

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 28 – LANDSCAPE CONTRACTORS' LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Landscape Contractors' Licensing Board intends to adopt the rules cited as 21 NCAC 28B .0104, .0303, and .0901, and amend the rules cited as 21 NCAC 28B .0103, .0201, .0202, .0402, .0403, .0501, .0507, .0601, and .0803.

Link to agency website pursuant to G.S. 150B-19.1(c):www.nclclb.com

Proposed Effective Date: *June 1, 2019*

Public Hearing:

Date: *December 20, 2018*

Time: *9:00 a.m.*

Location: *3901 Barrett Drive, Suite 202, Raleigh, NC 27609*

Reason for Proposed Action:

- 21 NCAC 28B .0103 Provide clarity on when and how license number is to be displayed.*
21 NCAC 28B .0104 Required per G.S. 93B-2; establish manner in which annual reports are filed and escrow account maintained.
21 NCAC 28B .0201 Provide clarity on length of time of exam authorization.
21 NCAC 28B .0202 Clarify who must present evidence of licensure from other jurisdiction.
21 NCAC 28B .0303 Establish rule regarding definition of qualifier and use of assumed names.
21 NCAC 28B .0402 Provide clarity on CEU credits, who is responsible for taking CEU, etc.
21 NCAC 28B .0403 Clarify that failure to comply with CEU requirements will impact license status.
21 NCAC 28B .0501 Clarify how Board will review contracts in determining whether licensure is required.
21 NCAC 28B .0507 Clarify definition of "garden pool."
21 NCAC 28B .0601 Clarify fees for types of licenses (licensing and reinstatement).
21 NCAC 28B .0803 Include copy costs for subpoenaed documents.
21 NCAC 28B .0901 Required per G.S. 150B-20; establish process for rulemaking petitions.

Comments may be submitted to: *Calvin M. Kirven, The North Carolina Landscape Contractors' Licensing Board, 3901 Barrett Drive, Suite 202, Raleigh, NC 27609*

Comment period ends: *February 1, 2019*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
 Environmental permitting of DOT affected
 Analysis submitted to Board of Transportation
 Local funds affected
 Substantial economic impact (\geq \$1,000,000)
 Approved by OSBM
 No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 28B – LICENSING BOARD RULES

SECTION .0100 – STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 28B .0103 PRACTICE OF LANDSCAPE ~~CONTRACTING~~ CONTRACTING; DISPLAY OF LICENSE NUMBER

(a) An individual who is "readily available to exercise supervision over the landscape construction and contracting work" as set forth in G.S. 89D-12(a) and G.S. 89D-17(f) is an individual who is physically located no more than 100 miles from where the construction or contract project is located or who is available electronically with the ability to view the construction or contract project.

(b) The contractor's license number shall be displayed in accordance with G.S. 89D-12(3). License numbers displayed on vehicles used in the contractor's landscaping business shall be a minimum of one inch in height.

History Note: Authority G.S. ~~89D-12(a)~~; 89D-12(a) and (e); 89D-15(2);
Temporary Adoption Eff. January 1, 2016;
Eff. ~~September 1, 2016~~-2016;
Amended Eff. June 1, 2019.

21 NCAC 28B .0104 ANNUAL REPORTS

(a) On or before October 31 of each year, the Board shall prepare and file reports required pursuant to G.S. 93B-2. The Board shall file reports in the manner requested by receiving agency or committee.

(b) The Board shall maintain an escrow account at the financial institution used regularly for deposits and checks. Fees tendered during a period of suspension under G.S. 93B-2(d) shall be deposited into this escrow account.

History Note: Authority G.S. 93B-2;
Eff. June 1, 2019.

SECTION .0200 – LICENSURE; RECIPROCITY

21 NCAC 28B .0201 APPLICATIONS FOR LICENSURE

(a) All applicants for licensure or examination shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office. The application shall require the following:

- (1) The Social Security Number of applicant;
- (2) The applicant's contact information;
- (3) The name of business under which licensee will be operating, if any;
- (4) Information about all crimes of which the applicant has been convicted;
- (5) Documentation regarding all crimes of which the applicant has been convicted;
- (6) Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (7) Three personal letters of reference;
- (8) Two professional letters of reference;
- (9) The corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (10) The application fee as set forth in Rule .0601 of this Subchapter.

(b) All letters of reference as required by Subparagraphs (a)(7) and (a)(8) of this Rule shall include the following information for the person providing the reference:

- (1) Name;
- (2) Address;
- (3) Phone number; and
- (4) Email address.

(c) Once an applicant has submitted a complete application and has been determined to have met the minimum qualifications set forth in G.S. 89D-16(a), the Board will notify the applicant that the applicant's qualifier is permitted to take an examination. Prior to taking the examination, the applicant shall submit an examination fee as set out in this Subchapter. In order for a qualifier to be permitted to take an examination, an applicant shall submit a complete application no less than 30 days prior to a scheduled examination date.

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

(e) A qualifier has one year from the date an application is approved by the Board to take and pass an examination. If a license expires pursuant to G.S. 89D-20(a) and is not renewed within one year of the date of expiration, the licensee must submit a new application pursuant to this Rule.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-16; 89D-20;
Temporary Adoption Eff. January 1, 2016;
Eff. ~~September 1, 2016~~-2016;
Amended Eff. June 1, 2019.

21 NCAC 28B .0202 RECIPROCITY

(a) All applicants for licensure by reciprocity shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office located as described in Rule .0101 of this Subchapter.

(b) All applications shall include the following:

- (1) The license by reciprocity application fee as set forth in Rule .0601 of this Subchapter;
- (2) Documentation establishing that the qualifier for the applicant holds an active license, certification, or registration as a landscape contractor in another state or country;
- (3) Information indicating whether the applicant or qualifier has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (4) The ~~corporate~~ surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (5) Contact information for three personal references;

- (6) Contact information for two professional references; and
- (7) Documentation regarding all crimes of which the applicant has been convicted.

If there is any evidence to show that the applicant has committed any acts that would constitute a violation under G.S. 89D-22, the applicant shall not be licensed by reciprocity.

- (c) Once an applicant has submitted a complete application and the Board has determined that the requirements for licensure, certification, or registration in the applicant's home jurisdiction are substantially equivalent to the requirements in G.S. 89D-16, the Board shall issue a license to the applicant.
- (d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

History Note: Authority G.S. 89D-15(2); 89D-15(3); 89D-15(4); 89D-16; 89D-19; 89D-22; Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016-2016; Amended Eff. June 1, 2019.

SECTION .0300 – LICENSE RENEWAL; REINSTATEMENT

21 NCAC 28B .0303 QUALIFIER/QUALIFYING PARTY; USE OF ASSUMED NAME

- (a) Each license shall have a person associated with the license who shall be deemed the "qualifier" or the "qualifying party." The qualifier shall be an individual who has passed the Board's examination in accordance with the Board's statutes and rules.
- (b) If the license is an individual license, the qualifier shall be the same person as the person holding the individual license name. If the licensee is a legal entity authorized under the Board's practice act, the qualifier shall be as follows:
 - (1) If a corporation, the qualifier shall be an officer or a full-time employee;
 - (2) If a limited liability company, the qualifier shall be a manager as defined in G.S. 57D-1-03 or a full-time employee;
 - (3) If a partnership, the qualifier shall be a general partner or full-time employee; and
 - (4) If the holder of an assumed or designated trade name, the qualifier shall be an owner of no less than 50 percent of the business or a full-time employee.
- (c) If a qualifier ceases his relationship with the licensee and pursuant to G.S. 89D-17(h) seeks additional time to acquire a qualifier, the licensee shall submit a written request to the Board. If more than 30 days pass without a qualifier and no written request is submitted, the license is automatically suspended. If more than one year passes and the license is not renewed, the license shall be revoked pursuant to G.S. 89D-20.
- (d) "Full-time employee" means a person who is paid a salary or wage and is engaged in the work of the licensee a minimum of 20 hours per week or a majority of the hours operated by the applicant, whichever is less. A qualifier shall not be an independent contractor.
- (e) Any applicant or licensee seeking to operate under an assumed name shall submit to the Board a Certificate of Assumed Name filed in accordance with Chapter 66, Article 14A of the General Statutes. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships shall be accompanied by a copy of any documents required to be filed with the North Carolina Secretary of State's office, such as Articles of Incorporation or Certificate of Authority.
- (f) All licensees shall comply with the requirements of G.S. 66-71.4 and shall notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.
- (g) No applicant or licensee shall use or adopt an assumed name used by any other licensee, or any name so similar to an assumed name used by another licensee that could confuse or mislead the public.

History Note: Authority G.S. 66-71-4; 89D-16; 89D-17; 89D-20; Eff. June 1, 2019.

SECTION .0400 - CONTINUING EDUCATION

21 NCAC 28B .0402 CONTINUING EDUCATION UNITS

- (a) A licensee shall complete seven continuing education units (CEUs) during the year preceding renewal. Beginning with renewals filed after August 1, 2016, at least three of the seven CEUs must be technical credits and at least two of the seven CEUs must be business credits. If the information provided to the Board as required by this Section is unclear, the Board may request additional information from a licensee in order to assure compliance with continuing education requirements.
- (b) For the purposes of this Rule:
 - (1) "technical credits" are defined as credits relating directly to the subject matter of landscape contracting as described in G.S. 89D-11(3); and
 - (2) "business credits" are defined as credits relating to general business practices, including business planning, contracts, liability exposure, human resources, basic accounting, financial statements, and safety.
- (c) CEUs shall be determined as follows:

Type of Qualifying Activity	Minimum time required for 1 CEU
Live course	50 minutes
Online course	50 minutes
Trade Shows, Field Days, and Tours	4 hours

<u>Green Industry Board Member Service</u>	1 hour
<u>Teaching or instructing</u>	1 hour
<u>In-house or Green Industry training</u>	1 hour

(d) No more than two CEU credits will be given for qualifying teaching or instructing in one year.

(e) No more than four CEU credits will be given for pesticide credits issued by the North Carolina Department of Agriculture and Consumer Services in a given year.

~~(f)~~ Credit shall not be given in increments of less than .5 CEUs. Breaks in courses shall not be counted towards CEU credit.

~~(g)~~ Requests for pre-approval shall be submitted at least 45 days prior to the first day of the course or event.

(h) All continuing education shall be taken personally by the individual receiving credit.

(i) A licensee shall not take the same CEU course within two consecutive licensing years.

(j) A licensee licensed less than 12 months shall not be required to submit evidence of continuing education at the initial renewal date.

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016-2016;
Amended Eff. June 1, 2019.*

21 NCAC 28B .0403 CONTINUING EDUCATION RECORDS; AUDIT

(a) A licensee shall maintain records of attendance at continuing education programs for which CEUs have been approved for two years following the processing date of the renewal application to which the CEUs were applied.

(b) Compliance with annual CEU requirements shall be determined through a random audit process conducted by the Board. Licensees selected for auditing shall provide the Board with the following documentation of the CEU activities claimed for the renewal period:

- (1) Attendance verification records; and
- (2) Information regarding course content, instructors, and sponsoring organization.

(c) Licensees selected for audit shall submit all requested information to the Board within 21 calendar days after the date the licensee was notified by the Board of the audit.

(d) Failure to maintain compliance with the Board's continuing education requirements will result in the licensee's status being automatically changed to inactive.

*History Note Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016-2016;
Amended Eff. June 1, 2019.*

SECTION .0500 - MINIMUM STANDARDS

21 NCAC 28B .0501 GENERAL

(a) Prior to commencing work, services performed by a licensed landscape contractor ("licensed contractor") that exceed five thousand dollars (\$5,000) in value shall be described in a written agreement. This agreement may be authored by either party and shall contain:

- (1) The business name, license number, business address, and telephone number of the licensed contractor;
- (2) The name and address of client or customer;
- (3) The address or location of work to be performed, if different from the client or customer's address;
- (4) The date of the proposal;
- (5) The description of the work to be performed;
- (6) The total value in lump sum, unit price, or time and material price;
- (7) The estimated time of completion unless already identified in an original prime contract, if applicable;
- (8) The terms of payment;
- (9) The terms of warranty (if any);
- (10) The terms of maintenance, including the party responsible for maintenance;
- (11) The signatures of all parties by individuals legally authorized to act on behalf of the parties;
- (12) Affixation of a seal described in G.S. 89D-12(d) or a statement that the licensed contractor is licensed by the Board and the current address and phone number of the Board; and
- (13) The date of signing.

Contracts that are lump sum and have no breakout of cost for services that are either covered or noncovered under G.S. 89D-11 through G.S. 89D-13 shall be inclusive of covered services under G.S. 89D-13(5).

(b) All work performed by a licensed contractor shall meet all applicable building codes, local ordinances, and project specifications. All work performed by a licensed contractor shall meet manufacturer's specifications.

(c) If project plans or specifications prepared by someone other than the licensed contractor do not meet pertinent codes and ordinances, the licensed contractor shall bring this to the attention of the client or customer.

- (d) If the licensed contractor observes a condition while the work is being performed that requires attention beyond the original scope of work, the contractor shall report the condition to a supervisor, the owner, or the person responsible for authorizing the work.
- (e) The licensed contractor shall call for utility location services pursuant to the Underground Utility Safety and Damage Prevention Act, G.S. 87-115 et seq., also known as the N.C. 811 law.
- (f) The licensed contractor shall maintain a worksite that meets state and local standards for a safe workplace.

History Note: Authority G.S. 89D-13(5); G.S. 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016-2016;
Amended Eff. June 1, 2019.

21 NCAC 28B .0507 LOW-VOLTAGE LIGHTING; POOLS

- (a) When installing low-voltage landscape lighting systems, the licensed contractor shall:
 - (1) Insure that all wire connections are waterproof;
 - (2) Only use weather-proof fixtures;
 - (3) Supply lamps per the manufacturer's specifications with all fixtures;
 - (4) Ensure that the total lamp wattage of each circuit does not exceed the National Electrical Code (NEC) standard for the size of wire being used;
 - (5) Not load a wire to more than 80 percent of the wire's capacity;
 - (6) Connect all exterior low-voltage wiring to a ground fault circuit interrupter (GFCI) circuit;
 - (7) Mount transformers a minimum of 18 inches above grade;
 - (8) Perform a post-installation inspection to verify that the lighting system is fully operational as intended per the manufacturer's recommendations; and
 - (9) Provide literature to the client about the lighting components that lists lamps per the manufacturer's specifications for fixtures.
- (b) All garden pools shall be installed in accordance with state and local codes. A garden pool is an ornamental water feature that is not defined as a swimming pool under any state or local code.

History Note: Authority G.S. 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016-2016;
Amended Eff. June 1, 2019.

SECTION .0600 - FEES

21 NCAC 28B .0601 FEE SCHEDULE

- (a) The Board shall charge the following fees:
 - (1) Application:\$75.00;
 - (2) Examination:\$150.00;
 - (3) ~~License~~Individual license fee:\$60.00;
 - (4) Corporate license fee:\$60.00;
 - ~~(4)~~(5) License renewal:\$60.00;
 - ~~(5)~~(6) Late renewal:\$25.00;
 - ~~(6)~~(7) Reinstatement:Individual license reinstatement: \$100.00;
 - (8) Corporate license reinstatement:\$100.00;
 - ~~(7)~~(9) License by reciprocity:\$100.00; and
 - ~~(8)~~(10) Duplicate license:\$25.00.
- (b) If the Board elects to use a testing service for the preparation, administration, or grading of examinations, the Board shall charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.
- (c) The late renewal and reinstatement fees shall be imposed for renewal applications submitted after August 1.All licenses shall expire on August 1 unless renewed.
- ~~(e)~~(d) All fees charged by the Board are non-refundable.

History Note: Authority G.S. 89D-15(2); 89D-15(10); 89D-21;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016-2016;
Amended Eff. June 1, 2019.

SECTION .0800 - HEARINGS PROCESS; SUMMARY SUSPENSION

21 NCAC 28B .0803 SUBPOENAS

- (a) Pursuant to G.S. 150B-39, the Board may issue subpoenas for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
- (b) After a notice of hearing in a contested case has been issued and served upon a licensee or, in a case concerning an application for licensure, the applicant, the respondent may request subpoenas for the attendance of witnesses and the production of evidence.

(c) Requests by a licensee or applicant for subpoenas shall be made in writing to the Board and shall include the following:

- (1) the name and home or business address of all persons to be subpoenaed; and
- (2) the identification of any documents or information being sought.

Upon submission of a written request containing the information in Subparagraphs (1) and (2) of this Paragraph, the Board shall issue the subpoenas to the requesting party within three business days of the Board's receipt of the request.

(d) Subpoenas shall be served by the party requesting the subpoena as provided by the Rules of Civil Procedure, G.S. 1A, Rule 45. The cost of service, fees, and ~~expenses~~ expenses, including copying costs, of any witnesses or documents subpoenaed is prescribed by G.S. 150B-39.

History Note: Authority G.S. 89D-15(2); 89D-15(8); 150B-39; 150B-40(c);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016-2016;
Amended Eff. June 1, 2019.

SECTION .0900 – RULEMAKING

21 NCAC 28B .0901 RULEMAKING PETITION

(a) Any person may petition the Board to adopt a rule by submitting to the Board a written request that shall include the following:

- (1) Petitioner's contact information including phone number and email address;
- (2) Proposed rule, proposed amendment, or rule to be repealed; and
- (3) An explanation of why the proposed adoption, amendment or repeal is being requested.

The request shall be submitted in writing to the Board office as set out in 21 NCAC 28B .0101.

(b) The Board shall consider a petition at its next regularly scheduled meeting unless the petition is filed less than 15 days prior to such meeting. If a petition is filed less than 15 days prior to the next regularly scheduled Board meeting, the Board shall consider the petition at the next subsequent Board meeting. In all cases, the Board shall make its decision within the timeframe set out in G.S. 150B-20(b).

(c) If the Board denies a petition, a copy of the decision shall be served upon the petitioner by one of the methods for service of process under G.S. 1A-1, Rule 5(b). If service is by registered, certified, or first-class mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2) with delivery receipt, the copy shall be addressed to the petitioner at the latest address given by the petitioner to the Board. Service by one of the additional methods provided in G.S. 1A-1, Rule 5(b), is effective as provided therein and shall be accompanied by a certificate of service as provided in G.S. 1A-1, Rule 5(b)(1).

History Note: Authority G.S. 150B-20;
Eff. June 1, 2019.