

SUBCHAPTER 28B – LICENSING BOARD RULES

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

(a) When establishing natural 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 ensure 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) Ensure 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.

(b) When installing artificial turf, the licensed contractor shall:

- (1) Ensure that the sub-grade is compacted and shall pitch properly to drain;
- (2) Establish a perimeter attachment system to secure the artificial turf;
- (3) Roll out the turf with the nap facing a consistent direction;
- (4) Secure the turf with an evenly weighted sand layer distributed over the entire surface; and

- (5) Follow all manufacturer's specifications for the type of turf being installed.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016;
Amended Eff. July 1, 2021.*

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 all NC Department of Insurance requirements regarding the construction of retaining walls which are hereby incorporated by reference and can be found at www.ncosfm.gov/codes free of charge;
- (3) Adhere to manufacturer's or design professionals specifications;
- (4) Bury the first course of a retaining wall;
- (5) Not construct dry-laid stone walls of a height more than 3 feet above grade;
- (6) 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;
- (7) Construct on a level, well-compacted base of granular material at least 6 inches deep;
- (8) Place backfill behind retaining walls in lifts no greater than 6 inches before compacted (each lift shall be well-compacted);
- (9) Prevent excessive runoff from passing over a retaining wall;
- (10) Construct vertically-set timber walls with above-ground heights equal to or less than the depth of timbers below grade;
- (11) Install deadmen every fourth course on 8 feet centers when constructing horizontally-set timber retaining walls with staggered joints;
- (12) 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; and
- (13) Assure that segmental walls meet the manufacturer's specifications.

(b) When installing retaining walls of dry-laid stone or concrete rubble, the licensed contractor shall:

- (1) Construct the wall no higher than 3 feet above grade; and
- (2) Stagger the joints when constructing a dry-laid stone wall.

(c) 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) Ensure that moisture is prevented from entering a cavity wall during construction.
- (4) Ensure 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;
 Amended Eff. July 1, 2021.

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: \$100.00;
- (4) Corporate license fee: \$100.00;
- (5) License renewal: \$100.00;
- (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, 2021, 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.