

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Board of Architecture

RULE CITATION: 21 NCAC 02 .0217

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection to this Rule because staff does not believe the Board has statutory authority to create a designation for and regulate individuals no longer licensed by the Board.

This Rule, which has been in the NC Administrative Code since 1991, was used to create a designation for Architect Emeritus Status. The Rule currently allows this designation to be applied to retired architects who are no longer in active practice. The proposed amendment will require the individuals seeking this status to permanently relinquish their license. Therefore, the agency is proposing to regulate individuals who are no longer licensed by the Board. However, the Board is a licensing board, and staff is not aware of any authority for the agency to confer a status that is exclusive of a license.

The Board has not provided, and staff is not aware of, any authority for the agency to create this designation without requiring licensure of an individual. It may be that the agency is relying upon G.S. 83A-12 for this Rule; however, staff notes that the statute expressly refers to licensees, and these individuals will not be licensed.

§ 83A-12. Prohibited practice.

The purpose of the Chapter is to safeguard life, health and property. It shall be unlawful for any individual, firm or corporation to practice or offer to practice architecture in this State as defined in this Chapter, or to use the title "Architect" or any form thereof, except as provided in Chapter 89A for Landscape Architects, or to display or use any words, letters,

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figures, titles, sign, card, advertisement, or other device to indicate that such individual or firm practices or offers to practice architecture as herein defined or is an architect or architectural firm qualified to perform architectural work, unless such person holds a current individual or corporate certificate of admission to practice architecture under the provisions of this Chapter. (1915, c. 270, s. 4; C.S., s. 4996; 1941, c. 369, ss. 1, 2; 1951, c. 1130, s. 3; 1957, c. 794, s. 11; 1965, c. 1100; 1969, c. 718, s. 21; 1973, c. 1414, s. 1; 1979, c. 871, s. 1.)

Therefore, staff recommends objection to this Rule as written for lack of statutory authority.

UNREVIEWED DRAFT

Chapter 83A.

Architects.

§ 83A-1. Definitions.

When used in this Chapter, unless the context otherwise requires:

- (1) "Architect" means a person who is duly licensed to practice architecture.
- (2) "Board" means the North Carolina Board of Architecture.
- (3) "Corporate certificate" means a certificate of corporate registration issued by the Board recognizing the corporation named in the certificate as meeting the requirements for the corporate practice of architecture.
- (4) "Corporate practice of architecture" means "practice" as defined in G.S. 83A-1(7) by a corporation which is organized or domesticated in this State, and which holds a current "corporate certificate" from this Board.
- (5) "Good moral character" means such character as tends to assure the faithful discharge of the fiduciary duties of an architect to his client. Evidence of lack of such character shall include the willful commission of an offense justifying discipline under this Chapter, the practice of architecture in violation of this Chapter, or of the laws of another jurisdiction, or the conviction of a felony.
- (6) "License" means a certificate of registration issued by the Board recognizing the individual named in the certificate as meeting the requirements for registration under this Chapter.
- (7) "Practice of architecture" means performing or offering to perform or holding oneself out as legally qualified to perform professional services in connection with the design, construction, enlargement or alteration of buildings, including consultations, investigations, evaluations, preliminary studies, the preparation of plans, specifications and contract documents, administration of construction contracts and related services or combination of services in connection with the design and construction of buildings, regardless of whether these services are performed in person or as the directing head of an office or organization. (1915, c. 270, s. 9; C.S., s. 4985; 1941, c. 369, s. 3; 1951, c. 1130, s. 1; 1957, c. 794, ss. 1, 2; 1979, c. 871, s. 1.)

§ 83A-2. North Carolina Board of Architecture; creation; appointment, terms and oath of members; vacancies; officers; bond of treasurer; notice of meetings; quorum.

(a) The North Carolina Board of Architecture shall have the power and responsibility to administer the provisions of this Chapter in compliance with the Administrative Procedure Act.

(b) The Board shall consist of seven members appointed by the Governor. Five of the members of the Board shall be licensed architects appointed for five year terms; the terms shall be staggered so that the term of one architect member expires each year. No architect member shall be eligible to serve more than two consecutive terms; if a vacancy occurs during a term, the Governor shall appoint a person to fill the vacancy for the remainder of the unexpired term. Two of the members of the Board shall be persons who are not licensed architects and who represent the interest of the public at large; the Governor shall appoint these members not later than July 1, 1979. The public members shall have full voting powers and shall serve at the pleasure of the Governor. Each Board member shall file with the Secretary of State an oath faithfully to perform duties as a member

of the Board, and to uphold the Constitution of North Carolina and the Constitution of the United States.

(c) Officers of the Board shall include a president, vice-president, secretary and treasurer elected at the annual meeting for terms of one year. The treasurer shall give bond in such sum as the Board shall determine, with such security as shall be approved by the Board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands. Notice of the annual meeting, and the time and place of the annual meeting shall be given each member by letter at least 10 days prior to such meeting and public notice of annual meetings shall be published at least once each week for two weeks preceding such meetings in one or more newspapers of general circulation in this State. A majority of the members of the Board shall constitute a quorum. (1915, c. 270, ss. 1, 2; C.S., ss. 4986-4988, 4990; 1957, c. 794, ss. 3, 4, 6; 1979, c. 871, s. 1.)

§ 83A-4. Fees.

All fees and charges by the Board shall be established by Board rule subject to the provisions of the Administrative Procedure Act.

Fees set by the Board shall not exceed the following amounts:

Initial Application	
Individual	
Residents	\$50.00
Nonresidents	\$50.00
Corporate	\$75.00
Reexamination	\$25.00
Annual License Renewal	
Individual	\$75.00
Corporate	\$100.00
Late Renewal Penalty	
Up-to-30 days	\$50.00
30 days to 1 year	\$50.00
Reciprocal Registration	\$150.00

The above fees are provided in addition to any other fees prescribed by law. Reasonable fees for examination materials, certificates, rosters and other published materials shall be established by the Board, but the Board shall not collect any fees not authorized by this Chapter. (1915, c. 270, ss. 3, 6; 1919, c. 336, ss. 1, 2; C.S., ss. 4992, 4994, 4995; 1951, c. 1130, s. 2; 1957, c. 794, ss. 7, 9, 10; 1971, c. 1231, s. 1; 1979, c. 871, s. 1; 1985, c. 364.)

§ 83A-6. Board rules; bylaws; standards of professional conduct.

(a) The Board shall have the power to adopt bylaws, rules, and standards of professional conduct to carry out the purposes of this Chapter, including, but not limited to:

- (1) The adoption of bylaws governing its meetings and proceedings;
- (2) The establishment of qualification requirements for admission to examinations, and for individual or corporate licensure as provided in G.S. 83A-7 and 83A-8;
- (3) The establishment of the types and contents of examinations, their conduct, and the minimum scores or other criteria for passing such examinations;
- (4) The adoption of mandatory standards of professional conduct concerning misrepresentations, conflicts of interest, incompetence, disability, violations of

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law, dishonest conduct, or other unprofessional conduct for those persons or corporations regulated by this Chapter, which standards shall be enforceable under the disciplinary procedures of the Board;

- (5) The establishment or approval of requirements for renewal of licenses designed to promote the continued professional development and competence of licensees. Such requirements shall be designed solely to improve the professional knowledge and skills of a licensee directly related to the current and emerging bodies of knowledge and skills of the licensee's profession.

When necessary to protect the public health, safety, or welfare, the Board shall require such evidence as it deems necessary to establish the continuing competency of architects as a condition of renewal of licenses.

(b) The Board shall not adopt any rule or regulation which prohibits advertising.

(c) The adoption, amendment or revocation of rules, regulations, and standards of professional conduct, and the publication and distribution of the same shall be subject to the provisions of the Administrative Procedure Act. (1979, c. 871, s. 1.)

§ 83A-11. Expirations and renewals.

Certificates must be renewed on or before the first day of July in each year. No less than 30 days prior to the renewal date, a renewal application shall be mailed to each individual and corporate licensee. The completed application together with the required renewal fee shall be returned to the Board on or before the renewal date. When the Board is satisfied as to the continuing competency of an architect, it shall issue a renewal of the certificate. Upon failure to renew within 30 days after the date set for expiration, the license shall be automatically revoked but such license may be renewed at any time within one year following the expiration date upon proof of continuing competency and payment of the renewal fee plus a late renewal fee. After one year from the date of revocation, reinstatement may be made by the Board, or in its discretion, the application may be treated as new subject to reexamination and qualification requirements as in the case of new applications. (1919, c. 336, s. 2; C.S., s. 4995; 1951, c. 1130, s. 2; 1957, c. 794, s. 10; 1979, c. 871, s. 1.)

§ 83A-12. Prohibited practice.

The purpose of the Chapter is to safeguard life, health and property. It shall be unlawful for any individual, firm or corporation to practice or offer to practice architecture in this State as defined in this Chapter, or to use the title "Architect" or any form thereof, except as provided in Chapter 89A for Landscape Architects, or to display or use any words, letters, figures, titles, sign, card, advertisement, or other device to indicate that such individual or firm practices or offers to practice architecture as herein defined or is an architect or architectural firm qualified to perform architectural work, unless such person holds a current individual or corporate certificate of admission to practice architecture under the provisions of this Chapter. (1915, c. 270, s. 4; C.S., s. 4996; 1941, c. 369, ss. 1, 2; 1951, c. 1130, s. 3; 1957, c. 794, s. 11; 1965, c. 1100; 1969, c. 718, s. 21; 1973, c. 1414, s. 1; 1979, c. 871, s. 1.)

1 21 NCAC 02 .0217 is proposed for amendment as follows:

2 **21 NCAC 02 .0217 ARCHITECT EMERITUS**

3 The Board shall approve an application for Architect Emeritus status for a person who meets the following criteria:

- 4 (1) the individual has been continuously licensed as an architect by the Board for a minimum of 10 years,
5 (2) the individual agrees to permanently relinquish their license and;
6 (3) the individual has no pending disciplinary action or history of criminal convictions that would support a
7 determination that the licensee is not of good character and reputation.

8 ~~Resident architects who have been registered in this state who are retired from active practice or other related~~
9 ~~professional activities in any jurisdictions whatsoever, may apply for "Emeritus Status" by submitting a form provided~~
10 ~~by the Board showing compliance with the requirements of this Section.—"Retired" means that the architect no longer~~
11 ~~practices architecture in that he/she no longer seals and certifies documents with his/her seal or otherwise offers to~~
12 ~~practice or practices architecture as defined in G.S. 83A-1 as amended. Nonresident architects who have been~~
13 ~~continuously certified by NCARB who are retired from active practice [or other related professional activities] in any~~
14 ~~jurisdictions whatsoever, and who are "emeritus", inactive or retired in every other jurisdiction in which they are~~
15 ~~licensed may also apply for "Emeritus Status" by submitting a form provided by the Board showing compliance with~~
16 ~~the requirements of this Section. Any such "architect emeritus" must renew that status on forms provided by the Board~~
17 ~~on or before the first day of July in each year. Any reference to an architect~~ An individual on who has been granted
18 "Emeritus Status" may use the designation "Architect Emeritus" on any letter, title, sign, card or other device. ~~device~~
19 ~~shall list such architect as "Architect Emeritus".~~

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21 *History Note: Authority G.S. 83A-4; 83A-6; 83A-11; 83A-12;*

22 *Eff. November 1, 1991;*

23 *Amended Eff. October 1, 2017; July 1, 2006;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13,*
25 *2015.*

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