APPLICATION PROCEDURE

.0301 General

An applicant for a general contractor's license must apply to the Board on the form prescribed and furnished by the Board.

.0302 Request

(a) A request for the required application form may be made at the address in Rule .0101 of this Chapter.

(b) The Board shall charge a fee to cover the cost of publishing and mailing the application package.

.0303	Form	<p>(a) General. There is one application form prescribed by the Board for all applicants desiring to become licensed to engage in the business of general contracting in North Carolina regardless of limitation or classification of license desired and regardless of whether the applicant desires to be licensed by reciprocity or by examination.</p> <p>(b) Contents. The application form requires the applicant to state which limitation and classification or classifications of license he is applying for and also to set forth the experience of the applicant or of his principal employees, as appropriate. In addition, the application form requires the applicant to give information concerning his personal history, including personal references.</p> <p>(c) Reciprocity. Applicants for a license to engage in the practice of general contracting in North Carolina based on reciprocity must 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 true copy of a valid license.</p>
.0305	Filing Address	The completed application form and fee payment are to be filed at the address shown in Rule .0101 of this Chapter.
.0308	Character References	The Board will request each person, firm or corporation named in an application form as a character reference by the applicant to submit to the Board a written evaluation of the applicant as to the reference's general experience with the applicant.

SECTION .0400 — EXAMINATION

.0402	Subject Matter	<p>(a) In light of the requirements of G.S. 87-10, the examinations given by the Board are designed to ascertain:</p> <ol style="list-style-type: none"> (1) the applicant's general knowledge of the practice of contracting in areas such as plan and specification reading, cost estimation, safety requirements, construction theory and other similar matters of general contracting knowledge; (2) the applicant's knowledge of the practice of contracting within the classification or classifications of general contracting as indicated by the applicant to the Board in his application; (3) the applicant's knowledge of the laws of the State of North Carolina relating to contractors, construction and liens, and the aspects and fundamentals of business management and operations. <p>(b) The content of the examination will depend on the classification or classifications of general contracting for which the applicant seeks licensure, as indicated by his application. Also, within the specialty contractor classification, examinations given by the Board are designed to test the applicant's knowledge of the particular trade, category or categories of specialty contracting indicated in his application.</p>
.0403	Number of Examinations Taken	An applicant must take one different examination for each classification of general contracting for which the applicant seeks licensure.
.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.
.0408	Person Taking Examination	(a) Persons other than the applicant, if the applicant is an individual, may take the required examination under certain conditions. Persons associated with a firm or corporation may take the required examination on behalf of the firm or corporation under certain conditions. The conditions are described in G.S. 87-10. The term "responsible managing" as used in G.S. 87-10 to describe persons who may take an examination on behalf of an applicant means that the person shall be actively 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. The term "members of the personnel" as used in G.S. 87-10 to describe persons who may

take an examination on behalf of an applicant means that the person shall be a responsible managing employee of the applicant and shall not be an independent contractor. A partner may take an examination on behalf of a partnership. It is the purpose of this Rule to encourage all licensees to have an experienced supervisor, knowledgeable about the type of construction being performed, actively engaged in supervision of the construction activity during as many operating hours as is possible.

(b) More than one person associated with an applicant may take the required examination. If one person associated with the applicant fails, and another passes, the license will be granted to that applicant.

.0410 Failing Examination

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

SECTION .0500 — LICENSE

.0501 License Granted

(a) Grant. Upon complying with the requirements of Article 1, Chapter 87 of the General Statutes of North Carolina and with the requirements of Section .0200 of this Chapter, the Board will grant the applicant a license to engage in the practice of general contracting within the appropriate limitation and classification.

(b) Display. The license certificate granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

.0502 Special License

Under no circumstances will any special or temporary license or permit be granted.

.0503 Renewal of License

(a) Form. A licensee's application for renewal requires the licensee to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the licensee to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the licensee on the form itself.

(b) The Board may require a licensee to submit an audited financial statement if there is any evidence indicating that the licensee may be unable to meet its financial obligations. A licensee may be required to provide evidence of continued financial responsibility satisfactory to the Board if there are indications that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities. Except as provided herein, evidence of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter. 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 audited financial statement with a classified balance sheet as part of any application for renewal. A corporate licensee shall notify the Board of its dissolution or suspension of its corporate charter within 30 days of such dissolution or suspension.

(c) Display. The certificate of renewal of license granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

.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 on a form prescribed and furnished by the Board.

(b) Request. A request for the required application form may be made at the address shown in Rule .0101 of this Chapter.

(c) Form. The application form for a change in limitation requires the applicant to set forth his professional qualifications and his present and past experience in general contracting. An audited financial statement prepared by a certified public accountant or by an independent accountant who is engaged in the public practice of accountancy is required with the application for a change in limitation.

(d) Eligibility. An applicant for a new limitation is eligible for the requested change if he possesses the qualifications for the limitation as set forth in Rule .0204 of this Chapter with the exception that such applicant shall not be required to take a written examination.

(e) Filing Deadline. An applicant who wishes to have his application considered for a change in limitation must file his application no later than the first day of the month preceding any regularly scheduled meeting of the Board. At such meeting the Board will consider the application. Regular meetings of the Board are in January, April, July and October of each year.

(f) Fees. The fees for issuance of limited, intermediate, and unlimited licenses are as provided by G.S. 87-10.

(g) Notice of Approval. Within two weeks after the regular meeting of the Board in which a timely filed application is considered, the Board will notify the applicant of its decision. If the application is approved, a certification of license in the new limitation will be issued by the Board and the applicant, as of the time of notice of the approval, may conduct himself or itself in accordance with the rights available under the limitation granted.

.0505

**Notification of
Address Change**

Applicants for licensure and holders of a valid license shall notify the Board in writing of a change in address within 30 days from the date of the change.

.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. The Board shall furnish copies free of charge to governmental entities.

SECTION .0700 — BOARD DISCIPLINARY PROCEDURES

.0701

**Improper
Practice**

(a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges are to be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination.

- (1) A charge, properly filed, shall be initially referred to the review committee.
- (2) The review committee shall be a committee made up of the following individuals:
 - (A) one member of the Board, and
 - (B) the legal counsel of the Board, and
 - (C) the Secretary-Treasurer.
- (3) The review committee shall be specifically delegated the responsibility of determining, prior to a full-scale hearing, whether or not a charge is unfounded or trivial. The decision of the review committee shall be final.
- (4) Once a charge is referred to the review committee, a written notice of and detailed explanation of the charge shall be forwarded to the person or corporation against whom the charge is made and a response is requested of the person or corporation so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given by first class mail to the last known address of the person or corporation.
- (5) If the respondent denies the charge brought against him, then, the review committee may direct that a field investigation be performed by an investigator retained by the Board.
- (6) After all preliminary evidence has been received by the review committee, it shall make a threshold determination of the charges brought. From the evidence, it shall recommend to the Board that:
 - (A) The charge be dismissed as unfounded or trivial;

- (B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the specific act or acts admitted by him to have been violated and, also, 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 matter being heard and determined by the Board, it may be resolved by consent order approved by the review committee.
- (7) Notice of the threshold determination of the review committee shall be given to the party against whom the charges have been brought and the party preferring the charge within ten days of the review committee's decision. Though it is not forbidden to do so, the review committee shall not be required to notify the parties of the reasons of the review committee in making its threshold determination.

(c) Board Determination. The Board may choose to hold a hearing on the merits of any disputed charge. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge in light of the requirements of G.S. 87-11.

.0702 Unlawful Practice

(a) Preferring Charges. Any person who believes that any person or corporation is in violation of the acts specified in G.S. 87-13 may prefer charges against that person or corporation. The charges are to be filed with the Secretary-Treasurer of the Board at the Board's office in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination.

- (1) A charge of unlawful practice, properly filed, is referred to the review committee.
- (2) The review committee is a committee made up of the following individuals:
 - (A) one member of the Board, and
 - (B) the legal counsel of the Board, and
 - (C) the Secretary-Treasurer.
- (3) The review committee is specifically delegated with the sole responsibility of determining on behalf of the Board whether there is probable cause to believe that a party against whom a charge has been brought in fact has violated the provisions of G.S. 87-13.
- (4) With or without notifying any of the parties involved, the review committee shall investigate the charge to determine whether there is probable cause to believe that G.S. 87-13 has been violated.
- (5) After all preliminary evidence has been received by the review committee, it makes its determination and acts in the following manner:
 - (A) If probable cause is found, the decision along with the reasons for the decision and any evidence accumulated by the review committee is immediately forwarded to the Board counsel for appropriate action.
 - (B) If no probable cause is found, the party preferring charges is so notified.

.0703 Fee for Submittal of Bad Check

(a) The Board shall charge any fee allowed by law if a check submitted to the Board is subsequently returned due to insufficient funds at or no account in a bank.

(b) Until such time as the payor of the bad check has made the check good and paid the prescribed fee, the payor will not be eligible to take an examination, review an examination, obtain a license or have his license renewed.

(c) Any license which has been issued or renewed based on the payment of a check which is subsequently returned to the Board for reasons stated in (a) of this Rule will be declared invalid until such time as the payor has made the check good and paid the prescribed fee. The invalidity shall commence from the date of issuance of the license or renewal.

(d) Payment to the Board for making good such bad check and for the prescribed fee shall be made in the form of a cashier's check or money order.

(e) All examination, license and license renewal applications provided by the Board shall contain information in a conspicuous place thereon clearly advising the applicant of any applicable bad check fee.

SECTION .0800 — CONTESTED CASES

- .0817 Right to Hearing** When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, privileges or a license of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give such person notice of their right to a hearing by mailing by certified mail to them at their last known address a notice of the proposed action and a notice of a right to a hearing.
- .0818 Request for Hearing** (a) Any time an individual believes their rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.
(b) Before an individual may file a request he must first exhaust all reasonable efforts to resolve the issue informally with the Board.
(c) Subsequent to such informal action, if still dissatisfied, the individual should submit a request to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request should contain the following information:
(1) Name and address of the Petitioner,
(2) A concise statement of the action taken by the Board which is challenged,
(3) A concise statement of the way in which the Petitioner has been aggrieved, and
(4) A clear and specific statement of request for a hearing.
(d) A request for administrative hearing must be submitted to the Board's office within 60 days of receipt of notice of the action taken by the Board which is challenged. The request will be acknowledged promptly and, if deemed appropriate by the Board, a hearing will be scheduled.
- .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).
- .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 contain the following information, in addition to the items specified in G.S. 150B-38(b):
(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 deemed relevant to informing the parties as to the procedure of the hearing.
(b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license or permit. Upon service of the order, the licensee or permit holder to whom the order is directed shall immediately cease the practice of general contracting in North Carolina. The Board shall promptly 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.
- .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).
- .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.

.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.

.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.

.0825 **Disqualification of Board Members**

(a) Self-disqualification. If for any reason a board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of case).

(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness of Affidavit. An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a board member may be disqualified under this Rule.

Where a petition for disqualification is filed less than 10 days before or during the course of a hearing, the hearing shall continue with the challenged board member sit-

ting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification:

- (1) The Board will appoint a board member to investigate the allegations of the affidavit.
- (2) The investigator will report their findings and recommendations to the Board.
- (3) The Board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) When a board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
- (6) If three or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

.0826 Failure to Appear

Should a party fail to appear at a scheduled hearing, the Board, or the designated administrative law judge, may proceed with the hearing and make its decision in the absence of the party, provided that the party has been given proper notice. The Board or the administrative law judge may order a continuance in order to give the party another opportunity to appear.

.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 be made in writing to the Board and shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, 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 caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service." The "return of service" form as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(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.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or produc-

tion would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(g) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(h) 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, and may notify any other party or parties of an open hearing, 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.

(i) Promptly after the close of such hearing, a majority of the Board members with voting authority, or an administrative law judge assigned to the case pursuant to G.S. 150B-40(e), 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.

.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 so that they cannot hear the testimony of other witnesses.

.0829 Final Decision

In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

.0830 Proposals for Decisions

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 03 .0127. Any party may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be received within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter, must be written and refer specifically to pages of the record or otherwise precisely 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) 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) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled board meeting following receipt of the written exceptions.

SECTION .0900 — HOMEOWNERS RECOVERY FUND

.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" includes contracting for the construction or alteration of a single-family residential dwelling unit.
- (2) "Dishonest conduct" does not include a mere breach of a contract.
- (3) "Incompetent conduct" is 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" includes 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 which 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 of real property who 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.
- (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 Volume VII of the North Carolina State Building Code.

.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.

.0903 Application for Payment

- (a) Applicants desiring to obtain payment from the fund shall file a verified application with the Board on a prescribed form. The form shall require information concerning the applicant and the claim including, but not limited to, the applicant's name and address, the amount of the claim, a description of the acts of the general contractor which constitute the grounds for the claim and a statement that all court proceedings are concluded or the general contractor has filed for bankruptcy. If the applicant has exhausted all civil remedies pursuant to G.S. 87-15.8(3), the application shall include certified copies from the civil action of the complaint, judgment and return of execution marked as unsatisfied. If the general contractor was a corporation which was dissolved no later than one year after the date of discovery by the applicant of the facts constituting the dishonest or incompetent conduct, and the applicant did not commence a civil action against the general contractor, then the applicant shall include certified copies of documents evidencing the dissolution. 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 and

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. 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.

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

.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).

.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.

.0906 Processing of Application

(a) Staff shall refer a properly filed application 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) The Committee shall determine, prior to a hearing, whether or not an application is meritless. The decision of the Committee is final. 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) If the general contractor denies the charges contained in the application, then, an investigator, retained by the Board, may perform a field investigation.

(d) The Committee may 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.

(e) After all preliminary evidence has been received by the Committee, it shall make a threshold determination 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.

(f) The Committee shall give notice of the threshold determination 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 threshold determination.

.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. The 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 will 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 been given proper notice. The Board may, in its discretion, order a continuance in order to give the party another opportunity to appear.

(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 in 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.

.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.

.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.



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