

SUBCHAPTER 28B – LICENSING BOARD RULES

SECTION .0100 – STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 28B .0101 NAME AND LOCATION OF BOARD

- (a) All communications shall be addressed to the North Carolina Landscape Contractors' Licensing Board ("Board") at 3901 Barrett Drive, Suite 202, Raleigh, North Carolina 27609. Applications and other information are available on the Board's website: www.nclclb.com.
- (b) The Board office is open from 9:00 a.m. until 5:00 p.m., Monday through Friday.
- (c) The Board office is closed on State and Federal holidays.

History Note: Authority G.S. 89D-14; 89D-15(2);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0102 MEETINGS

- (a) Regular meetings of the Board will be held at the Board office or other location chosen by the Chairman. Additional meetings may be held at such other times and places as the Board deems necessary.
- (b) The Board shall hold an annual meeting every January. At that meeting, the Board shall elect a chairman, a vice chairman, a secretary-treasurer, and such other officers as may be deemed necessary by the Board.

History Note: Authority G.S. 89D-14; 89D-15(2);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0103 PRACTICE OF LANDSCAPE 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) and (e); 89D-15(2);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 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 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. 89D-15; 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 forth in Rule .0601 of 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 shall take and pass an examination within one year from the date an application is approved by the Board.
- (f) 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;
 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 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;
 Amended Eff. June 1, 2019.

21 NCAC 28B .0203 MILITARY-TRAINED APPLICANT; MILITARY SPOUSE

- (a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:
- (1) submission of a complete application for licensure in accordance with Rule .0201 of this Section;

- (2) submission of an application fee in accordance with Rule .0601 of this Subchapter; and
 - (3) providing documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1), (2) and (3).
- (b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:
- (1) submission of a complete application for licensure in accordance with Rule .0201 of this Section;
 - (2) submission of an application fee in accordance with Rule .0601 of this Subchapter;
 - (3) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military; and
 - (4) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1), (2), (3) and (4).

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-21; 93B-15.1;
 Temporary Adoption Eff. January 1, 2016;
 Eff. September 1, 2016.

21 NCAC 28B .0204 MAINTAIN CURRENT INFORMATION

- (a) Every licensee shall keep the Board advised of the licensee's current mailing address, phone number, email address, and the name or names under which the licensee is practicing. If any change occurs, the licensee shall notify the Board in writing of the change within 60 days.
- (b) Upon the dissolution of a professional relationship, the member or members thereof shall notify the Board in writing concerning such dissolution and of the succeeding status and addresses of the individuals or firm.
- (c) Within 5 days after the lapse of a surety bond or revocation of a letter of credit prescribed in G.S. 89D-16(a)(4), a licensee shall notify the Board in writing. If a licensee fails to renew the surety bond or obtain a new letter of credit within 30 days after the lapse or revocation, the license shall be revoked.
- (d) Failure to notify the Board of the changes described in Paragraphs (a), (b), or (c) of this Rule shall constitute a violation of G.S. 89D-22.

History Note: Authority G.S. 89D-15(2), 89D-15(11); 89D-16(a)(4); 89D-17(h); 89D-22(8);
 Temporary Adoption Eff. January 1, 2016;
 Eff. September 1, 2016.

SECTION .0300 – LICENSE RENEWAL; REINSTATEMENT

21 NCAC 28B .0301 LICENSE RENEWAL; WAIVER

- (a) All licensees seeking renewal shall submit annually to the Board a renewal application. The deadline for submission is August 1 in the renewal year. Applications shall be postmarked or received by the Board no later than August 1. If August 1 falls on a Saturday or Sunday, the application shall be postmarked or received no later than the following Monday. The application form is available on the Board website or may be obtained by contacting the Board office.
- (b) All renewal applications shall include the following:
 - (1) The license renewal fee set forth in Rule .0601 of this Subchapter;
 - (2) Documentation showing that the licensee has met the Board's continuing education requirements as set forth in Section .0400 of this Subchapter. However, if the licensee was licensed by examination within the previous 12 months, the licensee is not required to submit evidence of continuing education; and
 - (3) Documentation regarding all crimes of which the licensee has been convicted since the previous licensure or renewal.
- (c) Incomplete applications shall not be processed. Renewal fees are non-refundable.
- (d) An individual who is serving in the Armed Forces of the United States shall receive an extension of time to pay the license renewal fee upon submission of the following to the Board:
 - (1) Written request for waiver; and
 - (2) Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-20; 93B-15; 105-249.2;
 Temporary Adoption Eff. January 1, 2016;
 Eff. September 1, 2016.

21 NCAC 28B .0302 REINSTATEMENT

- (a) All applicants for reinstatement under this Rule shall submit an application to the Board. The application form shall be obtained by contacting the Board office. The reinstatement application shall require the following:
 - (1) The applicant's home and business contact information including phone number and email address;
 - (2) Corporate surety bond or an irrevocable letter of credit as required by G.S. 89D-16(a)(4);

- (3) Documentation showing that the licensee has met the Board's continuing education requirements as set forth in Section .0400 of this Subchapter;
- (4) Documentation regarding all crimes of which the applicant has been convicted since the previous application or renewal was filed with the Board;
- (5) Reinstatement, license renewal and renewal late fees in accordance with Rule .0601 of this Subchapter; and
- (6) Attestation, by signature, that the licensee has not engaged in the practice of landscape construction or contracting after revocation and that all information supplied on the reinstatement application is true and accurate.

(b) Any licensee whose license is suspended for failure to obtain continuing education as required by G.S. 89D-20(b) and this Subchapter may request reinstatement pursuant to G.S. 89D-20(b).

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

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 .0401 GENERAL

To ensure continuing efforts on the part of licensed contractors to remain current with new developments in landscape technology and to encourage better business practices and safety in the profession, continuing education is required as a condition of license renewal. A licensee shall submit, as a part of his or her renewal application, evidence that he or she has met the Board's continuing education requirements as set forth in this Section. Except as provided in Rule .0301 of this Subchapter, renewal applications that do not contain this information shall be deemed incomplete.

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

21 NCAC 28B .0402 CONTINUING EDUCATION UNITS

(a) A licensee shall complete in-person 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
Green Industry Board Member Service	1 hour
Teaching or instructing	1 hour
In-house or Green Industry training	1 hour

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

(e) No more than four CEU credits shall be given for pesticide credits issued by the North Carolina Department of Agriculture and Consumer Services in one 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 as set forth in Rule .0405 of this Subchapter shall be submitted at least 45 days prior to the first day of the course or event.

(h) All continuing education shall be taken in-person 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 subject to continuing education requirements for the initial renewal date as set forth in this Rule.

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; 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 shall result in the licensee's status being 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; Amended Eff. June 1, 2019.

21 NCAC 28B .0404 EXTENSION OF TIME

(a) The Board shall grant a licensee an extension of time to complete CEU requirements during a period of service in the Armed Forces of the United States upon submission of the following to the Board:

- (1) Written request for an extension; and
- (2) Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

(b) The Board shall grant a licensee an extension of time or waiver to obtain CEU requirements if he or she has a disability or illness that prevents him or her from complying with CEU requirements. In order to receive the waiver, a licensee shall provide the Board with the following:

- (1) Written request for waiver; and
- (2) Documentation that describes the disability or illness and explains how the disability or illness prevents the licensee from complying with the Board's CEU requirements. Documentation includes a letter from a licensed physician, nurse practitioner (NP), or physician assistant (PA).

(c) Where on a case-by-case basis the Board determines that due to an undue hardship (such as active military service, natural disaster, or illness of family member) the licensee could not reasonably be expected to comply with the Board's CEU requirements, the licensee shall be granted an extension of time in which to obtain the required CEUs. To be considered for an extension of time, a licensee shall submit the following:

- (1) Written request for extension; and
- (2) Documentation that supports the reason for the extension.

(d) The Board shall grant a waiver of CEU requirements upon submission of documentation that a licensee is in active duty while serving in the Armed Forces and is or has been deployed for at least eight months during the twelve-month period during which CEUs were required.

(e) An extension granted under Paragraphs (b) or (c) of this Rule shall not exceed one year. Prior to the expiration of the one year extension of time, a licensee may request an additional extension in accordance with this Rule.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b); 93B-15; 105-249.2; Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0405 REQUESTS FOR APPROVAL

(a) All requests for CEU approval shall include the following:

- (1) All applicants for continuing education credit 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:
 - (i) Applicant's contact information including phone number and email address;
 - (ii) Name of business under which the applicant is operating;
 - (iii) Type of qualifying activity in accordance with Rule .0402 of this Subchapter;
 - (iv) Title of the qualifying activity;
 - (v) Date(s) and time(s) of the qualifying activity;
 - (vi) Complete address where the qualifying activity will be held;
 - (vii) Qualifying activity registration information;
 - (viii) Name of presenter(s) and credentials;
 - (ix) Course agenda and supporting materials; and
 - (x) Attestation, by signature, that the qualifying activity provider will maintain attendance records for this course for one year after the date of this course.
- (2) The number of Continuing Education Units (CEUs) requested; and
- (3) The Location, date(s), and time(s) of course, activity, or Landscape Contractor's Licensing Board meetings attended or to be attended.

(b) For live and online courses and teaching or instructing activity, in addition to the requirements of Paragraph (a) of this Rule, all requests shall include the following:

- (1) The course title(s) and a description of course content;
- (2) The name and educational or professional credentials of the instructor;
- (3) The duration of the course or activity; and
- (4) An attestation that the course provider will maintain attendance records for one year after the date of the course.

(c) For trade shows, field days, and tours, requests for approval shall, in addition to the requirements of Paragraph (a) of this Rule, include materials or handouts promoting or obtained during the event.

(d) For in-house or Green Industry training, requests for approval shall include the following, in addition to the requirements of Paragraph (a) of this Rule:

- (1) A description of training provided; and
 - (2) The name(s) of training instructors.
- (e) For the purposes of this Rule, "Green Industry" is defined as greenhouse, nursery, floriculture, sod, Christmas tree producers, and related industry trades.

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

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); 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016;
Amended Eff. June 1, 2019.

21 NCAC 28B .0502 PLANTING

When planting, the licensed contractor shall:

- (1) Avoid potential planting conflicts with utilities and sight lines.
- (2) Protect plant material from physical damage and desiccation during transport.
- (3) Maintain plants during landscape construction.
- (4) Consider the cultural requirements of individual plants.
- (5) Excavate the plant hole sufficiently to ensure plant establishment and to promote long-term health, typically two times the width of the plant ball or container size.
- (6) Scarify the sidewalls of the planting pit.
- (7) Set plants in an upright, plumb position, unless design intent dictates otherwise.
- (8) Set plants on a firm, solid base.
- (9) Remove all strings, twine, and strapping from around the trunk of trees.

- (10) Remove the top third to top half of burlap or other wrapping material from the rootball of balled and burlapped trees.
- (11) Remove top third to top half of wire baskets on balled and burlapped trees or bend basket wire back to be flush with the side of the ball.
- (12) Set the plant so that the top of rootball is at or slightly above surrounding soil and does not exceed four inches above the surrounding soil.
- (13) Prior to planting, insure that the trunk flare of a tree is not covered with soil, is at or above the surrounding finished grade, and that no soil has been placed on top of the rootball.
- (14) Prior to planting containerized plants, manage the rootball to mitigate problems such as circling roots. Acceptable mitigation methods shall include slicing the rootball, shaving the rootball, or redirecting roots.
- (15) Utilize backfill soil that is similar to the soil at the planting site or is amended to meet a specific landscaping objective.
- (16) Not firm backfill to a density that inhibits root growth.
- (17) Install backfill soil in such a manner that it is settled in layered sections to limit future settling.
- (18) Not utilize screened soil as the sole material for backfill.
- (19) When mulching plants, maintain a mulch depth that is beneficial to the health of the plants.
- (20) When mulch is applied, apply mulch so that it does not touch a tree trunk or root flare.
- (21) Water plants thoroughly and immediately after planting in accordance with the needs of the plant.
- (22) Notify client of his or her responsibility to water plants following installation.
- (23) Stake trees only when required due to high winds, extreme slopes, or soft soils;
 - (a) If trees are staked, the guys shall not be installed so as to provide pressure on the trunk.
 - (b) Guys in contact with the tree shall be of a material that will not damage the tree.
- (24) Provide plants that are true to name and species.
- (25) Provide plants that are healthy and in good condition.
- (26) Prune any broken limbs.
- (27) Prune co-dominant leaders in shade trees that typically have dominant leaders.
- (28) If a condition is observed while the work is being performed that is detrimental to the long-term health of the plant, the condition shall be reported to the customer or client, a supervisor, the owner, or person responsible for authorizing the work.

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

21 NCAC 28B .0503 TURF

When establishing turf, the licensed contractor shall:

- (1) Notify the owner or the construction manager whether there is adequate time to establish the specified turf from seed within the construction schedule and prior to finish of the job;
- (2) Prior to lawn installation, loosen soil to a minimum depth of three inches;
- (3) Confirm that all lawn seed meets the standards of the NC Seed Law of 1963, as set forth in G.S. 106, Art. 31;
- (4) Evenly distribute seed;
- (5) Apply seed at manufacturer's recommended rates;
- (6) Roll or rake after seeding to insure good soil contact;
- (7) Install sod within 36 hours of harvesting unless weather conditions or turf types dictate a shorter timeframe;
- (8) Lay sod strips in a staggered pattern, horizontal to slopes and with tight seams;
- (9) Roll sod after installation to provide good soil contact;
- (10) Distribute sprigs evenly;
- (11) Insure that sprigs and sod plugs are in good contact with the soil;
- (12) Water lawn areas after installation and in accordance with the needs of the lawn; and
- (13) Notify client of his or her responsibility to water turf following installation.

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

21 NCAC 28B .0504 FINISH GRADE

When grading, the licensed contractor shall:

- (1) Grade the surface such that the finish grade is smooth and free of depressions and debris;
- (2) Insure positive water flow through the site, away from structures, and in such a manner that there is no puddling or ponding; and
- (3) Comply with all applicable local and national building codes and ordinances regarding slopes and drainage.

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

21 NCAC 28B .0505 DESIGN AND CONSULTATION

(a) The licensed contractor shall be permitted to perform work as defined in G.S. 89D-11(3) and G.S. 89D-12 on the following project sites:

- (1) A single family residential project of any size;
- (2) A non-single family project under one acre in total area;
- (3) A residential, institutional, or commercial project over one acre in total area that involves only planting and mulching; and
- (4) Any other project not prohibited by, or specifically exempted from, the provisions of G.S. 83A, G.S. 89A, or G.S. 89C.

(b) Additionally, the licensed contractor shall:

- (1) Obtain direct knowledge of site conditions by visiting the site;
- (2) Insure that designs meet all applicable state and local codes and standards; and
- (3) Consider the cultural requirements of individual plants.

History Note: Authority G.S. 89D-11(3); 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0506 DRAINAGE SYSTEMS AND CISTERNS

Licensed contractors shall:

- (1) Install drainage systems and cisterns in accordance with state and local codes and ordinances;
- (2) Install drainage conveyances in such a way that there is a positive flow;
- (3) Install drainage systems with measures that allow cleaning of the system;
- (4) Install drainage systems with adequate structural integrity so as to prevent crushing of the drainage system;
- (5) Install French drain systems to drain to daylight or into existing storm drainage; and
- (6) Insure that cisterns and closed drywells include an overflow outlet.

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

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;
Amended Eff. June 1, 2019.

21 NCAC 28B .0508 WALLS

- (a) When installing retaining walls, the licensed contractor shall:
- (1) Adhere to all pertinent codes.
 - (2) Adhere to manufacturer's or design professionals specifications.
 - (3) Bury the first course of a retaining wall.
 - (4) Not construct dry-laid stone walls of a height more than 3 feet above grade.
 - (5) Include a subdrain system that is constructed and sized to release the subsurface water behind the wall and not allow hydrostatic pressure to build behind the wall.
 - (6) Construct on a level, well-compacted base of granular material at least 6 inches deep.
 - (7) Place backfill behind retaining walls in lifts no greater than 6 inches before compacted (each lift shall be well-compacted).
 - (8) Prevent excessive runoff from passing over a retaining wall.
 - (9) Construct vertically-set timber walls with above-ground heights equal to or less than the depth of timbers below grade.
 - (10) Install deadmen every fourth course on 8 feet centers when constructing horizontally-set timber retaining walls with staggered joints.
 - (11) Stagger the joints when constructing dry-laid stone walls. If successive vertical joints occur, the licensed contractor shall avoid running vertical joints more than two courses.
- (b) When installing freestanding walls, the licensed contractor shall:
- (1) Install footings for masonry and cast-in-place concrete freestanding walls of reinforced concrete. The top of the footing shall be at least 1 foot below grade.
 - (2) Reinforce freestanding walls as needed to prevent displacement from wind loads.
 - (3) Insure that moisture is prevented from entering a cavity wall during construction.
 - (4) Insure that segmental wall construction meets segmental wall manufacturer's specifications.

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

21 NCAC 28B .0509 PAVING

When paving, the licensed contractor shall:

- (1) Follow manufacturer's recommendations and specifications;
- (2) Choose paving materials that are appropriate for the project, based on the contractor's professional judgment;
- (3) Install paving on a well-compacted base that will prevent settlement;
- (4) Install paved surfaces to allow for surface drainage and to prevent ponding;
- (5) Install reinforcement in concrete slabs so that the reinforcement is suspended within the concrete and not resting on the base course;
- (6) Not pour concrete if air temperatures, away from artificial heat or in the shade, is less than 35 degrees Fahrenheit;
- (7) Not pour concrete if the air temperature in the shade is 90 degrees Fahrenheit and rising or if the concrete temperature is greater than 95 degrees Fahrenheit;
- (8) Use a vibratory compacting device to set unit pavers and after joints are swept; and
- (9) Utilize an edge restraint on unit paver installations.

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

21 NCAC 28B .0510 PRUNING

(a) When pruning, a licensed contractor shall:

- (1) Use sharp tools;
- (2) When making a pruning cut that removes a branch at its point of origin, make the cut close to the trunk or parent branch without cutting into the branch bark ridge or branch collar or leaving a stub;
- (3) Not flush cut;
- (4) Not top trees;

- (5) Remove branches in such a manner as to avoid damage to other parts of the plant or to other plants or property; and
- (6) Precut branches that are too large to support with one hand to avoid splitting the wood or tearing the bark.

(b) The requirements in Paragraph (a) of this Rule shall not apply when pruning to achieve artistic intent, such as pleaching, pollarding, sculpting, topiary, or espalier.

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

21 NCAC 28B .0511 WILDFLOWER, NATIVE GRASS, AND NO-MOW SEED ESTABLISHMENT

When establishing wildflower, native grass, or no-mow seeding, a licensed contractor shall:

- (1) Prior to construction, inform the owner or construction manager of the time required to establish native bunch grasses and forbs from seed and whether this time is compatible with the construction schedule.
- (2) Confirm the suitability of the specified seed for the project as determined by the land, soil type, and sun/shade exposure.
- (3) Select seed that is regionally appropriate and of the geographic ecotype for the location of the project by following the recommended seeding rate from the supplier.
- (4) Use pure live seed (PLS) rates for seeding. If bulk seed is utilized, adjust the rates accordingly.
- (5) Use a temporary cover, nurse crop, or mulch that is non-allelopathic and seasonally appropriate when seeding.
- (6) Use highest seed rates on slopes greater than 30 degrees or when a dormant seeding schedule is utilized.
- (7) Employ a seeding method that buries seed less than one-quarter inch in depth, and cultipack or roll after seed distribution.

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

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) Individual license fee: \$60.00;
- (4) Corporate license fee: \$60.00;
- (5) License renewal: \$60.00;
- (6) Late renewal: \$25.00;
- (7) Individual license reinstatement: \$100.00;
- (8) Corporate license reinstatement: \$100.00;
- (9) License by reciprocity: \$100.00; and
- (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.

(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;
Amended Eff. June 1, 2019.*

SECTION .0700 - COMPLAINTS; INVESTIGATIONS

21 NCAC 28B .0701 COMPLAINTS; INVESTIGATIONS

(a) All complaints filed with the Board shall be filed either on a form provided by the Board or via the Board's online

complaint process at www.nclclb.com. All complaints must contain the following information:

- (1) Date of alleged violation;
- (2) Contact information for licensee/unlicensed contractor;
- (3) Contractor license number, if known;
- (4) Complainant name and contact information;
- (5) Address where alleged violation(s) occurred;
- (6) Description of work performed;
- (7) Copy of written contract; and
- (8) Attestation, by signature, that information provided is true and accurate to the best of complainant's knowledge.

The Board will not investigate anonymous complaints. Incomplete complaints will not be investigated.

(b) Upon completion of the investigation, the investigator's report will be forwarded to a designated Board member and Board staff, who will make a recommendation, based upon whether the investigation produces evidence of a violation of G.S. 89D-22 through 24 or the rules of this Subchapter, to the full Board as to whether the case should be dismissed or whether further action by the Board is warranted.

History Note: Authority G.S. 89D-15(2); 89D-15(6); 89D-15(7);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

SECTION .0800 - HEARINGS PROCESS; SUMMARY SUSPENSION

21 NCAC 28B .0801 PROBABLE CAUSE

Upon a determination that there is probable cause to believe a violation of G.S. 89D or the rules of this Subchapter exists, the Board shall issue a Notice of Hearing pursuant to G.S. 150B-38(b) and (c). Any party served with a Notice of Hearing may file a written response pursuant to G.S. 150B-38(d).

History Note: Authority G.S. 89D-15(2); 89D-15(7); 89D-15(8); 150B-38;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0802 HEARINGS

(a) Contested case hearings shall be conducted by a majority of the Board unless the Board requests the designation of an administrative law judge pursuant to G.S. 150B-40(e). The Board chairman shall serve as the presiding officer unless he or she is absent or disqualified, in which case the vice-chairman shall preside. Hearings shall be conducted pursuant to G.S. 150B-40.

(b) An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, shall be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts that give rise to his or her belief that a Board member should be disqualified.

History Note: Authority G.S. 89D-15(2); 89D-15(8); 150B-38; 150B-40;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

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, 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;
Amended Eff. June 1, 2019.

21 NCAC 28B .0804 SUMMARY SUSPENSION

- (a) The Board may summarily suspend a license in accordance with G.S. 150B-3(c).
- (b) Upon the issuance of an order summarily suspending a license, the Board shall schedule a hearing to occur at the earliest practicable date. The order of summary suspension shall remain in effect until the proceedings are determined.

History Note Authority G.S. 89D-15(2); 89D-15(4); 150B-3(c);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

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.

###