

1 21 NCAC 12 .0204 is amended with changes as published in 32:10 NCR 968-981 as follows:

2
3 **21 NCAC 12 .0204** **LICENSE LIMITATIONS; ELIGIBILITY**

4 **(a)** All licenses shall have an appropriate limitation as set forth in this Rule.

5 ~~(a)~~ **(b)** Limited License. The applicant for a limited license ~~must:~~ shall:

- 6 (1) ~~Be [be]~~ entitled to be admitted to the examination given by the Board and must [shall] meet the
7 requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- 8 (2) ~~Be be~~ financially stable to the extent that the total current assets of the applicant or the firm or
9 corporation he or she represents exceed the total current liabilities by at least seventeen thousand
10 dollars (\$17,000) or the total net worth of the applicant or firm is at least eighty thousand dollars
11 (\$80,000);
- 12 (3) ~~Pass pass~~ the examination given by the Board for which shall contain subject matter related to the
13 specific contracting classification chosen by the applicant with a score of 70 percent or higher; as
14 set out in Rule .0404 of this Chapter; and
- 15 (4) ~~Provide~~ if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in
16 bankruptcy within five years prior to the filing of the application, provide to the Board an audited
17 financial statement with a classified balance sheet as part of the application, application, if the
18 applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within
19 seven [five] years prior to the filing of the application. This requirement ~~does~~ shall not apply to
20 shareholders of an applicant that is a publicly traded corporation. [The audited financial statement
21 shall be prepared by a certified public accountant.]

22 ~~(b)~~ **(c)** Intermediate License. The applicant for an intermediate license ~~must:~~ shall:

- 23 (1) ~~Be [be]~~ entitled to be admitted to the examination given by the Board and must [shall] meet the
24 requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- 25 (2) ~~Be be~~ financially stable to the extent that the total current assets of the applicant or the firm or
26 corporation he or she represents exceed the total current liabilities by at least seventy-five thousand
27 dollars (\$75,000), as reflected in an audited financial statement prepared by a certified public
28 accountant or an independent accountant who is engaged in the public practice of accountancy;
29 [accountant;] and
- 30 (3) ~~Pass pass~~ the examination given by the Board for which shall contain subject matter related to the
31 specific contracting classification chosen by the applicant with a score of 70 percent or higher. as
32 set out in Rule .0404 of this Chapter.

33 ~~(c)~~ **(d)** Unlimited License. The applicant for an unlimited license ~~must:~~ shall:

- 34 (1) ~~Be [be]~~ entitled to be admitted to the examination given by the Board and must [shall] meet the
35 requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- 36 (2) ~~Be be~~ financially stable to the extent that the total current assets of the applicant or the firm or
37 corporation he or she represents exceed the total current liabilities by at least one hundred fifty

1 thousand dollars (\$150,000), as reflected in an audited financial statement prepared by a certified
2 public accountant or an independent accountant who is engaged in the public practice of
3 accountancy; [accountant;]

- 4 (3) ~~Pass~~ pass the examination ~~given by the Board for~~ which shall contain subject matter related to the
5 specific contracting classification chosen by the applicant with a score of ~~70 percent or higher.~~ as
6 set out in Rule .0404 of this Chapter.

7 ~~(d)~~ (e) Surety Bonds. In lieu of demonstrating the ~~required~~ level of working capital ~~as required by~~ in Subparagraphs
8 ~~[(b)(2)] (c)(2)~~ and ~~[(e)(2)] (d)(2)~~ of this Rule or net worth under Subparagraph ~~(a)(2) (b)(2)~~ of this Rule, an applicant
9 may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58
10 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of
11 either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in
12 effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the
13 applicant demonstrates the required level of working ~~capital.~~ capital as required by Subparagraphs ~~[(b)(2)] (c)(2)~~ and
14 ~~[(e)(2)] (d)(2)~~ of this Rule. The application form and subsequent annual license renewal forms shall require proof of
15 a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three
16 hundred fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate
17 license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list the State of North Carolina
18 as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting
19 breach of a construction ~~contract or contract,~~ breach of a contract for the furnishing of labor, materials, or professional
20 services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the
21 performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any
22 other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety
23 cancel the bond, the surety and the applicant both shall notify the Board within 30 days in writing. If the applicant
24 fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's
25 cancellation, then the applicant's license ~~is~~ shall be suspended until written proof of compliance is provided.

26 ~~(e) Suspension. After a suspension of four years, the applicant shall fulfill all requirements of a new applicant for~~
27 ~~licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule~~
28 ~~shall subject the applicant to additional disciplinary action by the Board.~~

29 ~~(f) Reciprocity. An applicant that requests reciprocity as set forth in G.S. 87-15.1 must comply with all other~~
30 ~~requirements of the rules in this Chapter to be eligible to be licensed in North Carolina as a general contractor.~~

31 ~~(g) [(e)] (f) Accounting~~ Financial statements, accounting, and reporting standards. Financial statements submitted by
32 applicants to the Board shall be no older than twelve months from the date of submission. Financial statements shall
33 conform to United States "generally accepted accounting principles" (GAAP). The Board may require non-GAAP
34 financial statements from applicants wherein the only exception to GAAP is that such presentation is necessary to
35 ascertain the working capital or net worth of the particular applicant. Examples of ~~such~~ the circumstances when non-
36 GAAP presentation ~~is~~ may be necessary to ascertain the working capital or net worth of the applicant ~~are~~ shall be
37 when the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent" on personal

1 financial statements and when the only exception to GAAP is that the particular applicant is not combined with a
2 related entity into one financial statement pursuant to AICPA Financial Interpretation 46R (ASC 810). The
3 terminologies, working capital, balance sheet with current and fixed assets, current and long term liabilities, and any
4 other accounting terminologies, used herein shall be construed in accordance with GAAP Standards as promulgated
5 by the Financial Accounting Standards Board (FASB). The terminologies, audited financial statement, unqualified
6 opinion, and any other auditing terminologies used herein shall be construed in accordance with those standards
7 referred to as "generally accepted auditing standards" (GAAS) as promulgated by the American Institute of Certified
8 Public Accountants (AICPA).

9
10 *History Note: Authority G.S. 87-1; 87-4; 87-10; 87-15.1;*
11 *Eff. February 1, 1976;*
12 *Readopted Eff. September 26, 1977;*
13 *Amended Eff. January 1, 1983;*
14 *ARRC Objection March 19, 1987;*
15 *Amended Eff. May 1, 1989; August 1, 1987;*
16 *Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989;*
17 *Amended Eff. December 1, 1989;*
18 *Temporary Amendment Eff. May 31, 1996;*
19 *RRC Removed Objection Eff. October 17, 1996;*
20 *Amended Eff. August 1, 1998; April 1, 1997;*
21 *Temporary Amendment Eff. August 24, 1998;*
22 *Amended Eff. April 1, 2014; April 1, 2013; August 1, 2008; April 1, 2006; March 1, 2005; August*
23 *1, 2002; April 1, 2001; August 1, 2000;*
24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
25 *~~2016.~~ 2016;*
26 *Amended Eff. April 1, 2018.*

1 21 NCAC 12 .0503 is amended with changes as published in 32:10 NCR 968-981 as follows:

2
3 **21 NCAC 12 .0503 RENEWAL OF LICENSE**

4 (a) ~~Form.~~ The Board's renewal form shall require the applicant to include the following information: [Applicants]
5 Applications for renewal of license shall containing the following:

- 6 (1) ~~whether there were any changes made in the status of the licensee's business during the preceding~~
7 ~~year; and the Social Security Number of the applicant and qualifier(s) and tax identification number~~
8 ~~for corporations, LLCs, or partnerships;~~
- 9 (2) ~~a financial statement for the licensee's business. The financial statement need not be prepared by a~~
10 ~~certified public accountant or by a qualified independent accountant, but may be completed by the~~
11 ~~licensee on the form itself. the applicant's contact information;~~
- 12 (3) ~~the name of business under which licensee will be operating, if any;~~
- 13 (4) ~~information regarding any changes made in the status of the licensee's business, since the initial~~
14 ~~application or last renewal was submitted to the Board, whichever is later;~~
- 15 (5) ~~confirmation of license limitation and classifications;~~
- 16 (6) ~~information about all crimes of which the applicant has been convicted since the initial application~~
17 ~~or last renewal was submitted to the Board, whichever is later;~~
- 18 (7) ~~documentation regarding all crimes referenced above;~~
- 19 (8) ~~information indicating whether the applicant has any disciplinary history with any other~~
20 ~~occupational licensing, [registration] registration, or certification agency since the initial application~~
21 ~~or last renewal was submitted to the Board, whichever is later;~~
- 22 (9) ~~a financial statement prepared by a representative of the licensee on a form provided by the Board,~~
23 ~~[an acceptable substitute or by] a certified public [accountant] accountant, or an independent~~
24 ~~accountant who is engaged in the public practice of accountancy to demonstrate continued financial~~
25 ~~responsibility pursuant to Rule .0204 of this Chapter; [and]~~
- 26 (10) ~~if applicable, proof that the surety bond is maintained in compliance with Rule .0204 of this Chapter;~~
27 ~~and~~
- 28 [(40)](11) ~~the application fee [as set forth in Rule .0304 of this Chapter] and any accrued late [fees;] fees~~
29 ~~as set forth in Rule .0304 of this Chapter.~~

30 (b) ~~The Board shall require a licensee to submit an audited financial statement if there is any evidence indicating that~~
31 ~~the licensee may be unable to meet its financial obligations.~~ A licensee shall ~~be required to provide evidence of~~
32 ~~continued financial responsibility satisfactory to the Board, pursuant to Rule .0204 of this Chapter, if there are~~
33 ~~indications~~ submit an audited financial statement as evidence of continued financial responsibility in accordance with
34 Rule .0204 of this Chapter if the Board finds that the licensee is insolvent, financially unstable, or unable to meet its
35 financial responsibilities based upon the information provided in the renewal application. ~~responsibilities.~~ Except as
36 provided herein, evidence [Evidence] of financial responsibility shall be subject to approval by the Board in
37 accordance with the requirements of Rule .0204 of this Chapter.

1 (c) A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of
2 its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement [prepared by a certified
3 public accountant] with a classified balance sheet as part of any application for renewal. ~~A corporate licensee shall
4 notify the Board of its dissolution, suspension of its corporate charter, or withdrawal of its Certificate of Authority
5 within 30 days of such dissolution, suspension, or withdrawal.~~

6 ~~(d) A corporate license shall not be renewed unless it is in good standing with the N.C. Department of the Secretary
7 of State.~~

8 ~~(e)~~ (e) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the
9 Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to
10 file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines,
11 for paying renewal fees, and for meeting any other requirement or conditions related to the maintenance or renewal of
12 the license issued by the Board. The applicant shall furnish to the Board a copy of the military orders or the extension
13 approval by the Internal Revenue Service or by the North Carolina Department of Revenue.

14
15 *History Note: Authority G.S. 87-1; 87-4; 87-10; 87-12; 87-13; 93B-15;*
16 *Eff. February 1, 1976;*
17 *Readopted Eff. September 26, 1977;*
18 *ARRC Objection March 19, 1987;*
19 *Amended Eff. May 1, 1989; August 1, 1987;*
20 *Temporary Amendment Eff. June 28, 1989 for a period of 155 Days to Expire on December 1, 1989;*
21 *Amended Eff. December 1, 1989;*
22 *RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment;*
23 *Amended Eff. September 1, 1992;*
24 *Temporary Amendment Eff. May 31, 1996;*
25 *Amended Eff. April 1, 2014; June 1, 2011; June 1, 2003; April 1, 2003; August 1, 2002; April 1,*
26 *1997;*
27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
28 *~~2016.~~ 2016;*
29 *Amended Eff. April 1, 2018.*

1 21 NCAC 12 .0504 is amended with changes as published in 32:10 NCR 968-981 as follows:

2
3 **21 NCAC 12 .0504 INCREASE IN LIMITATION**

4 (a) General. A person, ~~firm~~ firm, or corporation holding a valid license to engage in the practice of general contracting
5 in North Carolina may apply for a different limitation by making application for such different limitation with the
6 Board on a form prescribed and furnished by the Board. The application shall contain the following:

7 (1) the Social Security Number of individual applicant, [qualifier(s)] ~~qualifier(s)~~, and tax identification
8 number for [corporation,] ~~corporations~~, LLCs, or partnerships;

9 (2) the applicant's contact information;

10 (3) the exact name of the business as reflected on the previously issued license that is subject to the
11 limitation increase application;

12 (4) information regarding any changes made in the status of the licensee's [business,] ~~business~~ since
13 the initial application or last renewal was submitted to the Board, whichever is later;

14 (5) confirmation of license limitation and classifications;

15 (6) requested limitation;

16 (7) an audited financial statement [to be] prepared in accordance with [by a certified public accountant
17 to demonstrate financial responsibility pursuant to] Rule .0204; [and]

18 (8) if applicable, proof that the surety bond is maintained in compliance with Rule .0204 of this Chapter;
19 and

20 [~~(8)~~(9) the application fee as set forth in Rule .0304 of this Chapter.

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

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

27 (d) (b) Eligibility. An applicant ~~for a new limitation is~~ shall be eligible for the requested change a new limitation if
28 he or she possesses the qualifications for the limitations as set forth in necessary in accordance with Rule .0204 of this
29 Chapter ~~with the exception that such applicant~~ Chapter, except that he or she shall not be required to take a written
30 examination. exam.

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

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

36 (g) ~~Notice of Approval.~~ Within two weeks after the regular meeting of the Board in which a timely filed application
37 is considered, the Board will notify the applicant of its decision. If the application is approved, a certification of

1 ~~license in the new limitation will be issued by the Board and the applicant, as of the time of notice of the approval,~~
2 ~~may conduct himself or itself in accordance with the rights available under the limitation granted.~~

3
4 *History Note:* Authority G.S. 87-1; ~~87-4~~; 87-10;
5 Eff. February 1, 1976;
6 Amended Eff. June 23, 1977;
7 Readopted Eff. September 26, 1977;
8 Amended Eff. May 1, 1989; January 1, 1983;
9 Temporary Amendment Eff. June 28, 1989, for a period of 155 days to expire on December 1, 1989;
10 Amended Eff. August 1, 2000; December 1, 1989;
11 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
12 ~~2016~~; 2016;
13 Amended Eff. April 1, 2018.



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 16, 2018

Anna Baird Choi
NC Licensing Board for General Contractors
Sent via email only: anna@ncl-law.com

Re: Objection to Rules 21 NCAC 12 .0204, .0503, and .0504

Dear Ms. Choi:

At its meeting on February 15, 2018, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

Specifically, the Commission objected to the above referenced Rules finding that the Board lacked the statutory authority to require financial statements be prepared by certified public accountants.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please feel free to contact me.

Sincerely,

Amber May
Commission Counsel

cc: Frank Wiesner, Frank.Wiesner@nclbgc.org

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

REQUEST FOR TECHNICAL CHANGE

AGENCY: Licensing Board for General Contractors

RULE CITATION: 21 NCAC 12 .0204

DEADLINE FOR RECEIPT: Friday, February 9, 2018

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

What is a limitation? I assume that it is referring to the categories contained within this Rule (limited, intermediate, and unlimited)? Under what circumstances would each category be appropriate? Some additional information as to what the significance of each category would be helpful.

In (a)(1), (b)(1), and (c)(1), what does "entitled to be admitted to the examination" mean? Does this simply mean that they have to meet the requirements set out in 87-10? Also, it is my understanding that Section .0400 addresses the examination requirements. Is this duplicative of (a)(3), (b)(3), and (c)(3)? Would it be sufficient and accurate to say something like: "meet the requirements as set forth in G.S. 87-10;"?

I want to be sure that I'm clear – for a Limited License, an applicant only must submit a audited financial statement if someone associated with it has filed bankruptcy within the past 5 years? If that is true, please consider moving the "if the applicant... is in bankruptcy or has been..." to the beginning of sub-paragraph (a)(4). As written, it gets a bit lost. Also, if my understanding is correct, how is an applicant for a limited license to satisfy (a)(2)? Must they simply check a box on the application or is proof required?

In (d), page 2, line 19, are there some federal regulations that GCs are subject to or do you mean State rules?

In (e), page 2, line 31, what is meant by "wherein the only exception to GAAP is that..."? Is this sentence saying that the Board may require additional non-GAAP financial statements if it is necessary to determine the working capital or net worth of a particular applicant? If so, please say that and consider simplifying this sentence.

In (e), there are references to several outside standards. Please confirm that all have been incorporated in accordance with [G.S. 150B-21.6](#).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609

Amber May
Commission Counsel

Date submitted to agency: January 30, 2018

1 21 NCAC 12 .0204 is amended as published in 32:10 NCR 968-981 as follows:

2
3 **21 NCAC 12 .0204** **LICENSE LIMITATIONS; ELIGIBILITY**

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- 5 (1) ~~Be~~ be entitled to be admitted to the examination given by the Board and ~~must~~ shall meet the
6 requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- 7 (2) ~~Be~~ be financially stable to the extent that the total current assets of the applicant or the firm or
8 corporation he or she represents exceed the total current liabilities by at least seventeen thousand
9 dollars (\$17,000) or the total net worth of the applicant or firm is at least eighty thousand dollars
10 (\$80,000);
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12 ~~specific contracting classification chosen by the applicant with a score of 70 percent or higher; as~~
13 ~~set out in Rule .0404 of this Chapter; and~~
- 14 (4) ~~Provide~~ provide to the Board an audited financial statement with a classified balance sheet as part
15 of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been
16 in bankruptcy within ~~seven~~ five years prior to the filing of the application. This requirement ~~does~~
17 shall not apply to shareholders of an applicant that is a publicly traded corporation. The audited
18 financial statement shall be prepared by a certified public accountant.

19 (b) Intermediate License. The applicant for an intermediate license ~~must~~ shall:

- 20 (1) ~~Be~~ be entitled to be admitted to the examination given by the Board and ~~must~~ shall meet the
21 requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
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23 corporation he or she represents exceed the total current liabilities by at least seventy-five thousand
24 dollars (\$75,000), as reflected in an audited financial statement prepared by a certified public
25 ~~accountant or an independent accountant who is engaged in the public practice of accountancy;~~
26 ~~accountant; and~~
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29 ~~set out in Rule .0404 of this Chapter.~~

30 (c) Unlimited License. The applicant for an unlimited license ~~must~~ shall:

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32 requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
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34 corporation he or she represents exceed the total current liabilities by at least one hundred fifty
35 thousand dollars (\$150,000), as reflected in an audited financial statement prepared by a certified
36 public ~~accountant or an independent accountant who is engaged in the public practice of~~
37 ~~accountancy; accountant;~~

1 (3) ~~Pass~~ pass the examination ~~given by the Board for which shall contain subject matter related to the~~
2 specific contracting classification chosen by the applicant with a score ~~of 70 percent or higher. as~~
3 set out in Rule .0404 of this Chapter.

4 (d) Surety Bonds. In lieu of demonstrating the ~~required~~ level of working capital as required by in Subparagraphs
5 (b)(2) and (c)(2) of this Rule or net worth under Subparagraph (a)(2) of this Rule, an applicant may obtain a surety
6 bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or
7 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++
8 or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as
9 the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates
10 the required level of working ~~capital. capital as required by Subparagraphs (b)(2) and (c)(2) of this Rule.~~ The
11 application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the
12 requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars
13 (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars
14 (\$2,000,000) for an unlimited license. The bond shall list the State of North Carolina as obligee and be for the benefit
15 of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or
16 contract, breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken
17 by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The
18 bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law,
19 regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant
20 both shall notify the Board within 30 days in writing. If the applicant fails to provide written proof of financial
21 responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license is
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29 applicants to the Board shall be no older than twelve months from the date of submission. Financial statements shall
30 conform to United States "generally accepted accounting principles" (GAAP). The Board may require non-GAAP
31 financial statements from applicants wherein the only exception to GAAP is that such presentation is necessary to
32 ascertain the working capital or net worth of the particular applicant. Examples of ~~such~~ the circumstances when non-
33 GAAP presentation is may be necessary to ascertain the working capital or net worth of the applicant ~~are~~ shall be
34 when the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent" on personal
35 financial statements and when the only exception to GAAP is that the particular applicant is not combined with a
36 related entity into one financial statement pursuant to AICPA Financial Interpretation 46R (ASC 810). The
37 terminologies, working capital, balance sheet with current and fixed assets, current and long term liabilities, and any

1 other accounting terminologies, used herein shall be construed in accordance with GAAP Standards as promulgated
2 by the Financial Accounting Standards Board (FASB). The terminologies, audited financial statement, unqualified
3 opinion, and any other auditing terminologies used herein shall be construed in accordance with those standards
4 referred to as "generally accepted auditing standards" (GAAS) as promulgated by the American Institute of Certified
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20 *1, 2002; April 1, 2001; August 1, 2000;*
21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
22 *~~2016~~ 2016;*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Licensing Board for General Contractors

RULE CITATION: 21 NCAC 12 .0503

DEADLINE FOR RECEIPT: Friday, February 9, 2018

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Rule .0204(d) requires that surety information be provided in annual license renewal forms; however, I don't see that requirement here. Was this intentional? I see this as being a potential clarity issue as there appear to be conflicting requirements.

In (a), by "applicants", did you mean "applications"?

In (a)(8), please add a comma after "registration"

In (a)(9), what are the required contents of the form for the financial statement? [G.S. 150B-2\(8a\)\(d\)](#) states that while the actual form does not need to be in Rule, contents of the form must be in rule or law. Is there a cross-reference available?

Also in (a)(9), what is considered to be an "acceptable substitute" and how is this determined? Please add a comma following "acceptable substitute." I'm having a bit of trouble understanding the overall intent here – I think that it is requiring that either a representative of the licensee complete the financial statement on the Board's form or "an acceptable substitute" (which I think has some clarity issues) OR a financial statement completed by a CPA? I think that perhaps a bit of rewording might help to clarify.

In (a)(10), since late fees are also included in .0304, please consider changing this to say "the application fee and any applicable late fees as set forth in Rule .0304 of this Chapter."

In (b), how will the Board determine whether someone is unable to meet their financial obligations? I understand that an all-inclusive list is not reasonable here, but some sort of idea as to how the Board will make their decision would be helpful. Is line 29 intended to address this? If so, I'm not sure that's clear. Perhaps some simplifying of this Paragraph would help clarify. Please see the suggestion below.

Amber May
Commission Counsel
Date submitted to agency: January 30, 2018

Also in (b), please consider changing the directive to the regulated public and say something like:

(b) ~~The Board shall require a licensee to submit an audited financial statement if there is any evidence indicating that the licensee may be unable to meet its financial obligations. A licensee shall be required to provide evidence of continued financial responsibility satisfactory to the Board, pursuant to Rule .0204 of this Chapter, if there are indications~~ submit an audited financial statement as evidence of continued financial responsibility in accordance with Rule .0204 of this Chapter if the Board finds ~~that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities based upon the information provided in the renewal application.~~ responsibilities. Except as provided herein, evidence ~~Evidence~~ of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter.

If you choose to use this language, it may need some fine-tuning. Please note that this is only a suggestion and you are in no way required to use it.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 30, 2018

1 21 NCAC 12 .0503 is amended as published in 32:10 NCR 968-981 as follows:

2
3 **21 NCAC 12 .0503 RENEWAL OF LICENSE**

4 (a) ~~Form. The Board's renewal form shall require the applicant to include the following information: Applicants for~~
5 renewal of license shall containing the following:

- 6 (1) ~~whether there were any changes made in the status of the licensee's business during the preceding~~
7 year; and the Social Security Number of the applicant and qualifier(s) and tax identification number
8 for corporations, LLCs, or partnerships;
- 9 (2) ~~a financial statement for the licensee's business. The financial statement need not be prepared by a~~
10 certified public accountant or by a qualified independent accountant, but may be completed by the
11 licensee on the form itself. the applicant's contact information;
- 12 (3) ~~the name of business under which licensee will be operating, if any;~~
- 13 (4) ~~information regarding any changes made in the status of the licensee's business, since the initial~~
14 application or last renewal was submitted to the Board, whichever is later;
- 15 (5) ~~confirmation of license limitation and classifications;~~
- 16 (6) ~~information about all crimes of which the applicant has been convicted since the initial application~~
17 or last renewal was submitted to the Board, whichever is later;
- 18 (7) ~~documentation regarding all crimes referenced above;~~
- 19 (8) ~~information indicating whether the applicant has any disciplinary history with any other~~
20 occupational licensing, registration or certification agency since the initial application or last
21 renewal was submitted to the Board, whichever is later;
- 22 (9) ~~a financial statement prepared by a representative of the licensee on a form provided by the Board,~~
23 an acceptable substitute or by a certified public accountant to demonstrate continued financial
24 responsibility pursuant to Rule .0204 of this Chapter; and
- 25 (10) ~~the application fee as set forth in Rule .0304 of this Chapter and any accrued late fees.~~

26 (b) The Board shall require a licensee to submit an audited financial statement if there is any evidence indicating that
27 the licensee may be unable to meet its financial obligations. A licensee shall be required to provide evidence of
28 continued financial responsibility satisfactory to the Board, pursuant to Rule .0204 of this Chapter, if there are
29 indications that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities. ~~Except~~
30 ~~as provided herein, evidence~~ Evidence of financial responsibility shall be subject to approval by the Board in
31 accordance with the requirements of Rule .0204 of this Chapter.

32 (c) A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of
33 its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement prepared by a certified
34 public accountant with a classified balance sheet as part of any application for renewal. ~~A corporate licensee shall~~
35 ~~notify the Board of its dissolution, suspension of its corporate charter, or withdrawal of its Certificate of Authority~~
36 ~~within 30 days of such dissolution, suspension, or withdrawal.~~

1 (d) A corporate license shall not be renewed unless it is in good standing with the N.C. Department of the Secretary
2 of State.

3 ~~(d)~~ (e) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the
4 Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to
5 file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines,
6 for paying renewal fees, and for meeting any other requirement or conditions related to the maintenance or renewal of
7 the license issued by the Board. The applicant shall furnish to the Board a copy of the military orders or the extension
8 approval by the Internal Revenue Service or by the North Carolina Department of Revenue.

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10 *History Note: Authority G.S. 87-1; 87-4;87-10; 87-12; 87-13; 93B-15;*
11 *Eff. February 1, 1976;*
12 *Readopted Eff. September 26, 1977;*
13 *ARRC Objection March 19, 1987;*
14 *Amended Eff. May 1, 1989; August 1, 1987;*
15 *Temporary Amendment Eff. June 28, 1989 for a period of 155 Days to Expire on December 1, 1989;*
16 *Amended Eff. December 1, 1989;*
17 *RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment;*
18 *Amended Eff. September 1, 1992;*
19 *Temporary Amendment Eff. May 31, 1996;*
20 *Amended Eff. April 1, 2014; June 1, 2011; June 1, 2003; April 1, 2003; August 1, 2002; April 1,*
21 *1997;*
22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
23 *~~2016.~~ 2016.*
24 *Amended Eff. April 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

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RULE CITATION: 21 NCAC 12 .0504

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(1), please add a comma after "qualifiers" and change "corporation" to "corporations" (assuming that's what you mean.)

In (a)(4), please remove the comma after "licensee's business"

In (a)(7), what is meant by "financial responsibility pursuant to Rule .0204." Is Rule .0204 being cited to show what evidence is required to show the financial responsibility? Specifically (b)(2) if going from a limited license to an intermediate license and (c)(2) if going from an intermediate license to an unlimited license? Does a surety bond come into play here?

Please add G.S. 87-4 to your History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 30, 2018

1 21 NCAC 12 .0504 is amended as published in 32:10 NCR 968-981 as follows:

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3 **21 NCAC 12 .0504 INCREASE IN LIMITATION**

4 (a) General. A person, ~~firm~~ firm, or corporation holding a valid license to engage in the practice of general contracting
5 in North Carolina may apply for a different limitation by making application for such different limitation with the
6 ~~Board on a form prescribed and furnished by the Board.~~ The application shall contain the following:

- 7 (1) the Social Security Number of individual applicant, qualifier(s) and tax identification number for
8 corporation, LLCs, or partnerships;
9 (2) the applicant's contact information;
10 (3) the exact name of the business as reflected on the previously issued license that is subject to the
11 limitation increase application;
12 (4) information regarding any changes made in the status of the licensee's business, since the initial
13 application or last renewal was submitted to the Board, whichever is later;
14 (5) confirmation of license limitation and classifications;
15 (6) requested limitation;
16 (7) an audited financial statement to be prepared by a certified public accountant to demonstrate
17 financial responsibility pursuant to Rule .0204; and
18 (8) the application fee as set forth in Rule .0304 of this Chapter.

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

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

25 ~~(d)~~ (b) Eligibility. An applicant ~~for a new limitation is~~ shall be eligible for ~~the requested change~~ a new limitation if
26 he or she possesses the qualifications ~~for the limitations as set forth in~~ necessary in accordance with Rule .0204 of this
27 Chapter ~~with the exception that such applicant~~ Chapter, except that he or she shall not be required to take a written
28 examination. exam.

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

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

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

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History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989; January 1, 1983;
Temporary Amendment Eff. June 28, 1989, for a period of 155 days to expire on December 1, 1989;
Amended Eff. August 1, 2000; December 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,
~~2016- 2016;~~
Amended Eff. April 1, 2018.